SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 64

THE UNITED STATES OF AMERICA, APPELLANT

vs.

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

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U–1, A to E. Letter agreement dated September 10, 1934 between Universal and two of the defendant corporations signed by R. E. Griffith and covers product for 1934–35 season. Attached is first page of standard form	5042	2469
U–2, A to D. Agreement dated August 26, 1936, between the four corporate defendants and their affiliates and Universal and covering 1936–37 season. Attached is first page of standard form	5047	2475
U–3, A. A preliminary agreement which was superseded by U–2 covering the 1936–37 season	5051	2479
U–3, B to D. Allocation sheets attached to above contract (U–3, A)	5052	2480
U–4, A to C. Agreement dated October 14, 1937, signed by R. E. Griffith for all corporate defendants and covering 1937–38 season	5055	2483
U–4, D to H. First page of schedule of feature contracts; printed form for four Buck Jones and Bob Baker pictures	5058	2486
U–5, A to E. Master agreement dated September 17, 1938, covering 1938–39 season, signed by R. E. Griffith for the two Dallas defendants and affiliated theatres, covering certain specified towns and situations for Universal 1938–39 product from December 15, 1938 to December 14, 1939. Attached is first page of standard form and allocation	5063	2493
U–6, A to D. Agreement dated September 1, 1938, between Universal and the Oklahoma City corporate defendants and their affiliates. Signed by H. R. Falls for defendants and covering 1938–39 season	5068	2501
U–39. Letter dated November 5, 1936, to A. J. Leary, Oklahoma City Exchange, from Edw. S. Oldsmith, Branch Manager, Dallas, Tex.	5232	2669
W–1, B & C. Letter agreement between Vitagraph Inc. and Duffy Theatres Inc., February 19, 1937	5075	2505
W–3, A to F. Contract dated September 28, 1933, between Griffith Amusement Co., Consolidated Theatres, Inc., and Allied Theatres, signed for Vitagraph by Sears, for Griffith Amusement Co., by R. E. Griffith and for others by Falls and Griffith. Attached is first page of standard form	5077	2507
W–3, G to M. Contract dated August 24, 1933, between Griffith Amusement Co., Consolidated Theatres, Inc., and R. E. Griffith and affiliated interests, signed by R. E. Griffith and by Sears for Vitagraph. Attached is front page of Standard form	5083	2514

	Original	Print
W-4, A to G. Contract dated September 4, 1934, between Griffith Amusement Co., Consolidated, R. E. Griffith and affiliated interests. Signed by R. E. Griffith and by Sears for Vitagraph	5090	2522
W-6, A to G. Contract dated August 15, 1935, between Griffith Amusement Co., Consolidated, R. E. Griffith and affiliated interests, signed by R. E. Griffith for all exhibitors and by Sears for Vitagraph	5099	2529
W-7, A to F. Contract dated September 1, 1936, between the Griffith Amusement Co., Consolidated Theatres, R. E. Griffith, Westex and affiliated interests, signed by R. E. Griffith for all exhibitors and by Sears for Vitagraph	5106	2536
W-8, A to I. Contract dated September 8, 1937, between Griffith, Consolidated, R. E. Griffith, Westex and affiliated interests, and signed by Griffith for all of the exhibitors and by Sears for Vitagraph	5112	2542
W-9, A to E. Contract dated January 27, 1938, between Griffith Amusement Co., Consolidated Theatres, Westex, and R. E. Griffith Theatres, and Vitagraph, Inc., signed by Sears for Vitagraph and H. R. Falls for exhibitors	5121	2552
W-10, A & B. Instrument dated January 13, 1938, between Griffith Amusement Co., Consolidated, R. E. Griffith, Westex and affiliated theatres, signed by Falls for the exhibitors. Further amends agreement dated September 8, 1937	5126	2558
W-11, A to E. Contract dated August 22, 1938, between Griffith Amusement Co., Consolidated and Westex Theatres, signed by H. R. Falls for all of the exhibitors	5128	2560
W-12, A to E. Contract dated September 14, 1938 between R. E. Griffith Theatres, Westex, and the Long Griffith Theatres, signed by R. E. Griffith for exhibitors and for Vitagraph by Sears	5133	2566
W-60, 3. Warner Standard Form	5142	2572

DEFENDANTS' EXHIBITS.

1. Contract between Jake Jones, operating the Ritz or State Theatre, Shawnee, Oklahoma and Universal Film Exchanges, Inc., dated October 21, 1936	5233	2670
2. Contract between Jake Jones, operating the Ritz or State Theatre, Shawnee, Oklahoma and Universal Film Exchanges, Inc., dated October 27, 1937	5234	2672
4. Contract between Jake Jones, operating the Ritz Theatre, Shawnee, Okla. and Universal Film Exchanges, Inc., dated March 20, 1939	5236	2674
5. Contract between Jake Jones-Seminole Amustment Co., operating the State Theatre, Shawnee, Oklahoma and Vitagraph, Inc., dated September 10, 1937	5237	2676
6. Contract between Jake Jones, operating the Ritz Theatre, Shawnee, Oklahoma and Metro-Goldwyn-Mayer Distributing Corporation, dated August 13, 1935	5238	2678
8. Contract between Jake Jones, operating the Ritz or State Theatre, Shawnee, Oklahoma and Metro-Goldwyn-Mayer Distributing Co., dated September 28, 1936	5239	2680

	Original	Print
34. Contract between Juanita B. Berry, operating the Campus or Oklahoma Theatre, Norman, Okla. and United Artists Corporation, dated Dec. 4, 1936	5288	2682
35. Contract between Juanita B. Berry, operating the Campus or Oklahoma Theatre, Norman, Oklahoma and United Artists Corporation, dated Dec. 4, 1936	5289	2685
36. Contract between Juanita B. Berry, operating the Campus or Oklahoma Theatre, Norman, Okla., and United Artists Corporation, dated December 4, 1936	5290	2688
62. Memorandum agreement between Duffy Theatres, Inc., and Consolidated Theatres, Inc., dated January 5, 1937, and is an option for Consolidated Theatres, Inc., to purchase theatre, furniture, fixtures, equipment and all other personal property located in and used as a part of the Temple and Rialto Theatres, Mangum, Oklahoma	5314	2691
63. Original letter from Duffy Theatres, Inc., Mangum, Oklahoma, to Mr. W. B. Zoellner, Metro-Goldwyn-Mayer, Oklahoma City, and signed by Pat Duffy, dated April 3, 1936	5317	2694
64. Original letter from Duffy Theatres, Inc., Mangum, Oklahoma, signed by Pat Duffy to Loew's Inc., Oklahoma City, and Mr. W. B. Zoellner, dated January 4, 1938	5318	2695
65. Original letter from Duffy Theatres, Inc., Mangum, Oklahoma, signed by Pat Duffy to Loew's, Inc., Oklahoma City, dated March 3, 1938	5319	2696
66. Original letter from Duffy Theatres, Inc., Mangum, Oklahoma, signed by Pat Duffy to Mr. W. B. Zoellner of Loew's Inc., Oklahoma City, dated March 24, 1938	5320	2697
69. Contract between Nona Kyser, operating the Strand or Ada Theatre, Ada, Oklahoma, and Columbia Pictures Corporation, dated October 14, 1936, covering the schedule for 1936-37 season to be run first, second and third run and preview privileges	5323	2698
72. Contract between Miss Nona Kyser, operating the Ada or Strand Theatre, Ada, Oklahoma, and Columbia Pictures Corporation, dated February 22, 1939, for the showing of first, second and third run pictures of the 1938-39 season, preview privileges	5326	2700
108. List showing competitive towns of Griffith Amusement Company	5440	2702
109. List showing competitive towns of Consolidated Amusement Company	5441	2703
133. List showing admission prices charged by Griffith Amusement Co. and Griffith Consolidated Theatres in their theatres during 1939	5511	2705
164. List of the directors of the R. E. Griffith Theatres, Inc., and Westex Theatres, Inc.	5576	2705
165. List of the stockholders and their holdings of R. E. Griffith Theatres, Inc.	5577	2706
166. List of the stockholders and their holdings of Westex Theatres, Inc.	5578	2707
Appellant's Praecipe for Record on Appeal	5601	2708

	Original	Print
Appellee's Designation of Additional Portions of Record on Appeal	5603	2709
Order of January 17, 1947, Extending Time to Docket Appeal	5605	2710
Order of February 26, 1947, Extending Time to Docket Appeal	5606	2710
Clerk's Certificate to Transcript	5607	2711
Statement of points to be relied upon and designation of record	5609	2711
Stipulation as to printing exhibits	5610	2712
Order noting probable jurisdiction	5613	2715

1 In the District Court of the United States,
Western District of Oklahoma

Civil Action File No. 172

UNITED STATES OF AMERICA, PLAINTIFF

v.

GRIFFITH AMUSEMENT COMPANY, CONSOLIDATED THEATRES, INC., R. E. GRIFFITH THEATRES, INC., WESTEX THEATRES, INC., L. C. GRIFFITH, H. J. GRIFFITH, R. E. GRIFFITH, PARAMOUNT PICTURES, INC., METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION OF TEXAS, LOEW'S INCORPORATED, RKO RADIO PICTURES, INC., VITAGRAPH, INC., UNIVERSAL FILM EXCHANGES, INC., TWENTIETH CENTURY-FOX FILM CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION OF TEXAS, UNITED ARTISTS CORPORATION, and COLUMBIA PICTURES CORPORATION, DEFENDANTS

Complaint

Filed April 28, 1939

STATEMENT OF JURISDICTION

The United States of America, by Charles E. Dierker, United States Attorney for the Western District of Oklahoma, acting under the direction of Frank Murphy, Attorney General, brings this proceeding in which equitable relief is sought under Section 4 of the Act of Congress of July 2, 1890 entitled "an Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," hereinafter referred to as the Sherman Act, against the above named defendants, which are more fully described as follows:

2 DESCRIPTION OF DEFENDANTS

1. Griffith Amusement Company, hereinafter referred to as Amusement, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Oklahoma City, Oklahoma. It operates* one or more motion picture theaters in each of the towns of Ada, Ardmore, Bartlesville, Blackwell, Bristow, Chandler, Duncan, Elk City, Enid, Fairfax, Guthrie, Henryetta, Hobart, Hugo, Maud, Norman, Okmulgee, Seminole, Shawnee, Stillwater, and Tonkawa in the State of Oklahoma. It also operates one or more theatres in each of the towns of Borger, Gainesville, Kermit, Pampas, Wellington and Wink in the State of Texas.

*The term "operate" as used throughout this complaint includes operation by salaried employees and operation in conjunction with other persons on a profit-sharing basis.

2. Consolidated Theatres, Inc., hereinafter referred to as Consolidated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Oklahoma City, Oklahoma. It operates one or more theatres in each of the towns of Altus, Chickasha, Claremore, Clinton, Cushing, Drumright, Holdenville, Hominy, Kingfisher, Mangum, Pauls Valley, Sapulpa, Sayre, and Venita, in the State of Oklahoma. It also operates one or more theatres in each of the towns of Cleburne, Goldsmith, Lubbock, Midland and Sunray, in the State of Texas.

3. R. E. Griffith Theatres, Inc., hereinafter referred to as Griffith, in a corporation organized and existing under the laws of the State of New Mexico, with its principal place of business in Dallas, Texas. It operates one or more theatres in each of the towns of Alamogordo, Carlsbad, Clovis, Deming, Eunice, Gallup, Hobbs, Jal and Roswell, in the State of New Mexico, and in each of the towns of Olney and Post, in the State of Texas.

3 4. Westex Theatres, Inc., hereinafter referred to as Westex, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Dallas, Texas. It operates one or more theatres in each of the towns of Ballinger, Belton, Burk-Burnett, Brady, Clarksville, Decatur, Georgetown, Gonzales, Hereford, Lampasas, Lockhart, Luling, Merket, Odessa, Plainview, Sansaba, Spur, Stamford and Winters, in the State of Texas, and two theatres in the town of Portales, in the State of New Mexico.

5. The four defendants, Amusement, Consolidated, Griffith and Westex are also hereinafter collectively referred to as the defendant exhibitors. The aforesaid towns in which they operate theatres are hereinafter collectively referred to as the Griffith Towns.

6. L. C. Griffith is President and a Director of Amusement, President and Director of Consolidated and resides in Oklahoma City, Oklahoma.

7. H. J. Griffith is Secretary and Director of Amusement, Assistant Secretary-Treasurer and Director of Consolidated and resides in Oklahoma City, Oklahoma.

8. R. E. Griffith is Assistant Secretary and Director of Amusement, Assistant Secretary of Consolidated, President and a Director of Griffith, and President and Director of Westex and resides in Dallas, Texas.

9. Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1501 Broadway, in the city of New York, New York.

10. Metro-Goldwyn-Mayer Distributing Corporation of Texas, hereinafter referred to as Metro-Goldwyn-Mayer, is a corporation organized and existing under the laws of the State of Texas and has its principal place of business at 2013 Jackson Street, in the city of Dallas, Texas.

4 11. Loew's, Incorporated, hereinafter referred to as Loew's, is a corporation organized and existing under the laws of the State of New York, which owns and controls the defendant Metro-Goldwyn-Mayer Distributing Corporation of Texas, and has its principal place of business at 1540 Broadway, in the city of New York, New York.

12. RKO Radio Pictures, Inc., hereinafter referred to as RKO, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1270 Sixth Avenue, in the city of New York, New York.

13. Vitagraph, Inc., hereinafter referred to as Vitagraph, is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 321 West 44th Street, in the city of New York, New York.

14. Universal Film Exchanges, Inc., hereinafter referred to as Universal, is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at Rockefeller Center, in the city of New York, New York.

15. Twentieth Century-Fox Film Corporation of Texas, hereinafter referred to as Fox of Texas, is a corporation organized and existing under the laws of the State of Texas and has its principal place of business at 1801 Wood Street, in the city of Dallas, Texas.

16. Twentieth Century-Fox Film Corporation, hereinafter referred to as Fox, is a corporation organized and existing under the laws of the State of New York, which owns and controls the defendant Twentieth Century-Fox Film Corporation of Texas, and has its principal place of business at 444 West 56th Street, in the city of New York, New York.

17. United Artists Corporation, hereinafter referred to as United Artists, is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 729 Seventh Avenue, in the city of New York, New York.

5 18. Columbia Pictures Corporation, hereinafter referred to as Columbia, is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 729 Seventh Avenue, in the city of New York, New York.

19. The defendants, Paramount, Loew's, Metro-Goldwyn-Mayer, RKO, Vitagraph, Universal, Fox, Fox of Texas, United Artists and Columbia, are engaged in the business of distributing motion picture films in interstate commerce throughout the United States, including the States of Oklahoma, Texas and New Mexico. They are hereinafter collectively referred to as the defendant distributors. Metro-Goldwyn-Mayer and Loew's are hereinafter referred to as one distributor and Fox and Fox of Texas are hereinafter referred to as one distributor. All of the defendant distributors maintain branch offices, called film exchanges, in Oklahoma City, Oklahoma, Dallas, Texas and Denver, Colorado, from which they distribute films to exhibitors in Oklahoma, Texas and New Mexico, with the exception of United Artists Corporation which maintains no exchange at Oklahoma City, Oklahoma.

DEFINITIONS OF TERMS*

20. First-run exhibition in a town is the initial exhibition of a motion picture in that town with first-run clearance.

21. Second-run exhibition in a town is the exhibition of a motion picture with second-run clearance, which has been previously shown in the same town.

22. A first run theatre is a motion-picture theatre which customarily exhibits first-class pictures on first run.

23. A second run theatre is a motion picture theatre which customarily exhibits first-class pictures on second run.

6 24. Feature pictures are motion pictures five or more reels in length.

25. First-class pictures are the feature pictures which are exhibited for a week or more in a first-run theatre in Oklahoma City, or Tulsa, Oklahoma, or in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas before being subsequently exhibited in the Griffith Towns.

26. Clearance is protection against competition granted to an exhibitor, by agreement with a distributor, which limits the terms on which the distributor may license films to other competing exhibitors.

27. First-run clearance is the protection customarily given to a first-run theatre by a distributor of feature pictures against competition resulting from the subsequent exhibition of its feature pictures at other theatres in the same town. Said protection generally takes the form of an agreement by the distributor covering a period of a year or more during which it agrees not to license its feature

*These definitions apply only to the use of these terms in this complaint.

pictures for exhibition at other theatres in the same town until a specified period has elapsed after the conclusion of their exhibition in the first-run theatre and further agrees not to license said pictures to said other theatres unless said other theatres maintain a specified minimum admission price.

28. Second-run clearance is the protection given a second-run theatre by a distributor of feature pictures against competition resulting from the exhibition of its feature pictures at other theaters in the same town subsequent to the second run. Said protection generally takes the form of an agreement similar to that described in the preceding paragraph.

DESCRIPTION OF BUSINESS INVOLVED

29. The defendant distributors have collectively released during each of the past five years more than ninety-five percent of the first-class pictures exhibited in the Griffith Towns.

7 30. First-class pictures generally have the highest production cost, are made with the aid of the best acting, directing, writing, and technical talent, and possess the greatest box-office value to an exhibitor. They also receive the maximum advertising expenditure by the distributors and their prior exhibition in metropolitan centers serves to further advertise and make them attractive to the patrons of motion picture theatres in the Griffith Towns.

31. The defendant distributors have collectively released during each of the past five years more than seventy-five percent of all feature pictures exhibited in the Griffith Towns.

32. The feature pictures released by the defendant distributors have constituted the principal entertainment furnished by any exhibitor in said towns during each of the past five years.

33. In order to successfully operate a first-run theatre in any of the Griffith Towns an exhibitor must be able to exhibit on first-run each year a substantial number of the feature pictures released by three or more of the defendant distributors each year.

34. In order to successfully operate a second-run theatre in any of the Griffith Towns an exhibitor must be able to exhibit on second-run each year a substantial number of the feature pictures released by three or more of the defendant distributors each year.

35. In order to successfully operate any motion picture theatre in any of said Griffith Towns an exhibitor must be able to exhibit on some run a substantial number of the

first-class pictures released by three or more of the defendant distributors each year.

36. During the past five years the defendant exhibitors have collectively supplied more than eighty percent of the total rental received by each of the defendant distributors for the exhibition of films in the Griffith Towns.

37. The defendant exhibitors have been able to take over the operation of numerous theatres and keep other theatres closed in said Griffith Towns during the past five
8 years by virtue of the control exercised by them over the licensing of feature pictures for exhibition in said towns, hereinafter alleged.

38. The prints of feature pictures released by the defendant distributors which are used by exhibitors in Oklahoma, Texas and New Mexico are manufactured entirely in other states; each print is used successively by numerous exhibitors and moves continuously across state lines in the course of such use.

VIOLATIONS ALLEGED

39. For the past five years the defendant exhibitors have continuously combined with each other and with each of the defendant distributors to unreasonably restrain interstate trade and commerce in motion picture films and to monopolize and attempt to monopolize the first and second run exhibition of feature pictures and the operation of first and second run theatres in the Griffith Towns in violation of Sections 1 and 2 of the Sherman Act, in the following manner:

40. Said exhibitors have refrained from competing with each other in the acquisition and operation of motion picture theatres in said towns pursuant to express or implied agreements to allocate said territory between them.

41. During each of the past five years said exhibitors have collectively contracted with each of the defendant distributors for all of the feature pictures annually required for exhibition at all of the theatres operated by them in said towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

42. By said contracts said exhibitors have combined with each other to compel each of the defendant distributors to grant to all of them in all of said towns the
9 following exclusive privileges during the entire time they have operated theatres in said towns:

(a) The exclusive privilege of selecting from the feature pictures released by said distributors such feature pictures as said exhibitors deemed suitable for exhibition in said towns, as and when prints thereof became available, before said pictures were released to any other exhibitors in said towns.

(b) The exclusive privilege of receiving clearance on said feature pictures over competing theatres in said towns.

43. The foregoing exclusive privileges have enabled the defendant exhibitors to unreasonably restrain, suppress and entirely eliminate the competition offered by other theatre operators in said towns in the licensing and exhibition of feature pictures by:

(a) Preventing them from obtaining enough first-class pictures for exhibition on any run to operate their theatres successfully.

(b) Forcing them to maintain admission prices higher than those warranted by the quality of the entertainment they were able to offer; that is, feature pictures previously exhibited or rejected by the defendant exhibitors.

(c) Preventing them from showing any feature pictures released by the defendant distributors with first-run clearance in any of said towns.

(d) Preventing them from exhibiting any feature pictures released by the defendant distributors with second-run clearance in any of said towns where any of the defendant exhibitors operate one or more second-run theatres.

10 44. For the past five years all of the defendant distributors have continuously combined with each other and with each of the defendant exhibitors to unreasonably restrain interstate trade and commerce in motion picture films and to monopolize and attempt to monopolize the first and second run exhibition of feature pictures and the operation of first and second run theatres in the Griffith Towns, in violation of Sections 1 and 2 of the Sherman Act in the following manner:

45. During each of the past five years said exhibitors have collectively contracted with each of the defendant distributors for all of the feature pictures released by them which said exhibitors required for exhibition in said towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of permitting each of the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in said towns.

46. By said contracts said distributors have uniformly granted to each of said exhibitors, in the respective towns in which they operate theatres, the exclusive privilege of selecting from the feature pictures released by said distributors such feature pictures as said exhibitors deemed suitable for exhibition in said towns as and when prints thereof became available, before said pictures were released to any other exhibitors in said towns.

47. During each of the past five years said distributors have uniformly granted to each of the defendant exhibitors, in each town where they operate theatres, the same clearance on all feature pictures released by any of said distributors, by means of which uniform action:

(a) First-run clearance on all of said feature pictures was exclusively granted to said exhibitors in all of said towns.

11 (b) Second-run clearance on all of said feature pictures was exclusively granted to said exhibitors in all of said towns where they operated second-run theatres.

(c) Competing exhibitors were forced to play all of said feature pictures that they were permitted to license at such admission prices and after the lapse of such periods of time as the defendant exhibitors and the defendant distributors agreed upon as sufficient to prevent said competing exhibitors from attracting patronage away from the defendant exhibitors.

48. Each of the defendant distributors has imposed the foregoing uniform restraints upon competing exhibitors in response to requests made by the defendant exhibitors and pursuant to agreements made with them, with full knowledge of the uniformity of the action taken by all of said defendant distributors and with full knowledge of the competitive effect of such uniform action.

49. Each of the defendant exhibitors is what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres as hereinbefore alleged, the said exhibitors and each of them have obtained what is commonly referred to in the motion picture industry as circuit buying power. Said circuit buying power has enabled them and each of them to obtain the exclusive privileges hereinbefore recited from the defendant distributors. Said circuit buying power has further enabled them and each of them to demand and receive from all distributors of motion pictures more favorable rental terms in licensing their motion pictures than can be obtained by competing individual exhibitors.

50. Said circuit buying power is now so great that its continued existence will tend to subject competing
12 exhibitors in the Griffith Towns to other and additional restraints in violation of the Sherman Act, even if the foregoing restraints are enjoined, unless said circuit buying power is eliminated.

RELIEF PRAYED

Wherefore, plaintiff prays:

(1) That the combination in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, be declared illegal and violative of the Sherman Act.

(2) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into and carrying out, directly or indirectly, expressly or impliedly, any monopolies or restraints of interstate trade and commerce similar to those alleged herein to be illegal.

(3) That the defendant exhibitors herein, and any two or more of them, and each and all of their respective officers and directors and each and all of their respective servants, agents and employees, and all persons acting or claiming to act on behalf of said defendants or any of them be perpetually enjoined and restrained from jointly or collectively negotiating any contracts for the licensing of feature pictures with any of the defendant distributors or their successors in interest.

(4) That the defendant distributors herein, and each and all of their respective officers and directors and each and all of their respective servants, agents and em-
13 ployees, and all persons acting or claiming to act on behalf of said defendants or any of them, be perpetually enjoined and restrained from licensing feature pictures for exhibition on any run at any theatre in any of the Griffith Towns, except upon a local competitive basis whereby all theatres operating in each of said towns will have an equal opportunity to license pictures for that area without regard to whether these theatres or any of them form or constitute a part of a circuit of theatres.

(5) That the defendant exhibitors and each of them be dissolved and that their respective properties be rearranged

under several separate and independent corporations in such a manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and prevent further violations of the Sherman Anti-Trust Act, and that said exhibitor defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(6) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the said exhibitor defendants and each of them and of the aforesaid monoply in the licensing and exhibition of motion pictures.

(7) That the defendant exhibitors and each of them be enjoined and restrained from acquiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably restrain competition or create or tend to create a monopoly in the licensing of feature pictures for first-run or second-run exhibition or in the operation of first-run or second-run theatres in any of the towns in which they operate theatres.

(8) That the plaintiff shall have such other and further relief as the Court shall deem just.

14 (9) That the plaintiff recover its costs and disbursements.

CHARLES E. DIERKER,
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706 Federal Building, Oklahoma City, Oklahoma.

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WADE H. LOOFBOUROW,
Assistant United States Attorney
for the Western District of Oklahoma.

[File endorsement omitted.]

15 In United States District Court

Particulars Supplied by Plaintiff in Response to Motions of the Respective Defendants

Filed May 17, 1940

The paragraph headings below correspond to the same headings used in the motion of Vitagraph, Inc.

I

1. As used in paragraphs 33 and 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

4 A (2) The manner in which the defendant exhibitors combined, as alleged in paragraph 39, is set forth in paragraphs 40, 41, 42, and 43 of the complaint.

4 A (4) The terms of the combination between the defendant exhibitors, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 40, 41, 42, and 43.

4 B (2), (3), and (4) The manner in which Vitagraph, Inc., combined with the defendant exhibitors, as alleged in paragraph 39, the terms, of which the Government is now informed, on which Vitagraph, Inc., became a member of said combination, and the means, of which the Government is now informed, agreed upon for carrying out said combinations, are set forth in paragraphs 41, 42, and 43.

6 A The defendant exhibitors have combined with each other "by said contracts", referred to in Paragraph
16 42, by refraining from contracting with the defendant distributors individually and contracting with said distributors only by means of joint contracts covering all of their theatres.

6 B The plaintiff does not claim that the contracts by which the defendant exhibitors are alleged to have combined are exclusively the licensing agreements under which the feature motion pictures were licensed for exhibition.

6 C Paragraph 42 does not allege that the contracts compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted

by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

6 D The defendant exhibitors have compelled Vitagraph, Inc. to grant to each of them the privileges set forth in paragraph 42 by refraining from licensing the product distributed by Vitagraph, Inc. for exhibition in the Griffith Towns unless the exclusive privileges set forth in paragraph 42 were granted to them.

7 A The exclusive privilege referred to in paragraph A (3) have

a. Prevented other theatre operators from obtaining enough first-class pictures for any run to compete successfully with the defendant exhibitor because they have enabled such exhibitors to license all or as many of said pictures as they need before any of them are even offered to the other operators.

b. Forced other theatre operators to maintain higher admission prices than those warranted by the quality of the entertainment they offered by forcing the distributors, in licensing pictures, to such operators, to require
17 such operator to charge a fixed, arbitrary, minimum admission price.

c. Prevented other operators from showing any feature picture released by the defendant distributors with first-run clearance by limiting first-run clearance to the theatres operated by the defendant exhibitors.

d. Prevented other operators from exhibiting any feature pictures released by the defendant distributors with second-run clearance by limiting second-run clearance to the theatres operated by the defendant exhibitors.

8 A The combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 4 differs from the combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 39 in the following respect: Paragraph 39 alleges a series of combinations between the defendant exhibitors and with each of the defendant distributors; paragraph 44 alleges a series of combinations among the defendant distributors and with each of the defendant exhibitors.

8 B (3) and (4) The manner in which the defendant distributors combined as alleged in paragraph 44, the terms of said combination, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

8 C (2) and (4) The manner in which each defendant exhibitor combined with the defendant distributors, as

alleged in paragraph 44, and the means agreed upon for carrying out said combination, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

9. The matters alleged in Paragraph 45 had the effect of permitting each of the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in each of the towns specified in the complaint in the manner set forth in paragraphs 46 and 47.

10 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privilege alleged in paragraph 46 as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in 45, 46, 47 and 48.

11 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as alleged in paragraph 47 as a result of an agreement among defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

12 A The term "foregoing uniform restraints", as used in paragraph 48, refers to the restraints described in paragraphs 46 and 47.

13 A and B. The phrase, "more favorable rental terms," as used in paragraph 49, includes prices and all other terms on which pictures are rented or licensed, such as play dates, clearance, method of payment, etc.

II

14. The words "past five years" as used in paragraphs 29, 31, 32, 36, 37, 39, 41, 44, 45, and 47, refer to the five-year period commencing April 29, 1934 and ending April 28, 1939. Each of the years referred to commenced on April 29th and ended on April 28th of the succeeding year.

15. The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

16. The word "exclusive" as used in paragraph 42 means that no other exhibitor in the towns named received the same privileges.

17. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

18 (a) The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

18. (b) The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

19. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

20 The paragraph headings below correspond to the same headings used in the motion of Paramount Pictures, Inc.

I

1. As used in paragraphs 33 and 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

4 A (2) The manner in which the defendant exhibitors combined, as alleged in paragraph 39, is set forth in paragraphs 40, 41, 42, 43 of the complaint.

4 A (4) The terms of the combination between the defendant exhibitors, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 40, 41, 42, and 43.

4 B (2), (3), and (4) The manner in which Paramount Pictures, Inc., combined with the defendant exhibitors, as alleged in paragraph 39, the terms, of which the Government is now informed, on which Paramount Pictures, Inc., became a member of said combination, and the means, of which the Government is now informed, agreed upon for carrying out said combination, are set forth in paragraphs 41, 42, and 43.

6 A The defendant exhibitors have combined with
21 each other "by said contracts", referred to in paragraph 42, by refraining from contracting with the defendant distributors individually and contracting with said distributors only by means of joint contracts covering all of their theatres.

6 B The plaintiff does not claim that the contracts by which the defendant exhibitors are alleged to have combined are exclusively the licensing agreements under which the feature motion pictures were licensed for exhibition.

6 C Paragraph 42 does not allege that the contracts compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

6 D The defendant exhibitors have compelled paramount Pictures, Inc. to grant to each of them the privileges set forth in paragraph 42 by refraining from licensing the product distributed by Paramount, Inc. for exhibition in the Griffith towns unless the exclusive privileges set forth in paragraph 42 were granted to them.

7 A The exclusive privilege referred to in paragraph A (3) have

a. Prevented other theatre operators from obtaining enough first-class pictures for any run to compete successfully with the defendant exhibitor because they have enabled such exhibitors to license all or as many of said pictures as they need before any of them are even offered to the other operators.

b. Forced other theatre operators to maintain higher admission prices than those warranted by the quality of the entertainment they offered by forcing the distributors, in licensing pictures, to such operators, to require
22 such operator to charge a fixed, arbitrary, minimum admission price.

c. Prevented other operators from showing any feature picture released by the defendant distributors with first-run clearance by limiting first-run clearance to the theatres operated by the defendant exhibitors.

d. Prevented other operators from exhibiting any feature pictures released by the defendant distributors with second-run clearance by limiting second-run clearance to the theatres operated by the defendant exhibitors.

8 A The combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 44 differs from the combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 39 in the following respect: Paragraph 39 alleges a series of combinations between the defendant exhibitors and with each of the defendant distributors; paragraph 44 alleges a series of combinations among the defendant distributors and with each of the defendant exhibitors.

8 B (3) and (4) The manner in which the defendant distributors combined as alleged in paragraph 44, the terms of said combination, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 45, 46, 47, and 48.

8 C (2) and (4) The manner in which each defendant exhibitor combined with the defendant distributors, as alleged in paragraph 44, and the means agreed upon for carrying out said combination, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

9. The matters alleged in paragraph 45 had the effect of permitting each of the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in each of the towns specified in the complaint in the manner set forth in paragraphs 46 and 47.

10 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privilege alleged in paragraph 46 as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in 45, 46, 47, and 48.

11 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as alleged in paragraph 47 as a result of an agreement among defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47, and 48.

12 A The term "foregoing uniform restraints", as used in paragraph 48, refers to the restraints described in paragraphs 46 and 47.

13 A and B. The phrase, "more favorable rental terms", as used in paragraph 49, includes prices and all other terms on which pictures are rented or licensed, such as play dates, clearance, method of payment, etc.

II

14. The words "past five years" as used in paragraphs 29, 31, 32, 36, 37, 39, 41, 44, 45, and 47, refer to the five-year period commencing April 29, 1934 and ending April 28, 1939. Each of the years referred to commenced on April 29th and ended on April 28th of the succeeding year.

15. The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

16. The word "exclusive" as used in paragraph 42 means that no other exhibitor in the towns named received the same privileges.

17. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

18 (a) The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

18 (b) The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

19. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

25 The paragraph headings below correspond to the same headings used in the motion of Twentieth Century-Fox Film Corp. and Twentieth Century-Fox Film Corp. of Texas.

I

1. As used in paragraphs 33 and 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

4 A (2) The manner in which the defendant exhibitors combined, as alleged in paragraph 39, is set forth in paragraphs 40, 41, 42, and 43 of the complaint.

4 A (4) The terms of the combination between the defendant exhibitors, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 40, 41, 42, and 43.

4 B (2), (3), and (4) The manner in which Twentieth Century-Fox Film Corp. and Twentieth Century-Fox Film Corp. of Texas, combined with the defendant exhibitors, as alleged in paragraph 39, the terms, of which the Government is now informed, on which Twentieth Century-Fox Film Corp. and Twentieth Century-Fox Film Corp. of Texas, became a member of said combination, and the means, of which the Government is now informed, agreed upon for carrying out said combination, are set

26 forth in paragraphs 41, 42, and 43.

6 A The defendant exhibitors have combined with each other "by said contracts", referred to in Paragraph 42, by refraining from contracting with the defendant distributors individually and contracting with said distributors only by means of joint contracts covering all of their theatres.

6 B The plaintiff does not claim that the contracts by which the defendant exhibitors are alleged to have com-

bined are exclusively the licensing agreements under which the feature motion pictures were licensed for exhibition.

6 C Paragraph 42 does not allege that the contracts compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

6 D The defendant exhibitors have compelled Twentieth Century-Fox Film Corp. and Twentieth Century-Fox Film Corp. of Texas to grant to each of them the privileges set forth in paragraph 42 by refraining from licensing the product distributed by Twentieth Century-Fox Film Corp. and Twentieth Century-Fox Film Corp. of Texas for exhibition in the Griffith towns unless the exclusive privileges set forth in paragraph 42 were granted to them.

7 A The exclusive privilege referred to in paragraph A (3) has

a. Prevented other theatre operators from obtaining enough first-class pictures for any run to compete successfully with the defendant exhibitor because they have enabled such exhibitors to license all or as many of said pictures as they need before any of them are even offered to the other operators.

b. Forced other theatre operators to maintain higher admission prices than those warranted by the quali-
27 ty of the entertainment they offered by forcing the distributors in licensing pictures to such operators to require such operators to charge a fixed, arbitrary, minimum admission price.

c. Prevented other operators from showing any feature pictures released by the defendant distributors with first-run clearance by limiting first-run clearance to the theatres operated by the defendant exhibitors.

d. Prevented other operators from exhibiting any feature pictures released by the defendant distributors with second-run clearance by limiting second-run clearance to the theatres operated by the defendant exhibitors.

8 A The combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 44 differs from the combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 39 in the following respect: Paragraph 39 alleges a series of combinations between the defendant exhibitors and with each of the defendant distributors; paragraph 44 alleges a series of combination among the defendant distributors and with each of the defendant exhibitors.

8 B (3) and (4) The manner in which the defendant distributors combined as alleged in paragraph 44, the terms

of said combination, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

8 C (2) and (4) The manner in which each defendant exhibitor combined with the defendant distributors, as alleged in paragraph 44, and the means agreed upon for carrying out said combination, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

9. The matters alleged in Paragraph 45 had the effect of permitting each of the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in each of the towns specified in the complaint in the manner set forth in paragraphs 46 and 47.

10 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privilege alleged in paragraph 46 as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in 45, 46, 47 and 48.

11 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as alleged in paragraph 47 as a result of an agreement among defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

12 A The term "foregoing uniform restraints", as used in paragraph 48, refers to the restraints described in paragraphs 46 and 47.

13 A and B. The phrase, "more favorable rental terms", as used in paragraph 49, includes prices and all other terms on which pictures are rented or licensed, such as play dates, clearance, method of payment, etc.

II

14. The words "past five years" as used in paragraphs 29, 31, 32, 36, 37, 39, 41, 44, 45, and 47, refer to the five-year period commencing April 29, 1934 and ending April 28, 1939. Each of the years referred to commenced on April 29th and ended on April 28th of the succeeding year.

15. The word "collectively" as used in paragraph 41 means concertedly through a common agent.

16. The word "exclusive" as used in paragraph 42 means that no other exhibitor in the towns named received the same privileges.

17. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

18 (a) The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

18 (b) The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

19. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

The paragraph headings below correspond to the same headings used in the motion of Metro-Goldwyn-Mayer Distributing Corp. of Texas and Loew's Inc.

I

1. As used in paragraphs 33 and 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

4 A (2) The manner in which the defendant exhibitors combined, as alleged in paragraph 39, is set forth in paragraphs 40, 41, and 43 of the complaint.

4 A (4) The terms of the combination between the defendant exhibitors, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 40, 41, 42, and 43.

4 B (2), (3), and (4) The manner in which Metro-Goldwyn-Mayer Distributing Corp. of Texas and Loew's Inc., combined with the defendant exhibitors, as alleged in paragraph 39, the terms, of which the Government is now informed, on which Metro-Goldwyn-Mayer Distributing Corp. of Texas and Loew's Inc., became a member of said combination, and the means, of which the Government is now informed, agreed upon for carrying out said combination, are set forth in paragraphs 41, 42, and 43.

6 A The defendant exhibitors have combined with each other "by said contracts", referred to in Paragraph 42, by refraining from contracting with the defendant distributors individually and contracting with said distribu-

tors only by means of joint contracts covering all of their theatres.

6 B The plaintiff does not claim that the contracts by which the defendant exhibitors are alleged to have combined are exclusively the licensing agreements under which the feature motion pictures were licensed for exhibition.

6 C Paragraph 42 does not allege that the contracts compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

6 D The defendant exhibitors have compelled Metro-Goldwyn-Mayer Distributing Corp. of Texas and Loew's Inc. to grant to each of them the privileges set forth in paragraph 42 by refraining from licensing the product distributed by Metro-Goldwyn-Mayer Distributing Corp. of Texas and Loew's Inc. for exhibition in the Griffith towns unless the exclusive privileges set forth in paragraph 42 were granted to them.

7 A The exclusive privilege referred to in paragraph A (3) has

a. Prevented other theatre operators from obtaining enough first-class pictures for any run to compete successfully with the defendant exhibitor because they have enabled such exhibitors to license all or as many of said pictures as they need before any of them are even offered to the other operators.

32 b. Forced other theatre operators to maintain higher admission prices than those warranted by the quality of the entertainment they offered by forcing the distributors, in licensing pictures, to such operators, to require such operators to charge a fixed, arbitrary admission price.

c. Prevented other operators from showing any feature picture released by the defendant distributors with first-run clearance by limiting first-run clearance to the theatres operated by the defendant exhibitors.

d. Prevented other operators from exhibiting any feature pictures released by the defendant distributors with second-run clearance by limiting second-run clearance to the theatres operated by the defendant exhibitors.

8 A The combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 44 differs from the combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 39 in the following respect: Paragraph 39 alleges a series of combinations between the defendant exhibitors and with each of the

defendant distributors; paragraph 44 alleges a series of combinations among the defendant distributors and with each of the defendant exhibitors.

8 B (2) and (4) The manner in which the defendant distributors combined as alleged in paragraph 44, the terms of said combination, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

8 C (2) and (4) The manner in which each defendant exhibitor combined with the defendant distributors, as alleged in paragraph 44, and the means agreed upon for carrying out said combination, of which the Gov-
33 ernment is now informed, as set forth in paragraphs 45, 46, 47 and 48.

9. The matters alleged in paragraph 45 had the effect of permitting each of the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in each of the towns specified in the complaint in the manner set forth in paragraphs 46 and 47.

10 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privilege alleged in paragraph 46 as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in 45, 46, 47 and 48.

11 A It is claimed that the defendant distributors have uniformily granted to each of the defendant exhibitors the same clearance on feature pictures as alleged in paragraph 47 as a result of an agreement among defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

12 A. The term "foregoing uniform restraints", as used in paragraph 48, refers to the restraints described in paragraphs 46 and 47.

13 A and B. The phrase, "more favorable rental terms", as used in paragraph 49, includes prices and all other terms on which pictures are rented or licensed, such as play dates, clearance, method of payment, etc.

II

14. The words "past five years" as used in paragraphs 29, 31, 32, 36, 37, 39, 41, 44, 45, and 47, refer to the five-year period commencing April 29, 1934 and ending April 28, 1939. Each of the years referred to commenced on April 29th and ended on April 28th of the succeeding year.

34 15. The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

16. The word "exclusive" as used in paragraph 43 means that no other exhibitor in the towns named received the same privileges.

17. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

18 (a) The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

18 (b) The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

19. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

35 The paragraph headings below correspond to the same headings used in the motion of R-K-O Radio Pictures, Inc.

I

1. As used in paragraphs 33 and 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

4 A (2) The manner in which the defendant exhibitors combined, as alleged in paragraph 39, is set forth in paragraphs 40, 41, 42, and 43 of the complaint.

4 A (4) The terms of the combination between the defendant exhibitors, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 40, 41, 42, and 43.

4 B (2), (3), and (4) The manner in which R-K-O Radio Pictures, Inc., combined with the defendant exhibitors, as alleged in paragraph 39, the terms of which the Government is now informed, on which R-K-O Radio Pictures, Inc., became a member of said combination, and the means, of which the Government is now informed, agreed upon for carrying out said combination, are set forth in paragraphs 41, 42, and 43.

6 A The defendant exhibitors have combined with
36 each other "by said contracts", referred to in paragraph 42, by refraining from contracting with the

defendant distributors individually and contracting with said distributors only by means of joint contracts covering all of their theatres.

6 B The plaintiff does not claim that the contracts by which the defendant exhibitors are alleged to have combined are exclusively the licensing agreements under which the feature motion pictures were licensed for exhibition.

6 C Paragraph 42, does not allege that the contracts compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

6 D The defendant exhibitors have compelled R-K-O Radio Pictures, Inc., to grant to each of them the privileges set forth in paragraph 42 by refraining from licensing the product distributed by R-K-O Radio Pictures, Inc. for exhibition in the Griffith towns unless the exclusive privileges set forth in paragraph 42 were granted to them.

7 A The exclusive privilege referred to in paragraph A (3) have

a. Prevented other theatre operators from obtaining enough first-class pictures for any run to compete successfully with the defendant exhibitor because they have enabled such exhibitors to license all or as many of said pictures as they need before any of them are even offered to the other operators.

b. Forced other theatre operators to maintain higher admission prices than those warranted by the quality of the entertainment they offered by forcing the distributors, in licensing pictures, to such operators, to re-
37 quire such operator to charge a fixed, arbitrary, minimum admission price.

c. Prevented other operators from showing any feature pictures released by the defendant distributors with first-run clearance by limiting first-run clearance to the theatres operated by the defendant exhibitors.

d. Prevented other operators from exhibiting any feature pictures released by the defendant distributors with second-run clearance by limiting second-run clearance to the theatres operated by the defendant exhibitors.

8 A The combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 44 differs from the combination to restrain and to monopolize and attempt to monopolize alleged in paragraph 39 in the following respect: Paragraph 39 alleges a series of combinations between the defendant exhibitors and with each

of the defendant distributors; paragraph 44 alleges a series of combinations among the defendant distributors and with each of the defendant exhibitors.

8 B (3) and (4) The manner in which the defendant distributors combined as alleged in paragraph 44, the terms of said combination, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

8 C (2) and (4) The manner in which said defendant exhibitor combined with the defendant distributors, as alleged in paragraph 44 and the means agreed upon for carrying out said combination, of which the Government is now informed, are set forth in paragraphs 45, 46, 47 and 48.

9. The matters alleged in paragraph 45 had the effect of permitting each of the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in each of the towns specified in the
38 complaint in the manner set forth in paragraphs 46 and 47.

10 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privilege alleged in paragraph 46 as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in 45, 46, 47 and 48.

11 A It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as alleged in paragraph 47 as a result of an agreement among defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

12 A The term "foregoing uniform restraints", as used in paragraph 46, refers to the restraints described in paragraphs 46 and 47.

13 A and B The phrase, "more favorable rental terms", as used in paragraph 49, includes prices and all other terms on which pictures are rented or licensed, such as play dates, clearance, method of payment, etc.

II

14. The words "past five years" as used in paragraphs 29, 31, 32, 36, 37, 39, 41, 44, 45, and 47, refer to the five-year period commencing April 29, 1934 and ending April 28, 1939. Each of the years referred to commenced on April 29th and ended on April 28th of the succeeding year.

15. The word "collectively" as used in paragraph 41 means concertedly through a common agent.

16. The word "exclusive" as used in paragraph 42 means that no other exhibitor in the towns named received the same privileges.

39 17. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

18 (a) The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

18 (b) The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

19. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

40 The following numbering corresponds to the numbering used in the motion of United Artists Corporation.

V

The first-run theatres referred to in Par. 25 are as follows:

Oklahoma City: Criterion, Midwest, Plaza, Tower.
Tulsa: Orpheum, Ritz.
Austin: Paramount, State.
Dallas: Majestic, Palace.
Fort Worth: Hollywood, Palace, Worth.
Houston: Loew's, Majestic, Metropolitan.
San Antonio: Aztec, Majestic.

VI

1. The word "collectively" as used in paragraph 29 means altogether.

41 VII

1. The first-class pictures referred to in paragraph 30 are the same pictures as those referred to in paragraphs 25 and 29.

VIII

1. The word "collectively" as used in paragraph 31 means altogether.

2. Said word has the same meaning as said word in paragraph 29.

IX

1. As used in paragraph 33, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depend-

ing upon local competitive conditions and the quality of the particular pictures.

2. At least 104 feature pictures annually are required to operate a first-run theatre in any of the Griffith towns.

X

1. As used in paragraph 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. At least 104 feature pictures annually are required to operate a second-run theatre in any of the Griffith towns.

XI

1 & 2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

42

XII

1. The word "collectively" as used in paragraph 36 means altogether.

2. The word "supplied" as used in paragraph 36 means paid.

XIV

1. (b) and (c). The terms of the combination between the defendant exhibitors and United Artists, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry out said combination, of which the Government is now informed, are set forth in paragraphs 41, 42 and 43.

XV

1. The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

2. The manner in which the matters alleged in paragraph 41 enable and have enabled the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in Griffith towns is set forth in paragraphs 42 and 43.

XVI

1. Paragraph 42 does not allege that "said contracts" compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

2. Paragraph 42 does not allege that "said con-
43 tracts" compelled United Artists to grant to defend-
ant exhibitors the exclusive privileges alleged there-
in. The compulsion was exerted by the defendant exhib-
itors; the contracts, of course, merely evidenced the privi-
leges granted.

XVIII

2. The means agreed upon for carrying out the combination between the defendant distributors and each of the defendant exhibitors, alleged in paragraph 44, of which the Government is now informed, are described in paragraphs 45, 46, 47 and 48 of the complaint.

XIX

1. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

2. It was not intended by paragraph 45 to allege that the defendant exhibitors required any specific number of pictures for exhibition in the Griffith towns during the five year period. Paragraph 45 simply alleges that the defendant exhibitors contracted for whatever number of pictures they desired, which would presumably be based on what they considered their needs to be, before such feature pictures were offered to any other exhibitor in the Griffith towns.

3. Paragraph 45, by the words "any other exhibitor" does not refer to any specific exhibitors.

4. The manner in which the matters alleged in para-
graph 45 enable and have enabled the defendant ex-
44 hibitors to control and monopolize the supply of
feature pictures available for exhibition in Griffith towns is set forth in paragraphs 46, 47 and 48.

5. Paragraph 45 does not allege that United Artists combined with any other distributor and contracted with the defendant exhibitors in the manner set forth in paragraph 45.

XX

1. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 45.

2. The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

3, 4 and 5. It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privileges referred to in paragraph 46 by reason of an agreement between said defendant distributors only to the extent that such an agrement may be inferred

from the circumstances alleged in paragraphs 45, 46, 47 and 48.

XXI

1. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

2. It is claimed that defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as a result of an agreement among the defendant distributors only to the extent
45 that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

3. Petitioner is not now sufficiently informed to specify the particular acts relied upon to establish such agreement other than the circumstances alleged in paragraphs 45, 46, 47 and 48.

4, 5 and 6. These requests are answered by the particulars furnished in response to XXI, 2 and 3 above.

XXII

1. The term "foregoing uniform restraints" as used in paragraph 46 refers to the restraints described in paragraphs 46 and 47.

4. Said restraints were imposed on competing exhibitions by defendant distributors in the manner set forth in paragraphs 45, 46, and 47.

6(a) The "uniformity of motion" to which paragraph 48 refers is the uniform conduct set forth in paragraphs 46 and 47.

6(b) The action claimed to have been taken by United Artists is the uniform conduct set forth in paragraphs 46 and 47.

6(d) The competitive effect of the uniform action referred to in paragraph 48 is set forth in paragraphs 45, 46 and 47.

46 The following numbering corresponds to the numbering used in the motion of Universal Film Exchanges, Inc.

V

The first-run theatres referred to in Par. 25 are as follows:

Oklahoma City: Criterion, Midwest, Plaza, Tower.
Tulsa: Orpheum, Ritz.
Austin: Paramount, State.
Dallas: Majestic, Palace.
Fort Worth: Hollywood, Palace, Worth.
Houston: Loew's, Majestic, Metropolitan.
San Antonio: Aztec, Majestic.

VI

1. The word "collectively" as used in paragraph 29 means altogether.

47 VII

1. The first-class pictures referred to in paragraph 30 are the same pictures as those referred to in paragraphs 25 and 29.

VIII

1. The word "collectively" as used in paragraph 31 means altogether.

2. Said word has the same meaning as said word in paragraph 29.

IX

1. As used in paragraph 33, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. At least 104 feature pictures annually are required to operate a first-run theatre in any of the Griffith towns.

X

1. As used in paragraph 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. At least 104 feature pictures annually are required to operate a second-run theatre in any of the Griffith towns.

XI

1 and 2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 60 to 100, depending upon local competitive conditions and the quality of the particular pictures.

48 XII

1. The word "collectively" as used in paragraph 36 means altogether.

2. The word "supplied" as used in paragraph 36 means paid.

XIV

1. (b) and (c) The terms of the combination between the defendant exhibitors and Universal, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry out said combination, of which the Government is now informed, are set forth in paragraphs 41, 42 and 43.

XV

1. The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

2. The manner in which the matters alleged in paragraph 41 enable and have enabled the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in Griffith towns is set forth in paragraphs 42 and 43.

XVI

1. Paragraph 42 does not allege that "said contracts" compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

2. Paragraph 42 does not allege that "said contracts" compelled Universal to grant to defendant exhibitors the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

49

XVIII

2. The means agreed upon for carrying out the combination between the defendant distributors and each of the defendant exhibitors, alleged in paragraph 44, of which the Government is now informed, are described in paragraphs 45, 46, 47 and 48 of the complaint.

XIX

1. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

2. It was not intended by paragraph 45 to allege that the defendant exhibitors required any specific number of pictures for exhibition in the Griffith towns during the five year period. Paragraph 45 simply alleges that the defendant exhibitors contracted for whatever number of pictures they desired, which would presumably be based on what they considered their needs to be, before such feature pictures were offered to any other exhibitor in the Griffith towns.

3. Paragraph 45, by the words "any other exhibitor" does not refer to any specific exhibitors.

4. The manner in which the matters alleged in paragraph 45 enable and have enabled the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in Griffith towns is set forth in paragraphs 46, 47 and 48.

5. Paragraph 45 does not allege that Universal combined with any other distributor and contracted with the defendant exhibitors in the manner set forth in paragraph 45.

XX

1. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

2. The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

3, 4 and 5. It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privileges referred to in paragraph 46 by reason of an agreement between said defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

XXI

1. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

2. It is claimed that defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

3. Petitioner is not now sufficiently informed to specify the particular acts relied upon to establish such agreement other than the circumstances alleged in paragraphs 45, 46, 47 and 48.

4, 5 and 6. These requests are answered by the particulars furnished in response to XXI, 2 and 3 above.

XXII

1. The term "foregoing uniform restraints" as used in paragraph 48 refers to the restraints described in paragraphs 46 and 47.

4. Said restraints were imposed on competing exhibitions by defendant distributors in the manner set forth in paragraphs 45, 46 and 47.

6(a) The "uniformity of action" to which paragraph 48 refers is the uniform conduct set forth in paragraphs 46 and 47.

6(b) The action claimed to have been taken by Universal is the uniform conduct set forth in paragraphs 46 and 47.

6(d) The competitive effect of the uniform action referred to in paragraph 48 is set forth in paragraphs 45, 46 and 47.

53 The following numbering corresponds to the numbering used in the motion of Columbia Pictures Corporation.

V

The first-run theatres referred to in Par. 25 are as follows:

Oklahoma City: Criterion, Midwest, Plaza, Tower.
Tulsa: Orpheum, Ritz.
Austin: Paramount, State.
Dallas: Majestic, Palace.
Fort Worth: Hollywood, Palace, Worth.
Houston: Loew's, Majestic, Metropolitan.
San Antonio: Aztec, Majestic.

VI

1. The word "collectively" as used in paragraph 29 means altogether.

VII

53 1. The first-class pictures referred to in paragraph 30 are the same pictures as those referred to in paragraphs 25 and 29.

VIII

1. The word "collectively" as used in paragraph 31 means altogether.

2. Said word has the same meaning as said word in paragraph 29.

IX

1. As used in paragraph 33, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. At least 104 feature pictures annually are required to operate a first-run theater in any of the Griffith towns.

X

1. As used in paragraph 34, "a substantial number of the feature pictures released by three or more of the defendant distributors each year" is from 100 to 200, depending upon local competitive conditions and the quality of the particular pictures.

2. At least 104 feature pictures annually are required to operate a second-run theatre in any of the Griffith towns.

XI

1 & 2. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the

defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

XIII

54 1. The word "collectively" as used in paragraph 36 means altogether.

2. The word "supplied" as used in paragraph 36 means paid.

XIV

1. (b) and (c). The terms of the combination between the defendant exhibitors and Columbia, alleged in paragraph 39, of which the Government is now informed, and the means agreed upon to carry out said combination, of which the Government is now informed, are set forth in paragraphs 41, 42 and 43.

XV

1. The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

2. The manner in which the matters in paragraph 41 enable and have enabled the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in Griffith towns is set forth in paragraphs 42 and 43.

XVI

1. Paragraph 42 does not allege that "said contracts" compelled the defendant distributors to grant the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

2. Paragraph 42 does not allege that "said contracts" compelled Columbia to grant to defendant exhibitors the exclusive privileges alleged therein. The compulsion was exerted by the defendant exhibitors; the contracts, of course, merely evidenced the privileges granted.

XVIII

55 2. The means agreed upon for carrying out the combination between the defendant distributors and each of the defendant exhibitors, alleged in paragraph 44, of which the Government is now informed, are described in paragraphs 45, 46, 47 and 48 of the complaint.

XIX

1. The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

2. It was not intended by paragraph 45 to allege that the defendant exhibitors required any specific number of pictures for exhibition in the Griffith towns during the five

year period. Paragraph 45 simply alleges that the defendant exhibitors contracted for whatever number of pictures they desired, which would presumably be based on what they considered their needs to be, before such feature pictures were offered to any other exhibitor in the Griffith towns.

3. Paragraph 45, by the words "any other exhibitor" does not refer to any specific exhibitors.

4. The manner in which the matters alleged in paragraph 45 enable and have enabled the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in Griffith towns is set forth in paragraphs 46, 47 and 48.

5. Paraprapah 45 does not allege that Columbia combined with any other distributor and contracted with the defendant exhibitors in the manner set forth in paragraph 45.

XX

1. The term "uniformly granted" means that the defendant distributors have acted similarly in granting
56 the privilege referred to in paragraph 46.

2. The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

3, 4 and 5. It is claimed that the defendant distributors have uniformly granted to each of the defendant exhibitors the exclusive privileges referred to in paragraph 45 by reason of an agreement between said defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

XXI

1. The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 47.

2. It is claimed that defendant distributors have uniformly granted to each of the defendant exhibitors the same clearance on feature pictures as a result of an agreement among the defendant distributors only to the extent that such an agreement may be inferred from the circumstances alleged in paragraphs 45, 46, 47 and 48.

3. Petitioner is not now sufficiently informed to specify the particular acts relied upon to establish such agreement other than the circumstances alleged in paragraphs 45, 46, 47 and 48.

4, 5 and 6. These requests are answered by the particulars furnished in response to XXI, 2 and 3 above.

XXII

57 1. The term "foregoing uniform restraints" as used in paragraph 48 refers to the restraints described in paragraphs 46 and 47.

4. Said restraints were imposed on competing exhibitions by defendant distributors in the manner set forth in paragraphs 45, 46 and 47.

6 (a) The "uniformity of action" to which paragraph 48 refers is the uniform conduct set forth in paragraphs 46 and 47.

6 (b) The action claimed to have been taken by Columbia is the uniform conduct set forth in paragraphs 46 and 47.

6 (d) The competitive effect of the uniform action referred to in paragraph 48 is set forth in paragraphs 45, 46 and 47.

58 The following numbers and letters correspond to the paragraph numbers and subparagraph headings in the defendants' Griffith Amusement Co., Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., L. C. Griffith, H. J. Griffith and R. E. Griffith, motion.

1

The term "first-run exhibition" as used in paragraph 20 is intended to exclude the first exhibition of a given picture in a given town where such exhibition is not coupled with "first-run clearance" as defined in paragraphs 26 and 27.

2

The term "second-run exhibition" as used in paragraph 21 is intended to exclude the second exhibition of a given picture in a given town where such exhibition is not coupled with "second-run clearance" as defined in paragraphs 26 and 28.

3

(a) In defining "first-run theatre" in paragraph 22 it is not intended to exclude theatres which customarily exhibit first-class pictures without first-run clearance as defined in paragraphs 26 and 27. Paragraph 22 does not define the term "first run".

(b) The term "first-class pictures" as used in paragraph 22 is defined in paragraph 25.

4

(a) In defining "second-run theatre" in paragraph 23 it is not intended to exclude theatres which customarily exhibit first-class pictures without "second-run clearance" as defined in paragraphs 26 and 28. Paragraph 23 does not define the term "second run".

59 (b) The term "first-class pictures" as used in paragraph 23 is defined in paragraph 25.

5

The definition of "first-class pictures" in paragraph 25 is intended to apply to and limit the meaning of that term wherever used in the complaint.

6

(a) The term "clearance" as defined in paragraph 26 is intended to have the meaning given to it by the definition therein contained. In so far as the Government is now informed, such definition does not differ from the meaning generally attributed to the term in the motion picture industry.

(b) By the definition of the term "clearance" in paragraph 26 it is intended to exclude all clearance other than that "which limits the terms on which the distributor may license films to other competing exhibitors."

(c) By the definition of the term "clearance" in paragraph 26 it is not intended to exclude clearance not resulting from or incorporated into a contract between the exhibitor and distributor.

7

(a) The term "first-run clearance" as defined in paragraph 27 is intended to have the meaning given to it by the definition therein contained. In so far as the Government is now informed, such definition does not differ from the meaning generally attributed to the term in the motion picture industry.

60 (b) By the definition of the term "first-run clearance" in paragraph 27 it is intended to exclude all clearance other than that "which limits the terms on which the distributor may license films to other competing exhibitors."

(c) By the definition of the term "first-run clearance" in paragraph 27 it is not intended to exclude clearance not resulting from or incorporated into a contract between the exhibitor and distributor.

8

(a) The term "second-run clearance" as defined in paragraph 28 is intended to have the meaning given to it by the definition therein contained. In so far as the Government is now informed, such definition does not differ from the meaning generally attributed to the term in the motion picture industry.

(b) By the definition of the term "second-run clearance" in paragraph 28 it is intended to exclude all clearance other than that "which limits the terms on which the distributor

(c) By the definition of the term "second-run clearance" in paragraph 28 it is not intended to exclude clearance not resulting from or incorporated into a contract between the exhibitor and distributor.

9

The term "first-class pictures" as used in paragraph 29 is defined in paragraph 25.

10

61 The words "past five years" as used in paragraph 29 and other paragraphs of the complaint refer to the five-year period commencing April 29, 1934, and ending April 28, 1939. Each of the years referred to commenced on April 29 and ended on April 28 of the succeeding year.

11

(a) The Government is not now accurately advised of the exact number of first-class pictures released by each of the distributor defendants during each of the past five years. On the basis of its present knowledge, however, the Government estimates that the number of first-class pictures released by each of the distributor defendants during each of the past five years was as follows:

Paramount, from 20 to 30.
Loew's, from 30 to 40.
RKO, from 5 to 15.
Vitograph, from 25 to 35.
Universal, from 5 to 10.
Fox, from 25 to 35.
United Artists, from 10 to 20.
Columbia, from 5 to 10.

12

(b) The Government is not now advised of the exact number of feature pictures released by each of the distributor defendants during each of the past five years. On the basis of its present knowledge, however, the Government estimates that the number of feature pictures released by each of the distributor defendants during each of the past five years was as follows:

Paramount, from 55 to 75.
Loew's, from 40 to 60.
RKO, from 40 to 50.
Vitograph, from 50 to 60.
Fox, from 50 to 65.
Universal, from 25 to 45.
62 United Artists, from 15 to 25.
Columbia, from 35 to 50.

13

(a) As used in paragraphs 33 and 34, the words "substantial number" refer to from 100 to 200 feature pictures, depending upon local competitive conditions and the quality of the particular pictures. As used in paragraph 35, "a substantial number of the first-class pictures released by three or more of the defendant distributors" is from 50 to 100, depending upon local competitive conditions and the quality of the particular pictures.

(b) The Government makes no claim in paragraphs 33, 34, or 35 that in order to operate a theatre successfully in any Griffith town, an exhibitor must have available a minimum number of the pictures released by *each* distributor defendant.

16

(a), (2), (4). The manner in which the defendant exhibitors combined with each other as alleged in paragraph 39, the terms of said combination, of which the Government is now informed, and the means agreed upon to carry it out, of which the Government is now informed, are set forth in paragraphs 40, 41, 42, and 43.

(b), (2), (3) and (4). The manner in which each of the defendant distributors combined with the defendant exhibitors as alleged in paragraph 39, the terms of which the Government is now informed, on which each of the defendant distributors became a member of said combination, and the means, of which the Government is now informed, agreed upon for carrying out said combination, are set forth in paragraphs 41, 42, and 43.

63

18

(a) The word "collectively" as used in paragraph 41 means concertedly, through a common agent.

(c) The manner in which the matters alleged in paragraph 41 had the effect of enabling the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in the Griffith towns is set forth in paragraphs 42 and 43.

19

(a) The word "exclusive" as used in paragraph 42 means that no other exhibitor in the towns named received the same privileges.

(b) and (c) The defendant exhibitors have compelled each of the defendant distributors to grant to them the privileges set forth in paragraph 42 by refraining from licensing the product of the defendant distributors for exhibition in the Griffith towns unless the exclusive privileges set forth in paragraph 42 were granted to them.

20

(a) The term "first-class pictures" as used in 43 (a) is limited by the definition of said term in paragraph 25.

(b) By agreements with the defendant distributors controlling the admission prices at which pictures licensed from them by competing exhibitors could be shown, the defendant exhibitors forced competing exhibitors to maintain admission prices higher than those warranted by the quality of the entertainment which said competing exhibitors were able to offer.

21

By paragraph 44 it is intended to charge a combination in restraint of trade and to monopolize and attempt to monopolize other than the violations alleged in
64 paragraphs 39 to 43, inclusive, and paragraphs 49 and 50. The allegations of paragraph 44 are specified and particularized in paragraphs 45, 46, 47 and 48, and paragraph 44 is accordingly limited by them.

22

The word "collectively" as used in paragraph 45 means concertedly, through a common agent.

23

(a) The term "uniformly granted" means that the defendant distributors have acted similarly in granting the privilege referred to in paragraph 46.

(b) The word "exclusive" as used in paragraph 46 means that no other exhibitor in the towns referred to received the same privilege.

25

(a) The term "foregoing uniform restraints" as used in paragraph 48 refers to the restraints described in paragraphs 46 and 47.

(d) The "uniformity of action" to which paragraph 48 refers is the uniform conduct set forth in paragraphs 46 and 47.

(e) (1) The competitive effect of the "uniform action" referred to in paragraph 48 is set forth in paragraphs 45, 46, and 47.

26

(b) The phrase "favorable rental terms" as used in paragraph 49 is not intended to refer only to prices.

(c) The phrase "more favorable rental terms" as used in paragraph 49 includes prices and all other terms on which pictures are rented or licensed, such as play dates, clearance, method of payment, etc.

[File endorsement omitted.]

65 In United States District Court

Answer of L. C. Griffith

Filed June 14, 1940

Comes now L. C. Griffith, and for his answer to the complaint and the bill of particulars, to which reference is hereinafter made as "complaint", states as follows:

I

That he admits the allegations contained in paragraph 1 of the complaint, except that he denies that Griffith Amusement Company operates theatres in the towns of Ardmore, Fairfax, Maud, Tonkawa and Bristow, in the State of Oklahoma, and Gainesville, in the State of Texas.

II

That he admits the allegations contained in paragraph 2 of the complaint, except that he denies that Consolidated Theatres, Inc. operates theatres in the towns of Pauls Valley and Kingfisher, in the State of Oklahoma, and Lubbock, in the State of Texas.

III

That this answering defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 29, 30, 31, 32, 36, and 38.

IV

That this answering defendant admits the allegations contained in paragraphs 6 and 7 of the complaint.

V

That this answering defendant denies the averments contained in paragraph 20 of the complaint, except that he admits that the first run exhibition of a motion picture is generally, with some few exceptions however, the initial exhibition of that motion picture in that town.

VI

That he denies the averments contained in paragraph 21 of the complaint except that he admits that the second run exhibition of a motion picture in a town is an exhibition of that motion picture in that town subsequent to its first run therein.

66 VII

That he denies the averments contained in paragraphs 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 50 of the complaint.

VIII

That he admits the averments contained in the first sentence of paragraph 49; that he is without knowledge or information sufficient to form a belief as to the truth of the second sentence of said paragraph 49; that he denies the averments made in the third and fourth sentences of said paragraph 49.

Wherefore, the defendant, L. C. Griffith, having fully answered the complaint herein, demands judgment dismissing the complaint, together with all costs and disbursements of this action.

J. B. Dumas,
1501 Ramsey Tower,
Oklahoma City, Oklahoma.

Henry S. Griffing,
2701 First National Building,
Oklahoma City, Oklahoma.
Solicitors for L. C. Griffith.

Acceptance of Service

Service of copy of the foregoing answer is accepted this 14th day of June, 1940.

Charles E. Dierker,
Attorney for United States of America.

[File endorsement omitted.]

67 In United States District Court

Answer of H. J. Griffith

Filed June 14, 1940

Comes now H. J. Griffith, and for his answer to the complaint and bill of particulars, to which reference is hereinafter made as "complaint", states as follows:

I

That he admits the allegations contained in paragraph 1 of the complaint, except that he denies that Griffith Amusement Company operates theatres in the towns of Ardmore, Fairfax, Maud, Tonkawa and Bristow, in the State of Oklahoma, and Gainesville, in the State of Texas.

II

That he admits the allegations contained in paragraph 2 of the complaint, except that he denies that Consolidated Theatres, Inc., operates theatres in the towns of Pauls Valley and Kingfisher, in the State of Oklahoma, and Lubbock, in the State of Texas.

III

That this answering defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 29, 30, 31, 32, 36, and 38.

IV

That this answering defendant admits the allegations contained in paragraphs 6 and 7 of the complaint.

V

That this answering defendant denies the averments contained in paragraph 20 of the complaint, except that he admits that the first run exhibition of a motion picture is generally, with some few exceptions however, the initial exhibition of that motion picture in that town.

VI

That he denies the averments contained in paragraph 21 of the complaint except that he admits that the second run exhibition of a motion picture in a town is an exhibition of that motion picture in that town subsequent to its first run therein.

68

VII

That he denies the averments contained in paragraphs 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 27, 28, and 50 of the complaint.

VIII

That he admits the averments contained in the first sentence of paragraph 49; that he is without knowledge or information sufficient to form a belief as to the truth of the second sentence of said paragraph 49; that he denies the averments made in the third and fourth sentences of said paragraph 49.

Wherefore, the defendant, H. J. Griffith, having fully answered the complaint herein, demands judgment dismissing the complaint, together with all costs and disbursements of this action.

J. B. Dudley,
1501 Ramsey Tower,
Oklahoma City, Oklahoma,

Henry S. Griffing,
2701 First National Building,
Oklahoma City, Oklahoma,
Solicitors for H. J. Griffith.

ACCEPTANCE OF SERVICE

Service of copy of the foregoing answer is accepted this 14 day of June, 1940.

CHARLES E. DIEKER,
Attorney for United States of America.

[File endorsement omitted.]

68 In United States District Court

Answer of Consolidated Theatres, Inc.

Filed June 14, 1940

Comes now Consolidated Theatres, Inc., a corporation, and for its answer to the complaint and the bill of particulars, to which reference is hereinafter made as "complaint", states as follows:

I

That it admits the allegations contained in paragraph 1 of the complaint, except that it denies that Griffith Amusement Company operates theatres in the towns of Ardmore, Fairfax, Maud, Tonkawa and Bristow, in the State of Oklahoma, and Gainesville, in the State of Texas.

II

That it admits the allegations contained in paragraph 2 of the complaint, except that it denies that it operates theatres in the towns of Pauls Valley and Kingfisher, in the State of Oklahoma, and Lubbock, in the State of Texas.

III

That the answering defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 29, 30, *21*, 32, 36, and 38.

IV

That this answering defendant admits the allegations contained in paragraphs 6 and 7 of the complaint.

V

That this answering defendant denies the averments contained in paragraph 20 of the complaint, except that it admits that the first run exhibition of a motion picture is generally, with some few exceptions however, the initial exhibition of that motion picture in that town.

VI

That it denies the averments contained in paragraph 21 of the complaint except that it admits that the second run exhibition of a motion picture in a town is an exhibition of that motion picture in that town subsequent to its first run therein.

70 VII

That it denies the averments contained in paragraphs 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 28, and 50 of the complaint.

VIII

That it admits the averments contained in the first sentence of paragraph 49; that it is without knowledge or information sufficient to form a belief as to the truth of the second sentence of said paragraph 49; that it denies the averments made in the third and fourth sentences of said paragraph 49.

Wherefore, the defendant, Consolidated Theatres, Inc., having fully answered the complaint herein, demands judgment dismissing the complaint, together with all costs and disbursements of this action.

J. B. Dudley,
1501 Ramsey Tower,
Oklahoma City, Oklahoma.

Henry S. Griffing,
2701 First National Building,
Oklahoma City, Oklahoma.
Solicitors for Consolidated Theatres, Inc.

Acceptance of Service

Service of copy of the foregoing answer is accepted this 14th day of June 1940.

Charles E. Dierker,
Attorney for United States of America.

71 In United States District Court

Answer of Griffith Amusement Company
Filed June 14, 1940

Comes now Griffith Amusement Company, a corporation, and for its answer to the complaint and the bill of particulars, to which reference is hereinafter made as "complaint", states as follows:

I

That it admits the allegations contained in paragraph 1 of the complaint, except that it denies that it operates theatres in the towns of Ardmore, Fairfax, Maud, Tonkawa and Bristow, in the State of Oklahoma, and Gainesville, in the State of Texas.

II

That it admits the allegations contained in paragraph 2 of the complaint, except that it denies that Consolidated

Theatres, Inc. operates theatres in the towns of Pauls Valley and Kingfisher, in the State of Oklahoma, and Lubbock, in the State of Texas.

III

That this answering defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 29, 30, 31, 32, 36 and 38.

IV

That this answering defendant admits the allegations contained in paragraphs 6 and 7 of the complaint.

V

That this answering defendant denies the averments contained in paragraph 20 of the complaint, except that it admits that the first run exhibition of a motion picture is generally, with some few exceptions however, the initial exhibition of that motion picture in that town.

VI

That it denies the averments contained in paragraph 21 of the complaint except that it admits that the second run exhibition of a motion picture in a town is an exhibition of that motion picture in that town subsequent to its first run therein.

72

VII

That it denies the averments contained in paragraphs 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 50 of the complaint.

VIII

That it admits the averments contained in the first sentence of paragraph 49; that it is without knowledge of information sufficient to form a belief as to the truth of the second sentence of said paragraph 49; that it denies the averments made in the third and fourth sentences of said paragraph 49.

Wherefore, the defendant, Griffith Amusement Company, having fully answered the complaint herein, demands judgment dismissing the complaint, together with all costs and disbursements of this action.

J. B. Dudley,
1501 Ramsey Tower,
Oklahoma City, Oklahoma.
Henry S. Griffing,
2701 First National Building,
Oklahoma City, Oklahoma.
Solicitors for Griffith Amusement Company.

ACCEPTANCE OF SERVICE

Service of copy of the foregoing answer is accepted this 14th day of June, 1940.

CHARLES E. DIERKER,
Attorney for United States of America.

[File endorsement omitted.]

73 In United States District Court

Answer of R. E. Griffith Theatres, Inc. Westex Theatres, Inc. and R. E. Griffith

Filed June 15, 1946

Defendants, R. E. Griffith Theatres, Inc. Westex Theatres, Inc. and R. E. Griffith, for answer to the complaint, as amplified by the Bill of Particulars filed herein, herein referred to as the "complaint," allege:

I

For lack of information they neither admit or deny the allegations of Paragraphs 1 and 2, of Paragraphs 9 to 19, both inclusive, and of Paragraphs 29, 30, 31, 32, 36 and 38.

II

They admit the allegations of Paragraphs 6, 7 and 8 of the complaint.

III

They admit the allegations of the first sentence of Paragraph 3, and of the first sentence of Paragraph 4 of the complaint.

IV

They admit that Defendant, R. E. Griffith Theatres, Inc., operates one or more theatres in Gallup, Hobbs and Roswell, New Mexico, and Post, Texas, as alleged in Paragraph 3 of the complaint; but in answer to the allegations of said Paragraph regarding the other towns or cities named therein, they allege that R. E. Griffith Theatres, Inc. owns only an interest in one or more theatres in each of said other towns or cities, each of which such theatres is operated by said Defendant and the co-owner or co-owners thereof, jointly.

V

They admit that Defendant, Westex Theatres, Inc., operates one or more theatres in Burkburnett, Texas, and Portales, New Mexico, as alleged in Paragraph 4 of the complaint; but in answer to the allegations of said Paragraph regarding the towns of Ballinger, Belton, Clarksville, Georgetown, Hereford, Lampasas, Merkel,
74 Odessa, Plainview, San Saba, Spur, Stamford and

Winters, Texas, they allege that Westex Theatres, Inc. owns only an interest in one or more theatres in each of said towns or cities, each of which such theatres is operated by said Defendant and the co-owner or co-owners thereof, jointly, and that said Defendant, by means of ownership or corporate stock, has an interest in one or more theatres in Brady, Gonzales, Lockhart and Luling, Texas, each of which theatres is operated by the corporate owner thereof. They deny that said defendant operates or has any interest in the operation of any theatre in Decatur, Texas.

VI

That they deny the allegations of Paragraph 20 of the complaint, with the exception that they admit that the first run exhibition of a motion picture, as such term is usually used in the trade, is, with some few exceptions, the initial exhibition of that motion picture in that town.

VII

That they deny the allegations of Paragraph 21, with the exception that they admit that the second run exhibition of a motion picture in a town is the exhibition subsequent to its first run therein.

VIII

That they deny the allegations contained in Paragraphs 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 50.

IX

That they admit the allegations contained in the first sentence of Paragraph 49; that they are without knowledge or information sufficient to form a belief as to the truth of the second sentence of said Paragraph 49; that they deny the allegations made in the third and fourth sentences of said Paragraph 49.

WHEREFORE, these Defendants, having fully answered, pray for judgment against the Plaintiff, together with all costs and disbursements and for such other and further relief as to the Court shall seem just and proper in the premises.

75

L. M. Rice,
2015 Tower Petroleum Building,
Dallas, Texas.
R. R. Conners,
same address,
R. A. Conners,
Attorneys for R. E. Griffith Theatres, Inc., Westex Theatres, Inc., and R. T. Griffith.

ACCEPTANCE OF SERVICE

Service of copy of the foregoing answer acknowledged this 15 day of June, 1940.

CHARLES E. DIERKER,
Attorney for United States Government.

[File endorsement omitted.]

76 In United States District Court

Stipulation

Filed November 27, 1940

The United States of America, plaintiff herein, and the defendants Twentieth Century-Fox Corporation of Texas, Twentieth Century-Fox Film Corporation, Lowe's, Incorporated, Metro-Goldwyn-Mayer Distributing Corporation of Texas, RKO Radio Pictures, Inc., Vitagraph, Inc., and Paramount Pictures Inc., hereby stipulate and agree by their respective counsel that an order may be entered herein dismissing the complaint as to said defendants.

CHARLES E. DIERKER,
United States Attorney for the Western District of Oklahoma,
Attorney for the Plaintiff.

CHARLES B. COCHRAN,
AMES, COCHRAN, MONNET, HAYES & AMES,
Attorneys for Twentieth Century-Fox Corporation of Texas, Twentieth Century-Fox Film Corporation, Lowe's, Incorporated, Metro-Goldwyn-Mayer Distributing Corporation of Texas, RKO Radio Pictures, Inc., Vitagraph, Inc., and Paramount Pictures Inc.

[File endorsement omitted.]

77 In United States District Court

Order of Dismissal

Filed November 27, 1940

Upon the stipulation of counsel for the plaintiff and the defendants Twentieth Century-Fox Corporation of Texas, Twentieth Century-Fox Film Corporation, Loew's, Incorporated, Metro-Goldwyn-Mayer Distributing Corporation of Texas, RKO Radio Pictures, Inc., Vitagraph, Inc., and Paramount Pictures, Inc.,

It is hereby ordered, adjudged and decreed that the complaint be dismissed as to said defendants Twentieth Century-Fox Corporation of Texas, Twentieth Century-Fox Film Corporation, Loew's, Incorporated, Metro-Goldwyn-

Mayer Distributing Corporation of Texas, RKO Radio Pictures, Inc., Vitagraph, Inc., and Paramount Pictures Inc.

Enter:

EDGAR S. VAUGHT,
Judge.

[File endorsement omitted.]

78 In United States District Court

Order Granting Leave to Amend Complaint

Filed November 27, 1940

Upon motion of the plaintiff herein, due notice thereof having been served upon counsel for all defendants and the court being fully advised in the premises;

It is hereby ordered, adjudged and decreed that the plaintiff be granted leave to amend the complaint herein by striking therefrom all of the allegations contained in paragraphs 44 to 48, inclusive, thereof, and said paragraphs are hereby stricken from said complaint.

Enter:

EDGAR S. VAUGHT,
Judge.

[File endorsement omitted.]

79 In United States District Court

Order of Dismissal

Filed November 15, 1943

On pretrial conference on this date, Complainant having suggested its willingness that this action be dismissed against defendants Universal Film Exchanges, Inc., United Artist Corporation and Columbia Pictures Corporation, and said defendants having moved the Court for an order to dismiss this case against them, and Complainant concurring therein,

It is ordered that this action be and the same hereby is on this date dismissed against defendants Universal Film Exchanges, Inc., United Artist Corporation and Columbia Pictures Corporation.

Dated: November 15, 1943.

EDGAR S. VAUGHT,
United States District Judge.

O. K.
HOLMES BALDRIDGE,
Counsel for Complainant.
O. K.
M. W. MCKENZIE.
Attorney for Defendants.
[File endorsement omitted.]

80 In United States District Court

Proceedings, May 7, 1945, Before Judge Vaught

On this 7th day of May 1945, the plaintiff appears by Messrs, Charles E. Dierker, John Brett, Posey T. Kime, Robert L. Wright and Milton A. Kallis, the defendants, Griffith Amusement Company, Consolidated Theatres, Inc., H. J. Griffith and L. C. Griffith, appear by Messrs. C. B. Cochran, J. B. Dudley and Henry A. Griffing, and the defendants, R. E. Griffith Theatres, Inc., Westex Theatres, Inc., and R. E. Griffith, appear by Mr. L. M. Rice, Esq., their attorneys. All parties announce ready for trial. Thereupon, Mr. Rice, Attorney, suggests the death of R. E. Griffith, and the Court thereupon dismisses this case as to said defendant. Mr. Wright makes the opening statement for the plaintiff, Mr. Cochran makes the opening statement for the defendants, Griffith Amusement Company, Consolidated Theatres, Inc., H. J. Griffith and L. C. Griffith, and Mr. Rice makes the *open* statement for the defendants, R. E. Griffith Theatres, Inc., Westex Theatres, Inc., and R. E. Griffith. At this time, the hour for adjournment having arrived, the further trial of this cause is continued to May 8, 1945, at 10:00 a. m.

In United States District Court

81 *Opinion*

Filed October 9, 1946

On April 28, 1939, the United States of America filed its complaint against the defendants Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., L. C. Griffith, H. J. Griffith, R. E. Griffith, Paramount Pictures, Inc., Metro-Goldwyn-Mayer Distributing Corporation of Texas, Loew's Incorporated, RKO Radio Pictures, Inc., Vitagraph, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, Twentieth Century-Fox Film Corporation of Texas, United Artists Corporation, and Columbia Pictures Corporation, alleging violations of Sections 1 and 2 of Title 15 U. S. C. A., the Sherman Anti-Trust Act, and seeking relief under Section 4 thereof. Prior to the trial of the cause, the action was dismissed as to all of the defendants except Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., L. C. Griffith, H. J. Griffith and R. E. Griffith. Defendant R. E. Griffith died in 1943 and the action was not revived against his personal representatives or his estate.

82

On motion of the plaintiff, paragraphs 44 to 48, inclusive, were stricken from the complaint leaving paragraphs 39, 40, 41, 42, 43, 49 and 50, which charge violations of the Sherman Anti-Trust Act. All of the defendants remaining in the case are what are known in the moving picture industry as exhibitors. The alleged violations follows:

"39. For the past five years the defendant exhibitors have continuously combined with each other and with each of the defendant distributors to unreasonably restrain interstate trade and commerce in motion picture films and to monopolize and attempt to monopolize the first and second run exhibition of feature pictures and the operation of first and second run theatres in the Griffith Towns in violation of Sections 1 and 2 of the Sherman Act, in the following manner:

"40. Said exhibitors have refrained from competing with each other in the acquisition and operation of motion picture theatres in said towns pursuant to express or implied agreements to allocate said territory between them.

"41. During each of the past five years said exhibitors have collectively contracted with each of the defendant distributors for all of the feature pictures annually required for exhibition at all of the theatres operated by them in said towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

"42. By said contracts said exhibitors have combined with each other to compel each of the defendant distributors to grant to all of them in all of said towns the following exclusive privileges during the entire time they have operated theatres in said towns: (a) The exclusive privilege of selecting from the feature pictures released by said distributors such feature pictures as said exhibitors deemed suitable for exhibition in said towns, as and when prints thereof became available, before said pictures were released to any other exhibitors in said towns. (b) The exclusive privilege of receiving clearance on said feature pictures over competing theatres in said towns.

"43. The foregoing exclusive privileges have en-
83 abled the defendant exhibitors to unreasonably restrain, suppress and entirely eliminate the competition offered by other theatre operators in said towns in the licensing and exhibition of feature pictures by: (a) Preventing them from obtaining enough first-class pictures for exhibition on any run to operate their theatres success-

fully. (b) Forcing them to maintain admission prices higher than those warranted by the quality of the entertainment they were able to offer; that is, feature pictures previously exhibited or rejected by the defendant exhibitors. (c) Preventing them from showing any feature pictures released by the defendant distributors with first-run clearance in any of said towns. (d) Preventing them from exhibiting any feature pictures released by the defendant distributors with second-run clearance in any of said towns where any of the defendant exhibitors operate one or more second-run theatres."

"49. Each of the defendant exhibitors is what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres as herein before alleged, the said exhibitors and each of them have obtained what is commonly referred to in the motion picture industry as a circuit buying power. Said circuit buying power has enabled them and each of them to obtain the exclusive privileges herein before recited from the defendant distributors. Said circuit buying power has further enabled them and each of them to demand and receive from all distributors of motion pictures more favorable rental terms in licensing their motion pictures than can be obtained by competing individual exhibitors.

"50. Said circuit buying power is now so great that its continued existence will tend to subject competing exhibitors in the Griffith Towns to other and additional restraints in violation of the Sherman Act, even if the foregoing restraints are enjoined, unless said circuit buying power is eliminated."

The defendants deny generally these allegations and upon the issues thus joined the cause was tried to the court.

The record is quite voluminous, containing close to 4,000 pages of testimony and many hundreds of exhibits, and exhaustive briefs were filed, which necessitates a much more lengthy opinion then in ordinary cases.

The production, distribution and distribution of moving picture films comprise an industry that has arisen and developed during the past thirty years. In order that we may better understand the situation here, as it has been developed in the trial, it is appropriate to give a brief resume of the background of the development of the industry as it pertains to the defendants, as disclosed by the testimony.

84 During the thirty year period immediately preceding the filing of the complaint in this cause, the mo-

tion picture industry has undergone marvelous changes and developments.

These changes have been very marked not only in the production and distribution of pictures, but also in the exhibition of pictures. The showhouse or theater in the smaller towns and in many of the larger ones, at the beginning of this period, consisted ordinarily of a remodeled storeroom equipped, often poorly, for exhibition purposes. Those originally engaged in the exhibition of pictures were persons of little or no experience in the business and usually their methods were as crude and inefficient as the houses in which they operated. The production of better and more attractive pictures called for more efficient methods in their exhibition. All of these developments have required substantial capital for the construction of modern theatres, installation of sound equipment, more efficient personnel, and advertising and exhibiting the production.

In many of the situations in the territory in question, the pioneer exhibitors have been slow to respond to the public demand for better showhouses, more modern equipment and efficient service in the exhibition of pictures. This very positive progress in the development of the business not only has made the well-managed theater a good business proposition, but has resulted in an increased interest in the business by a more progressive element, willing to provide the capital and more efficient service to meet the public demand. In reviewing the evidence, the situations will be treated individually in order to determine whether or not the existing conditions are the natural and logical result of the gradual changes suggested by the demands of the public and the opportunities from a business standpoint, and will be considered only as effecting the territory involved in this action.

The testimony discloses that the moving picture
85 industry, as it pertained to the exhibition of pictures, from its early inception until about 1928 or 1929 consisted of the exhibition of what is known as "silent films". During this period, very little effort was made by the exhibitors to construct showhouses or theatres adequate to accommodate the public. The accommodations were unsanitary, poorly planned and constructed, and were known throughout the industry as the "storehouse" type of theater. Particularly was this true as to the states of Oklahoma, New Mexico and the outlying districts of Texas. In the principal cities in Texas, however, many modern theater buildings were constructed. In 1928 or 1929 what is known as "sound equipment" was perfected and since that time we have had what is termed "talking pictures." The cost

of the construction and equipment of a modern de luxe type of theatre with sound equipment and a seating capacity of 600 to 1,000 was approximately $75,000. The successful installation of sound equipment in old buildings that had been converted into theaters necessitated much and expensive remodelling, at an approximate cost of $14,000. Stages in such buildings had to be reconstructed, ceilings raised or lowered, obstructions that would interfere with sound removed.

As the moving picture industry was so developing, the nation was experiencing what has been termed the "depression", with which all are familiar. Every line of business suffered and there were many failures due entirely to the depression. In order to supply the patronizing public with adequate and comfortable showhouses or theatres, those engaged in the business who kept abreast of the steady and continuing progress and scientific development of the industry sought to provide houses of entertainment, until today there is scarcely a town of 3,500 population that does not have at least one or more modern theater buildings.

Three of the defendants, R. E. Griffith, L. C. Griffith, and H. J. Griffith (hereinafter referred to as the Griffith
86 brothers), lived in the State of Texas. From 1915 to 1919, R. E. Griffith and L. C. Griffith were engaged as traveling salesmen for various distributors selling moving picture films to theater operators, except for about one year during the first World War when L. C. Griffith served as a soldier in the United States Army. As they traveled in the states of Texas, Oklahoma and New Mexico, they grew familiar with the theater situations throughout that territory. They became interested in the exhibition branch of the industry and acquired a lease on a building in San Marcos, Texas, and remodelled it into a theater. From that time forward their interest increased and from time to time they acquired, in whole or in part, other theaters. They financed their enterprises from what they could save from their salaries, supplemented with earnings from their ventures. The two brothers came to Oklahoma City, Oklahoma, in December 1919. At that time they had acquired an interest in the "film exchange" industry with W. G. Underwood of Dallas, Texas. They organized such an exchange business in Oklahoma City under the firm name of Oklahoma Specialty Film Exchange. This organization dealt in and distributed what was then known as "state rights" pictures and was a Griffith brothers enterprise. In this line of endeavor the two brothers traveled extensively throughout the state of Oklahoma and became familiar

with the theater situation in the various towns and cities. They conceived the idea of establishing modern theaters with modern equipment in various towns, as opportunities presented. In 1924 or 1925 they acquired the Rialto theater in Oklahoma City and placed their younger brother, H. J. Griffith, in charge of it as operator, where he continued until 1926. During this time each brother developed certain individual qualities for business as he became better acquainted with the industry. R. E. Griffith grew skillful in buying and booking films for theaters, an increasingly technical and difficult task. L. C. Griffith developed as an executive. H. J. Griffith became proficient in hand-
87 ling the problems involved in keeping the machinery in operating condition, and the buildings properly lighted, ventilated, equipped and repaired. They possessed in common the ability to recognize and appraise conditions in the industry. Up to 1926 they had worked together as a partnership and had acquired theaters and interests in theaters in several towns and cities. They were handicapped for finances in their endeavor to extend their holdings. An opportunity presented itself in 1926 which they believed would provide them with sufficient capital to carry out their desires of expansion. Consideration of this opportunity resulted in a contract with the Universal Chain Theatrical Enterprises, by the terms of which the Griffith brothers were to organize a corporation to be known as the Griffith Amusement Company. The Universal Chain was to own a series of class B stock in Griffith Amusement Company and was from time to time to furnish funds to the new organization as loans with interest at ten per cent. per annum, for the purpose of acquiring theaters. The Griffith brothers, were to have the actual management of the Griffith Amusement Company and the final decision relative to the acquisition of theaters. L. C. Griffith became president of the corporation and still retains that office. R. E. Griffith continued as buyer and booker of films and H. J. Griffith continued in the capacity heretofore outlined. At the time of the organization of Griffith Amusement Company, the Griffith brothers owned fifteen theaters in various places in the territory, most of which were of the storehouse type. The contract with the Universal Chain continued in force and effect until sometime in 1928 when difficulty was encountered by Griffith Amusement Company in procuring advancement of funds from the Universal Chain, and the contract was terminated. The stock owned by the Universal Chain in the Griffith Amusement Company was purchased by the Griffith brothers.

Some of the stockholders of Griffith Amusement Company did not endorse the acquisition of additional
88 theatres and the Griffith brothers organized another corporation, the Consolidated Theatres, Inc., and later changed to Griffith Consolidated Theatres, Inc. The latter corporation acquired theatres as advantageous opportunities permitted. L. C. Griffith later became president of Consolidated Theatres, Inc., and that organization occupied the same offices as Griffith Amusement Company, with the same clerical force and with one overhead expense.

Griffith Amusement Company organized a department to furnish administrative services to theatres throughout the territory, including those of Consolidated Theatres, Inc. It furnished such services as the buying and booking of films, bookkeeping and auditing services, an auto trailer pick-up service to deliver film reels, and various other services valuable to theatre operators, at a fee of four percent of the annual gross receipts, under what were called administrative contracts.

In acquiring an interest less than the full ownership of a theatre, the purchase contract provided that the Griffith interest would have "exclusive charge of the buying and booking of films."

In the purchase of a theater, the contract usually provided that the seller would not engage in the theater business, directly or indirectly, in that community for a specified period of time, as a part of the consideration for the purchase of the "good will" of the seller.

In 1931, R. E. Griffith left the organization as a regular salaried employee of Griffith Amusement Company and was never thereafter employed by Griffith Amusement Company or Consolidated Theatres, Inc., except as follows. Neither L. C. Griffith nor H. J. Griffith had acquired sufficient experience in buying and booking films to carry on such work successfully for their theaters. The corporations then employed R. E. Griffith to buy and book films for the theaters in which they were interested until the 1938-1939 season, when his services as such were discontinued.

In the meantime, H. R. Falls assisted R. E. Griffith
89 in such service until 1938 when Falls assumed such duties for Griffith Amusement Company and Consolidated. From 1938 until his death in 1943 R. E. Griffith was in no way connected with buying and booking films for the two corporations.

At the time R. E. Griffith severed his connection with the organization in 1931, he exchanged his stock in Consolidated Theatres for three theaters owned by that corporation in New Mexico, but retained his stock in Griffith Amusement

Company. He removed to New Mexico and formed two organizations through which he conducted the same character of business. One was incorporated December 23, 1931, as R. E. Griffith Theatres, Inc., and the other was incorporated March 27, 1936, as Westex Theatres, Inc.

The Griffith brothers are shown to have been exceptionally good theater operators, keeping constantly abreast of the development of a rapidly growing industry. Their accounts naturally were coveted by the producers and distributors of moving pictures.

The contentions of the Government, as stated in its brief, are: "that the defendants secured through acquisition of financial interests in competing theatres and by management agreements with them, a film purchasing power far greater than that possessed by any of its local competitors;" "that this power was used to secure contracts for exhibition rights to the films of the major distributors which gave the defendants an unreasonable control over the licensing of such film to others in numerous towns in the states mentioned;" "that this control was used to absorb or otherwise eliminate a number of actual and potential competitors;" and, "that the acquisition of such power by concerted action, apart from its illegal use, constitutes a violation of the Sherman Act." The Government insists that the evidence justifies the conclusion as a matter of law that these contentions are sound, and stresses in its brief twenty-five theater situations to sustain its position. These situations are taken up in detail in the findings of fact filed herein.

90 There are three parties involved in the industry in the exhibition of moving picture films—the producer, the distributor, and the exhibitor. The producer and the distributor are closely allied, so much so that they are frequently one institution with two departments. The distributor has to rely upon the producer for product. The producer has to rely upon the distributor for the exploitation of the product. The production of moving picture films entails the expenditure of vast sums of money to meet weekly pay rolls, *et cetera*. It is the function and business of the distributor to contact the exhibitors throughout the territory where they desire to exhibit the films. In doing this, the distributor is concerned in securing the best returns for the product he can obtain that will insure a steady income and keep the industry moving. The exhibitor is interested in buying the product at the lowest possible cost and in keeping a steady flow of the product for his theater, or theaters, of the kind and character he desires, at the times and places he desires to exhibit.

The product is copyrighted and is not sold to the exhibitor but is licensed to him for exhibition under certain terms and conditions. This practice has developed what is termed in the industry the "standard form" of contract, the provisions of which control except where they conflict with provisions in the "master" or basic contract. The evidence clearly discloses that the distributor selects his own customers and accounts and the exhibitor has no control over that phase of the industry. Many things are taken into consideration by the distributor in making that selection, such as the ability of the exhibitor to exploit the films in his community, his experience in exhibiting moving picture films, the facilities of his theater, his ability to pay for the product, and his integrity or lack of integrity.

In the development of the trade in the industry, the distributor endeavored to have his exhibitor license the product for a year in a contract called a season contract.
91 The solicitation began about the latter part of July or the first of August in each year. At that time the distributor had determined the kind and character of product he would be able to apply the exhibitor for that season. In most instances, the films had not yet been produced and no one knew how successful they would prove as boxoffice attractions, and in the season contract the exhibitor would be accorded the privilege of rejecting or eliminating a certain percent of the product during the season. Later, and during the time covered by the complaint, the distributor conceived the idea of licensing the product for a longer term than one season, and entered into a contract to license its product for a two, three or five-year period, which was called a franchise. This proved not to be advantageous to the distributor and has been discontinued by practically all of them. At the time the contracts were entered into between the distributors and the exhibitors, the terms and conditions were arrived at by "barter and trade."

Griffith Amusement Company, Consolidated Theatres, Inc., and the theatres with whom they had administrative contracts negotiated the licensing of films through R. E. Griffith, as their representative, until the 1938-1939 season. At the beginning of the season, as a matter of convenience, R. E. Griffith would go to the New York offices of the various major distributors, and it was the rule that all licensing contracts were required to have the approval of the New York office. There he would enter into negotiations with each distributor separately for the licensing of such of the output of films on hand, or to be produced, as he deemed would insure a supply which would reasonably meet the

needs of the various towns in which they were to be exhibited, at the times they were needed. Such negotiations called for considerable ability and skill, and frequently took weeks to conclude. The negotiations with each distributor would be reduced to a memorandum agreement and
92 later covered by a contract for each theater. These contracts always provided that the exhibition of the films was to be governed by the general provisions of the standard form of contract unless it was provided otherwise in the memorandum agreement.

Beginning with the 1938-1939 season, the negotiating for the licensing of films was done by H. R. Falls, as representative, and in much the same manner as theretofore except as to the place of negotiation. Instead of Falls going to New York, the representatives, or the state or district managers, of the distributors carried on their negotiations with Falls either in Oklahoma City, Oklahoma or Dallas, Texas.

The evidence discloses that in all the contracts with exhibitors, the films were licensed either at a "flat-rental" price or on a "percentage" basis. The contracts of the defendants Griffith Amusement Company, Consolidated Theatres, R. E. Griffith Theatres and Westex Theatres are practically all on a flat rental basis, although there are some percentage deals. The competitors of the defendants, aside from those with whom there were administrative contracts, were inclined more often to deal on a percentage basis. On the flat rental basis the exhibitor took a chance that he might lose on the deal, while on the percentage basis such chance was negligible. The testimony of all the major distributors is that in licensing the films, the Griffith theatres were treated the same as any other exhibitor.

As the industry developed the distributors began to license their films to be run for a second, third or even greater number of exhibitions, in towns and cities where they deemed it to be profitable. This caused some exhibitors to operate theatres for the exhibition of such runs almost exclusively. Such theaters are designated as second and third-run theatres. The second and third-run theaters supplement their product frequently by licensing films produced by other than the major producers, which are called "independents." The distributors alone determined
93 in which localities second and third runs should be licensed and how much time should elapse between the first exhibition of a film and the second and succeeding runs of it.

All of the defendants, except R. E. Griffith who is dead, together with their representatives who took part in and concluded the negotiations for licensing product with the

distributors covering the period of time set out in the complaint, have testified that they had no agreement or understanding with such distributors to in any manner control the exhibition of moving picture films in the various towns and theaters. They further testify that what was, or was not, to be licensed to their competitors in the various situations was never discussed or taken into consideration in such negotiations. Their testimony is corroborated by the representatives of the distributors who were present and negotiating with them in the licensing of product. There is no evidence to the contrary. The representatives of the distributors who took part in these negotiations testify that the buying power of the defendants was not considered the controlling factor in their negotiations, and some of them specify towns in the territory where they have never licensed their product first, second or third run to the defendants but have always licensed the product to their competitors.

The defendants further testify that they did not combine or conspire to unreasonably restrain trade in the moving picture films, or to stifle competition in the product, or to create a monopoly in it in the various situations in which they exhibited the films.

This brings us squarely to the consideration of the following propositions and the law as declared by our courts governing such situations.

1. Are the acts and conduct of the defendants, as shown by the evidence, in the acquisition and operation of their theatres in connection with their buying power, and
94 the provisions of their contracts with distributors, such as to justify the inference that a conspiracy or combination exists upon the part of the defendants to control the exhibition of moving picture films, or to unreasonably restrain trade in such products, or to stifle competition in such product, or to create a monopoly in the exhibition of moving picture films in the towns in the territory covered by the complaint, in violation of the Sherman Act?

2. If the court would be justified in concluding that such an inference could be drawn, would the court be further justified in concluding that such inference should control over the positive and direct testimony of the witnesses to the contrary?

3. Is buying power alone, resulting from thrift, fair dealing and industry, sufficient to justify the inference that a combination or conspiracy exists for the purpose of, and is being used in negotiations to, unreasonably restrain trade, stifle competition, or create a monopoly in a given product, or must it be established by a fair preponderance

of the evidence that a combination or conspiracy exists and has for its purpose the use of such buying power to obtain those specific results?

In considering the first proposition it may be necessary to repeat statements contained in our preliminary discussion.

Section 1, Title 15, U. S. C. A., provides, so far as it pertains to the case at bar, as follows:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *"

Section 2 provides in part:

"Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a misdemeanor, * * *."

The Government contends that the defendants have by their acts and conduct in the territory and during the time set forth in its complaint violated the provisions of
95 these sections. The Government assumes that the defendants were acting in unison and in a cohesive combination in their theater operations. The evidence does not sustain this contention.

The undisputed testimony is that the defendants, L. C. Griffith, R. E. Griffith and H. J. Griffith, operated as a partnership in the business of acquiring, operating and developing theaters until sometime in 1926. There was nothing unlawful or unreasonable in that line of endeavor and they are not charged with any irregular conduct in it. In 1926 they incorporated their business as Griffith Amusement Company. Since that time, the acts of the brothers were those of officers of corporate bodies and not those of individuals, except the services performed by R. E. Griffith as buyer and booker of films. In 1928 another corporation was organized by these brothers, known as Consolidated Theatres, Inc. While the evidence discloses that these two corporations maintain their offices at the same place, it also shows that they are distinct entities and have had nothing in common with each other aside from the fact that since their organization, both have engaged in the exhibition of moving picture films. The uncontradicted evidence is that in 1931, R. E. Griffith severed his business connection with both Griffith Amusement Company and Consolidated Theatres and has had nothing to do with the business policies or operation of those two organizations since that time aside from serving them as agent and representative in purchasing and booking films for a consideration agreeable

to the parties, until the season of 1938-1939 when he ceased to function in that capacity.

Neither Griffith Amusement Company nor Consolidated Theatres had any control of any character over the operations of R. E. Griffith Theatres, Inc., or Westex Theatres, Inc. Nor did R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., have any control of any character over the operations of Griffith Amusement Company or Consoli-
96 dated Theatres, Inc., during the time covered by the complaint, but each has been, and was at the time of this trial, a distinct entity from the date of its organization.

The Government contends that the four corporation defendants were combined into one circuit of theaters and refers to it as "the Circuit." The evidence does not so disclose. It does disclose that each corporate defendant owned and operated a distinct circuit or chain of theaters.

The business or industry in which these defendants are engaged is competitive in many places. We are not concerned with those towns where there was no competition at the time of the filing of this complaint except any incidental bearing it might have upon competitive situations during the time covered by the complaint. "Competition," it has been said, "is the life of trade." The very law we have under consideration, the Sherman Act, has for its purpose the protection of competition. The law in every conceivable way has always favored it, when fairly conducted.

In Sinclair Refining Company v. Federal Trade Commission, 276 F. 686, 688 (CCA 7), the court said:

"Competition is not an unmixed good. It is a battle for something that only one can get; one competitor must necesssarily lose. The weapons in competition are various. Superior energy, more extensive advertising, better articles, better terms as to time of delivery, place of delivery, time of credit, interest or no interest, freights, methods of packing, lower prices, more attractive and more convenient packages, superior service, and many others, are and always have been considered proper weapons. Expense attending the use of any weapon, the foolishness of it, the fact that a method is uneconomical, or that the competitor cannot meet any method or scheme of competition because it will be ruinous to him to do so, have not, nor has either of them, ever been held unfair. Such things are a part of the strife inherent in competition. * * *"

If the battle of competition is carried to its normal conclusion one competitor reaches a point of ascendency
97 over the other, and the losing competitor naturally takes a secondary position or is completely van-

quished. They both cannot occupy the same position in the contest at the same time. It is a competitive contest and there is no rule of law, economics, or business that can strike and maintain an even balance between the participants during its progress. In the business in which the individual defendants were engaged, the exhibition of moving picture films, both competitors could not exhibit the same picture at the same time. The licensing of the film was the business of the distributor, and his choice of who should exhibit it and the terms and conditions under which he would license the film were matters that were wholly in his control. The distributor either had the film or was going to produce it; it was his article and was for license. The market was provided by the distributor; the various exhibitors knew where and from whom the article was to be licensed. The methods of the distributor were known to all. The evidence shows that the exhibitor either could go to headquarters direct and bargain or could wait for some representative to call on him and bargain through the representative. If the exhibitor was content to wait for the representative, or depend upon correspondence, he took his chances on supply. If upon the other hand he cared to go to headquarters and bargain, it was possible to get a better choice of product, just as it is in any other line of endeavor where one is engaged in retailing to the trade goods that are provided by wholesale dealers.

The evidence discloses that the defendants took advantage of the opportunities afforded them in the ordinary course of dealing during the time covered by the complaint. That was their privilege and there was nothing illegal or immoral about it, merely because they represented large interests or were able to make large deals. The evidence shows that the licensing was all arrived at by barter and trade, and the exhibitors all placed upon the same footing.

98 The attitude of the Government is one of suspicion. Many of the normal and natural occurrences and situations are given a sinister meaning and argued from that standpoint. The proposition of what "could be done" or "might be done" under given situations is argued vigorously. But we are not concerned with that approach. Our concern is what the evidence discloses *was done*, and any fair inferences we can gather from those acts regarding the intent of those who acted. A fair indication of this attitude can be gathered from the Government's brief (p. 14) which states:

"The ability of the defendant to withdraw from a particular major distributor the entire revenue from its closed

towns was of course a major threat it possessed. When this is controlled by one individual negotiating with a distributor its effect is self evident."

The evidence fails to disclose that any threat was so made by R. E. Griffith or any other defendant in the negotiations for films, but to the contrary. The suggestion that any distributor on account of that ability was intimidated or compelled to sell films to the defendants is not supported by the evidence. If the mere ability to withdraw all purchases from a distributor in noncompetitive situations, unless the purchaser grants favors in competitive situations, is a threat then all exhibitors possessing two theaters, one in a competitive situation and one in a noncompetitive situation, violate the Sherman Act. Such argument is unsound and falls of its own weight.

The Government contends that "Section 1 of the Sherman Act was violated by unreasonable restraints on the interstate distribution of motion pictures resulting from: (a) each of the master deals and franchises between a distributor and the Griffith Circuit; (b) each of the agreements between exhibitors for collective licensing; (c) each of the agreements between exhibitors by which one agreed not to compete with the other either by a pooling arrangement or by a sale of goodwill, and (d) unreasonable restraints resulting from implied agreements between defendants and distributors." These contentions will be considered in order.

99 The Government assumes a state of facts not supported by the evidence. There are no master deals or franchises between any distributor and the "Griffith Circuit" shown in the evidence. The master deals and franchises in their final analysis are between a distributor and each of the four corporate defendants, or between a distributor and some individual exhibitor who is not a party defendant here. They are separate deals negotiated by an agent for the exhibitors upon the one hand and the various distributors individually upon the other hand. There is no evidence that there was any agreement, conspiracy or combination between the negotiators of the deals that had for its object granting to the defendant exhibitors any advantage or concession for the purpose of stifling competition, monopolizing the industry, or occasioning or bringing about any unreasonable restraint in trade in the product in such territory. The undisputed testimony is that such matters were never at any time discussed between the parties.

The master deals consist of either a memorandum agreement at the close of the negotiations signed by the parties, or in some instances, a letter from one party setting forth the terms and accepted by letter by the other party. Later these were approved by the proper officials of the distributors, which were followed by contracts embodying the agreement with the individual theater exhibitors. *These* is nothing in the evidence that indicates anything abnormal or unusual in these agreements.

As to the franchises, the evidence is that prior to the time covered by the complaint, the distributors conceived the idea of licensing their films for a longer period that one season. They sought out the exhibitors and endeavored to license them for a term of years, which resulted in contracts that were called franchises. They not only sought out the exhibitors operating a circuit of theaters, but also the exhibitor operating one theater. Such licensing became a part of the ordinary method and many operators of theaters had franchises for a term of two, three and even five years. Later most of the distributors concluded that in practical operation, a franchise was not desirable and discontinued the practice.

That such franchises were considered as a part of the ordinary method of contracting for moving picture films by all the trade is borne out by Section IV of the Consent Decree which provides: "The provisions of this decree shall not apply to any franchise which was signed prior to June 6, 1940."

The evidence discloses that the defendants entered into four of such franchise contracts. One executed May 8, 1930, for a term of five years, between Metro-Goldwyn-Mayer Distributing Corporation (now Loew's) and Griffith Amusement Company, Consolidated Theatres, Inc., and two other corporations not party defendants here. It was amended as to Griffith Amusement Company and Consolidated on April 20, 1933. At the time of the filing of the complaint it had practically one year to run. It was not renewed. One executed September 15, 1934, for a term of three years, between Paramount Pictures Distributing Company and Griffith Amusement Company, R. E. Griffith Theatres, Inc., Consolidated Theatres and fifteen other organizations not parties to this action, all represented by R. E. Griffith, agent for such parties. This franchise was not renewed. One executed March 19, 1935, for a term of three years between RKO Distributing Corporation and Griffith Amusement Company, R. E. Griffith Theatres, Con-

solidated Theatres and five other organizations not parties to this action, all represented by R. E. Griffith, as agent. This franchise was not renewed. One executed September 14, 1937, for a term of three years between Columbia Pictures Corporation and Consolidated Theatres, R. E. Griffith Amusement Company and Westex Theatres, by R. E. Griffith "authorized agents." This was not renewed.

101 During the time covered by the complaint, the defendants did not have franchises in effect with more than two distributors during any season. The franchise with Loew's (MGM) and Paramount were in effect during the 1934-1935 season. The franchises of Paramount and RKO were in effect in the 1935-1936 and 1936-1937 seasons. Franchises were in effect with RKO for the 1937-1938 season, and with Columbia for the 1938-1939 and 1939-1940 seasons. Thus at least six of what is termed the major distributors had no franchises with the defendants during any season covered by the complaint. In view of that situation we fail to see how the franchises held by the defendants could seriously restrain commerce in the films. Certainly they did not unreasonably restrain it, regardless of any of the provisions in the franchises that appear upon their face.

But counsel for the Government insist there are provisions in those franchises that would justify the conclusion that special privileges were given to the defendants, and that by reason thereof, it can be inferred that some kind of an agreement or conspiracy was in effect between the parties to the franchise to restrain commerce, control product or monopolize.

Those provisions have been carefully considered. The argument is not based upon what has been done under the provisions, but it chiefly based upon what *could* be done, or how the provisions *could* be interpreted. For instance, in the Government's brief (p. 66), counsel states:

"In the agreement with Columbia Pictures Corporation * * * the following clause appears, "It is agreed that the exhibitor can revise the schedule of allocation by towns, provided the total amount of money by picture, in each classification, for the Circuit, remains the same." * * * The effect on competition of such a right is too clear to require elucidation."

Then counsel proceeds to elucidate as follows:

"Under the terms of such contracts the Griffith Circuit could allocate the entire amount of rental to its most

102 prosperous theatre and utilize all the others in the

chain as fighting theatres to drive out the independent exhibitors in the other towns in which it exhibited the distributors' pictures. * * *"

There is no evidence in the record that any such conduct was indulged in by the defendants, or that such sinister thoughts occurred to them. There is a vast difference between what *might have been done* and what could have been done and what *was done.*

Counsel argues further in the brief (p. 67):

"In the three-year franchise of Paramount Pictures, * * * the following clause appears, 'Distributor agrees to release exhibitor from the obligation covering any individual town which the exhibitor may find it necesary to close permanently.' The effect of such a clause is similar to that granted to allocate pictures between towns. It is also capable of the construction that a distributor may by entering into a pooling arrangement with a competitor decide to close his theatre in a particular town and thus restrain the interstate distribution of product."

This would be a strained construction of a simple and unambiguous clause in a contract, the ordinary and clear meaning of which is obvious.

Again counsel states (p. 67):

"In the contract between the RKO and the Griffith Circuit * * * this clause appears, 'It is agreed that if the exhibitor shall during the term of this agreement open additional theatres in any of the towns covered herein, with the exception of Oklahoma City, that any of the feature photoplays and short subject photoplays may be exhibited therein in place of the theatres named herein.' The effect of this clause is to arm Griffith with an assured franchise to license pictures in any theatre which he may desire to open even though he decided to open it solely for the purpose of destroying a competitor's business. It is difficult to conceive of greater relinquishment of control of its film distribution than this one and its inclusion in a master deal belies the protestations that each theatre was considered in arriving at the rental prices fixed in the master deals.

"Under the terms of this clause, the Griffith Circuit was empowered to open the flimsiest kind of a converted store show immediately adjacent to its independent competitor and without fear of loss of product play the top pictures of the distributor."

This also is a strained construction. The clause is simple and plain and admits of no inference of a sinister or hidden meaning when the contract is considered as a whole.

103 Counsel has overlooked many contingencies in

arriving at such a construction. Here is a contract covering many towns. A theatre may be destroyed by fire or storm; a lease may expire and cannot be renewed; local authorities may condemn a building for theater use. Any number of things might occur to cause an exhibitor to open another theater in a town covered by the contract. The exhibitor has provided himself by license with moving picture films to operate his theaters in a town over a period of time. Thus with good foresight and business judgment he provides for such a contingency. The clause does not give the exhibitor any new or additional product. It simply permits him in such event to use product, that under his contract he has obligated himself to play and pay for, by exhibiting the same film in the same town in a location other than the one named in the contract. This gives him no unfair advantage over his competitor, takes away none of his competitor's product, and certainly in no way unreasonably restrains commerce, nor can it be construed as an intent to monopolize.

Under proposition (b), "the agreements between exhibitors for collective licensing restrain competition and were an unreasonable restraint of trade," counsel for the Government argues as follows; (p. 68):

"In some 48 instances, agreements were entered into under the terms of which booking of pictures would be handled by the Griffith Circuit. Each of these agreements pro tanto reduced the bargaining power of a major distributor and constituted a combination against him for the securing of the special privileges some of which have been discussed above. Moreover, they had the effect of preventing competition between the exhibitors entering into them for the booking was centrally controlled."

Again we have an assumption that all of the defendants were combined in one circuit which is far from being supported by the record. Counsel assumes this position from the fact that all of the defendants, until the 1938-1939 season, negotiated the purchase and booking of films through R. E. Griffith as agent for the parties involved in the deals.

104 There is no difference in principle in the instant case and the case of Appalachian Coals, Inc., et al. v. United States, 288 U. S. 344, 357, 359, 377, except in the case at bar it is contended the defendants were operating collectively by purchasing and booking through an exclusive buying agency and in the case cited an exclusive selling agency was under attack. In the discussion of it, Mr. Chief Justice Hughes said:

"The challenged combination lies in the creation by the defendant producers of an exclusive selling agency. * * *"

* * * * * *

"First: There is no question as to the test to be applied in determining the legality of the defendants' conduct. The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor. * * * The decisions establish, said this Court in Nash v. United States, 229 U. S. 373, 376, "that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade." [Citing numerous authorities.]

"In applying this test, a close and objective scrutiny of particular conditions and purposes is necessary in each case. Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. 'The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains.' Chicago Board of Trade v. United States, supra (246 U. S. 231). The familiar illustrations of partnerships, and enterprises fairly integrated in the interest of the promotion of commerce, at once occur. The question of the application of the statute is one of intent and effect, and is not to be determined by arbitrary assumption. * * *"

* * * * * *

"* * * The Anti-Trust aims at substance. Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge corporation bringing various independent units into one ownership. Either may be prompted by business exigencies, and the statute gives to neither a special privilege. The question in either case is whether there is an unreasonable restraint of trade or an attempt to monopolize. * * *"

If the Act "aims at substance" and if "realities must dominate the judgment" and we apply these principles here, then it is apparent that a similar condition confronted the defendants Griffith Amusement Company and Consolidated Theatres, at the time R. E. Griffith severed his active connection with them. It was good busi-

ness judgment to procure his services for the corporations. He, by training and experience, was well fitted for it. What is abnormal about such an arrangement? But that is not all there is to the administrative agreements. Counsel apparently overlooks the fact that the agreements provide for many types of service, the buying and booking of films is only one incident, and that for all the services to be performed under it, a specified fee is to be charged.

The administrative contracts are of two general kinds or types. Counsel for defendants quite clearly describe them in their brief (pp. 70-71), as follows:

"One type is an agreement between one of the corporate defendants and a third party with whom it was jointly operating a theatre or theatres in a certain town, setting forth the terms of the partnership operation, the duties to be performed by each party, the compensation to be received by each party, the division of profits, and other details of the operating agreement."

"The second type of contract reflected in those exhibits is a contract between Griffith Amusement Company and Consolidated Theatres, Inc., or Consolidated Theatres, Inc., and its partner, as the owners and operators of theatres, whereby for an agreed percentage of the gross box office receipts Griffith Amusement Company agreed to perform certain services, including the licensing and booking of pictures."

Suffice it to say the objectionable paragraph pointed out by the Government is not the controlling feature of the contracts but is merely incidental. The contracts must be considered as a whole, and when so considered, there is nothing abnormal about them and no hidden or sinister meaning in them. There is nothing in them that signifies any intent to unreasonably restrain trade, stifle competition or monopolize.

Proposition (c), the agreements between exhibitors by which one agreed not to compete with the other
106 either by a pooling arrangement or by a sale of good will constitutioned unreasonable restraints of trade, calls for a consideration of the facts and circumstances surrounding these two characters of transaction.

The alleged pooling arrangements stressed by the Government are in the situations at Chickasha, Enid and Stillwater, Oklahoma. The defendants designate them as parnership agreements. But regardless of their designations, they are agreements that affected local situations concerning economy, expense and efficiency in operation that called for that character of agreement. In the Chickasha situation, no competition of the two circuits was affected in any

manner, and the mere fact that an unprofitable and unsuitable theater was abandoned and one party to the contract finally became the owner of the theater by a mutual and satisfactory sale does not condemn the transaction as monopolistic. In the Stillwater situation, under the circumstances surrounding the transaction, there is nothing sinister or abnormal about it. On account of the depression and the inexperience of Russ, the operator of the competing theater, it is apparent that his proposition to Griffith Amusement Company was reasonable, and the terms of the agreement had the effect of mutually assisting both organizations in the situation which was purely a local one. The Enid situation also was a purely local affair and there was nothing abnormal about the contract or its effect. All of these three contracts are shown by the evidence to have been brought about by efforts to economize and more efficiently operate, with no apparent desire to stifle competition unreasonably restrain, or monopolize. "The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it." Appalachian Coal, Inc. v. United States, supra.

Under this contention, the Government stresses the restrictive covenant found in the contracts in the purchase of theaters. In these contracts, as a part of the consideration, it is provided that in purchasing the good will,
107 the vendor is not to engage in the same business for a specified time and at a specified place. There is nothing abnormal or unusual in this character of contract. What is known as good will, that has been built up by an owner of a business, is a valuable asset, and in the sale of that business he should be able to profit by it. This right has been so recognized and approved by our courts.

A great many of these contracts are Oklahoma contracts and are governed by state statute.

Section 217, Title 15 Okl. St. Ann, provides

"Every contract by which any one is restrained from exercising in a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void."

Section 218 of the same title provides:

"One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or part thereof, so long as the buyer, or any person deriving title to the good-will from him carries on a like business therein."

After carefully considering the Oklahoma contracts in view of the state statutes and the decisions of the Supreme

Court interpreting them, there can be no question as to their validity in that state. The contracts concern the sale of theaters, leases, equipment, *et cetera,* as well as good will. The covenants stressed by the Government are all based upon the purchase of the good will of the vendor. Whether they violate the Sherman Act would depend upon the intent of the parties, or the results effected.

In United States v. Addyston Pipe & Steel Company *et al.*, 85 F. 271, 280, in discussing the character of contract under consideration, the court said:

"The inhibition against restraints of trade at common law seems at first to have had no exception. See language of Justice Hull, Year Book, 2 Hen. V., folio 5 pl. 26. After a time it became apparent to the people and the courts that it was in the interest of trade that certain covenants in restraint of trade should be enforced. It was of importance as an incentive to industry and honest dealing in trade, that, after a man had built up a business with an extensive good will, he should be able to sell his business and good
108 will to the best advantage, and he could not do so unless he could bind himself by an enforceable contract not to engage in the same business in such a way as to prevent injury to that which he was about to sell. It was equally for the good of the public and trade, when partners dissolved, and one took the business, or they divided the business, that each partner might bind himself not to do anything in trade thereafter which would derogate from his grant of the interest conveyed to his former partner. Again, when two men became partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise, and energy to carry on a successful business, and one useful to the community. * * *"

And again, in considering whether the contract effected an unreasonable restraint in trade, the court quoted with approval from the case of Horner v. Graves, 7 Bing. 735, as follows:

"We do not see how a better test can be applied to the question whether this is or not a reasonable restraint of trade than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party requires can be of no benefit to either. It can only be oppressive. It is, in the eye of the law, unreasonable. Whatever is injurious to the interests of the public is void on the ground of public policy."

In Goldberg *et al.* v. Tri-States Theatre Corporation, 127 F. 2d 26, 29 (CCA 8) an injunction was sought based upon the violation of a restrictive clause in a contract similar to the one at bar. In passing upon the clause as to whether it effected a restraint in trade, the court said:

"The validity of the agreement, as a restraint upon trade, is not seriously open to question under the general contract law of Nebraska. An agreement which places a restriction upon the use of certain real estate is not invalid in Nebraska, as being an unreasonable restraint of trade, where the restriction is purely ancillary to the acquiring of an interest in another piece of real estate for commercial purposes; where it places only a limited restraint as to period and manner of the use of such property; where it does not appear to be greater than reasonably to serve as a protection in accomplishing the legitimate commercial purpose for which the interest in the other real estate involved was acquired; and where it does not have as its primary object or as its direct result the fostering of some illegal monopoly."

109 And in summing up the transaction, the court said:

"Under all the circumstances of the transaction, it must be held that the restricted agreement was intended simply and fairly to protect the interests created by the new sublease and the purchase of the 99 year leasehold; that it was only such a reasonable protection as any purchaser in good faith would have required under the circumstances of the transaction; that the situation which prompted the deal and the relationship in which the parties dealt afford no sound basis for inferring that it was dominated by any purpose of fostering an illegal monopoly under a previous combination and conspiracy, if any such combination ever had existed, as appellants contend; and that, so far as the public is concerned, it was not intended to and did not serve to achieve any such harmful or illegitimate result."

The situation involved in the Oklahoma contracts containing restrictive clauses could not be stated in more apt language. Under all the facts and circumstances surrounding the various Oklahoma contracts, they appear both valid and reasonable.

The Government particularly stresses the covenant in the contract of sale between A. M. Morgan and Jack Pickens, as agent for the Brady Amusement Company, Westex Theatres, and R. E. Griffith Theatres, in which Morgan sold the Ritz theater at Brady, Texas. The evidence clearly discloses that Morgan's purpose in acquiring theaters was

not so much with the idea of operating the theater as it was to sell out to a competitor. Under the circumstances surrounding that sales transaction it is quite easy to understand why the purchaser might desire such a covenant in the contract of sale that was agreed upon, which was that Morgan "will not engage in the moving picture business or theatre business of any kind or character, directly or indirectly, in any town in the State of Texas, Oklahoma and New Mexico in which he might be in competition with Brady Amusement Company, Westex Theatres, Inc., or the R. E. Griffith Theatres, Inc., for a period of five years from this date." If the provisions in the contract were put to a test, it may be admitted that it would be held to be valid as to the town of Brady, Texas, and invalid as to the other territory attempted to be covered. But so far as it affects the question before us, taking into consideration the facts and circumstances surrounding the transaction, there is nothing that would justify the conclusion that the parties defendant who were parties to this contract were in a conspiracy or combination to control the exhibition of moving picture films at Brady, Texas, or any other place, or that the restrictive covenant in the contract would justify the conclusion that there was an intent upon the part of those defendants to stifle competition in the exhibition of films, or to unreasonably restrain interstate trade or commerce in them, or that it had any such effect. The sale as it was ultimately closed was initiated by Morgan and was satisfactory to him. He was not unreasonably restrained in the town of Brady, Texas, and he makes no complaint that he was so restrained at any other place. The public was in no manner adversely affected by the transaction.

As to proposition (d), that the Sherman Act was violated by unreasonable restraints resulting from implied agreements between defendants and distributors. The court is not required to search for implied agreements in the face of the fact that the agreements are all written, signed by the parties, and are unambiguous in meaning. We are again called upon to speculate and guess at some hidden or concealed perfidy that does not appear in the instruments themselves. Where a conspiracy is charged, it is the duty of the court to scrutinize and consider carefully any and all transactions that would throw any light upon the issue, and where the evidence consists of written agreements, those agreements and the circumstances surrounding their execution should be considered carefully. The purpose of the agreement, the object the parties had in mind and the results accomplished must all be considered. But when that

is done and no serious fault found in the instruments, then it is not the duty of the court to speculate and guess as to what *could be done* or what *might be done*, or the effect that *might be accomplished* under the agreement, when the possible purpose was totally foreign to what the parties expressed in the agreement.

111

The Government contends that "Section 2 of the Act was violated by the defendants monopolizing the business of operating theatres and the supply of major films." Under this contention, buying power and its effect are again emphasized. This question had had consideration in discussing the previous contention. Suffice it to say here that the evidence fails to disclose that the defendant exhibitors in the buying and booking of moving picture films contracted for any greater supply of product than they believed was reasonably necessary to supply the demands of the public in the various situations. In the purchase of their product, the positive evidence is quite clear that there was no intent upon the part of the defendants to control, stifle competition in or monopolize the industry in the territory, or to unreasonably restrain interstate distribution of moving picture films. For that reason it is not apparent how the case of *United States v. Aluminum Company of America et al.*, 148 F. 2d 416, relied upon by the plaintiff, applies here. The distinction is clear. Speaking of the Aluminum Company, the court said:

" * * * It was not inevitable that it should always anticipate increases in the demand for ingot and be prepared to supply them. *Nothing compelled it to keep doubling and redoubling its capacity* before others entered the field. * * * [Italics supplied.] Id. p. 431.

In the case at bar we have no such situation. There is a vast difference between ingots and moving picture films. Ingots of aluminum are a staple and fixed product. Moving picture films are a fluctuating and uncertain product. Until a film has been exhibited no one knows or can accurately estimate its value as a box-office attraction, either as a first-run exhibition or a subsequent run exhibition. What the demand for its exhibition may by the public is an unknown factor. The market in which it is procured by the exhibitor is a competitive one in which all exhibitors may enter and compete in compliance with the rules and customs of the industry, as they then exist, to obtain the product. Unless some unfair or illegal advantages are taken by one competitor, his rival in business should not be heard to complain because he has been unsuccessful in procuring the product.

112

Second proposition: If the court would be justified in concluding that such an inference could be drawn, would the court be further justified in concluding that such an inference should control over the positive and direct testimony of witnesses to the contrary?

When conspiracy is one of the elements of the charge against a defendant, the very charge itself is of such a nature that circumstantial evidence may be the character of evidence that will be relied upon to sustain the charge. The law imposes upon the plaintiff the burden of sustaining the allegations of his complaint by a preponderance of the evidence. In a case such as we have here it is the duty of the court to determine whether or not the allegations of the complaint are so sustained. The court is entitled to have presented positive evidence when it is obtainable, and not be compelled to search the record for inferences that may be drawn.

The positive testimony concerning the transactions and conduct of the parties by those who were in a position to know, so far as the negotiations of the defendants and various distributors are concerned, is that no combination, understanding or agreement existed between them that had for its purpose the control of the exhibition of moving picture films by any of the defendants, or any unreasonable restraint in trade in the product, or monopolization by the defendants of the product, or the stifling of competition upon the part of the defendants and the
113 distributors. In fact they all state that the competitors of the defendants were never mentioned in the negotiations for film contracts. The Government, however, from testimony detailing trivial circumstances which in each case is positively denied by witnesses who appear to the court to be worthy of belief, in connection with the documentary evidence, assumes that the court must infer the existence of a combination and conspiracy.

The Government cites United States v. Crescent Amusement Company et al., 323 U. S. 173, and United States v. Schine Chain Theatres, Inc., et al., 63 F. Supp. 22 (D. C., N. Y. Oct. 8, 1945). When these two cases are analyzed they are easily distinguished from the case at bar. In the Crescent Amusement Company Case, many of the things charged by the Government, which are similar to the charges here, the trial court found to be sustained by the evidence. Upon the appeal the only question before the court was whether there was evidence to sustain the lower court, and the court said:

"The crux of the government's case was the use of the buying power of the combination for the purpose of elim-

inating competition with the exhibitors and acquiring a monopoly in the areas in question. There was ample evidence that the combination used its buying power for the purpose either of restricting the ability of its competitors to license films or of eliminating competition by acquiring the competitor's property or otherwise. For example, the defendants would insist that a distributor give them monopoly rights in towns where they had competition or else defendants would not give the distributor any business in the closed towns where they had no competition. * * *" Id. 181.

* * * * *

"* * * But the vice of this undertaking was the competition of several exhibitors in a plan of concerted action. They had unity of purpose and unity of action. They pooled their buying power for a common end. It will not do to analogize this to a case *where purchasing power is pooled so that the buyers may obtain more favorable terms.* The plan here was to crush competition and to build a circuit for the exhibitors. * * *" [Italics supplied.] Id. 183.

Although the charge is similar to the charge in the instant case, the proof is not. In the case at bar there
114 is no testimony by any witness to that effect, but the testimony is to the contrary.

The Schine Case, supra, is not applicable here for the same reason and is thus clearly distinguishable. It is true that the Government followed practically the same pattern in its charges in that case as in the instant case. But in the Schine Case it satisfied the court with ample proof to sustain the charges and in the case at bar it has wholly failed to sustain the charges by a fair preponderance of the evidence.

The Government also cites the case of Interstate Circuit, Inc., et al. v. United States, 306 U. S. 208, 213. This case is also easily distinguishable. There the court again was passing upon the sufficiency of the findings of fact to support the decision of the court and stated:

"The case is now before us on findings of the District Court specifically stating that appellants did in fact agree with each other to enter into and carry out the contracts, which the court found to result in unreasonable and therefore unlawful restraints of interstate commerce."

* * * * *

"The trial court *drew the inference of agreement from the nature of the proposals made on behalf of Interstate and Consolidated;* from the manner in which they were made; from the substantial unanimity of action taken upon them by the distributors; *and from the fact that the*

appellants did not call as witnesses any of the superior officials who negotiated the contracts with Interstate or any official who, in the normal course of business, would have had knowledge of the existence or non-existence of such an agreement among the distributors. This conclusion is challenged by appellants because not supported by subsidiary findings or by the evidence. We think this inference of the trial court was rightly drawn from the evidence. * * * " Id. 221. [Italics supplied.]

And the court further amplified as follows:

" * * * Taken together, the circumstances of the case which we have mentioned, *when uncontradicted and with no more explanation than the record affords,* justify the inference that the distributors acted in concert and in common agreement in imposing the restrictions upon their licensees in the four Texas cities.

115 "This inference was supported and strengthened *when the distributors, with like unanimity, failed to tender the testimony, at their command,* of any officer or agent of a distributor who knew, or was in a position to know, whether in fact an agreement had been reached among them for concerted action. When the proof supported, as we think it did, the inference of such concert, the *burden rested on appellants of going forward with the evidence to explain away or contradict it.* They undertook to carry that burden by calling upon local managers of the distributors to testify that they had acted independently of the other distributors, and that they did not have conferences with or reach agreements with the other distributors or their representatives. *The failure under the circumstances to call as witnesses those officers who did have authority to act for the distributors and who were in a position to know whether they had acted in pursuance of agreement is itself persuasive that their testimony, if given, would have been unfavorable to appellants.* The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. Citing authorities." [Italics supplied.] Id. 225.

Even if the court would be justified in inferring from the Government's evidence, consisting largely of a documentary character, that a combination or conspiracy existed upon the part of the defendants and distributors as alleged in the complaint, and the burden was thus cast upon the defendants to "explain away or contradict it," the defendants have met and discharged that burden to the thorough satisfaction of the court with positive evidence from those officers of the distributors who negotiated with the defendant exhibitors.

Third proposition: Is buying power alone, resulting from thrift, fair dealing and industry, sufficient to justify the inference that a combination or conspiracy exists for the purpose of, and is being used in negotiations to, unreasonably restrain trade, stifle competition, or create a monopoly in a given product, or must it be established by a fair preponderance of the evidence that a combination or conspiracy exists and has for its purpose the use of such buying power to obtain those specific results?

When we come to consider this proposition, the law is well settled that the size of an institution, regardless
116 of a power that might be exercised on account thereof, is not in itself an offense against the statute. The principle is well expressed in United States v. International Harvester Company et al., 274 U. S. 693, 708, where the court said:

"* * * The law, however, does not make the mere size of a corporation, however impressive, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power. United States v. Steel Corporation, 251 U. S. 417, 451." * * *

In Federal Trade Commission v. Paramount Famous-Lasky Corporation *et al.*, 57 F. 2d 152, 157, the court said:

"* * *But the size alone does not give rise to a violation of the law. United States v. International Harvester Co., 274 U. S. 693, 47 S. Ct. 748, 71 L. Ed 1302; United States v. U. S. Steel Corp., 251 U. S. 417, 40 S. Ct. 293, 64 L. Ed 343, 8 A. L. R. 1121. * * *."

In United States v. United States Steel Corporation et al., 251 U. S. 417, 450-451, the court said:

"* * * The Government, therefore, is reduced to the assertion that the size of the Corporation, *the power it may have, not the exertion of the power,* is an abhorrence to the law, or as the Government says, 'the combination embodied in the Corporation unduly restrains competition by its *necessary effect* (the italics are the emphasis of the Government) and therefore is unlawful regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes should we be led. Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the government contention, *which regards power rather than its use* the determining consideration, seems to conduct. Certainly conducts we may say, for it is

the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor, for in ascendency there is the menace of monopoly.

"We have pointed out that there are several of the Government's contentions which are difficult to represent or measure, and, the one we are now considering, that is the power is 'unlawful regardless of purpose,' is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because
117 there is potency in it for mischief. The regression is extreme, but short of it the Government cannot stop. The fallacy it conveys is manifest.

"* * * The Corporation is undoubtedly of impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. *But we must adhere to the law and the law does not make mere size an offence or the existence of unexerted power an offence.* It, we repeat, requires *overt acts* and trusts to its prohibition of them and its power to repress and punish them. It does not *compel* competition nor require all that is possible." [Italics supplied.]

In *United States* v. *Standard Oil Company of New Jersey et al.*, 173 F. 177, 196, in discussing the principle of law under consideration here, Mr. Justice Sanborn said:

"* * * On the other hand, Congress did not intend to impede legitimate commercial activity, nor put a limit to its fruits. The genius and industry of man, when kept to ethical standards, still have full play, and what he achieves is his; and this applies as well to a corporation, in which the energies of many are concentrated under the authority of law in a single organization. A railroad company, for instance, which has extended its line across the continent and conquered the waste or wilderness, is not a monopoly within the statute merely because its capital is great and it alone serves the tributary country; and so of an industrial corporation, the wisdom and business sagacity of whose managers have foreseen and taken advantage of the natural tendencies of trade and caused it to outstrip all competition. Success and magnitude of business, the rewards of fair and honorable endeavor, were not among the evils which threatened the public welfare and attracted the attention of Congress. But when they have been attained by wrongful or unlawful methods, and competition has been crippled or destroyed, the elements of monopoly are present. * * *"

The theories and contentions of the parties have been patiently followed by the court but there is nothing in the evidence to justify the conclusion that any buying power possessed by the defendants was ever exerted by the defendants to "secure contracts for exhibition rights to the films of the major distributors which gave the defendants an unreasonable control in licensing such film to others in the various towns in the territory covered by the complaint. There is nothing in the evidence that would justify the conclusion that the buying power of the defendants was used to absorb or otherwise eliminate a number of actual
118 and potential competitors, nor would that justify the conclusion that the possession of the power or the manner in which it was used is a violation of the Sherman Act.

The Government has failed to establish by a fair preponderance of the evidence that the defendants have purchased or contracted for more moving picture films than they believed were, or in fact were, reasonably necessary to supply their theaters. Competition was fair under the circumstances of each situation involved. The defendants went into the open market and bought their product from the distributors in the same manner as was open to all competitors. The defendants were alert and progressive and took such advantages only as were natural in the industry. There is nothing in the evidence to justify the conclusion that the distributors were overawed or overreached in their dealings with the defendants; or that the distributors were compelled or coerced into entering into any contract with the defendants by reason of the buying power of the defendants, or from any other cause. There is no evidence that would justify the conclusion that any combination or agreement of any character existed between the defendants and the distributors that had for its purpose the stifling of competition in, or monopolization of, the exhibition of moving picture films, or to unreasonably restrain trade or interstate commerce in such exhibition of moving picture films, that has been occasioned or brought about by the manner in which the defendants used any buying power they possessed.

Findings of fact and conclusions of law will be filed simultaneously with this opinion. A form of judgment consistent with this opinion and the findings of fact and conclusions of law may be submitted within fifteen days from this date.

EDGAR S. VAUGHT,
United States District Judge.

Dated this 9th day of October, 1946.
[File endorsement omitted.]

119 In United States District Court

Findings of Fact and Conclusions of Law
Filed October 9, 1946
FINDINGS OF FACT

1

The court finds the following facts:

1

L. C. Griffith and R. E. Griffith, brothers, engaged in the business of acquiring and operating theaters for the exhibition of moving picture films by the purchase of a theatre in San Marcos, Texas, in 1915. Later in developing this business they were joined by a younger brother, H. J. Griffith, under the firm name and style of Griffith Brothers. By industry, thrift and ability they had acquired an interest in and were operating 16 such theaters in various towns in the states of Oklahoma and Texas in 1926. During that time they had developed certain qualifications in business: L. C. Griffith as an executive, R. E. Griffith as a buyer and booker of films, and H. J. Griffith in keeping the property in proper condition, looking after the lighting, heating, ventilation, accommodations and everything that had to
120 do with the mechanical operations of the various theaters. Each of the brothers possessed one quality in common, the ability to find and appraise opportunities to expand their business. By July 14, 1926, Griffith Brothers owned a 100 per cent. interest in 7 theaters in 4 towns and a 50 per cent. interest in 8 theaters in 4 towns. At that time the Griffith Brothers incorporated their business into the Griffith Amusement Company and transferred their interest in their theaters to that corporation. They issued 1400 shares of Class A stock: 616 shares to L. C. Griffith; 616 shares to R. E. Griffith; and 158 shares to H. J. Griffith. They issued shares of Class B stock to the Universal Chain Theatrical Enterprises with the understanding, as provided by contract, that the Universal Chain Theatrical Enterprises should lend Griffith Amusement Company sufficient funds up to a certain amount, as required to purchase and equip additional theaters, the loans to bear 10 per cent. interest and to be secured by the property so acquired. The acquisition of such theaters was to be dictated by Griffith Amusement Company. L. C. Griffith, at the organization of Griffith Amusement Company, became its president and chief managing officer and has continued as such since that time. R. E. Griffith had charge of the licensing and booking of moving picture films for the corporation and actively participated in the affairs of the corporation until sometime

in May, 1931. H. J. had charge of the remodeling, equipping and mechanical operations of the theaters and actively participated in the affairs of the corporation until April 1, 1939.

On April 28, 1939, the date of filing of this action, Griffith Amusement Company owned a 100 per cent. interest in 23 theaters in 10 towns and owned a financial interest with various other parties in 35 theaters in 12 towns.

2

121 Sometime in 1928, the Universal Chain Theatrical Enterprises declined to make further loans to Griffith Amusement Company. The Griffith brothers desired to continue to acquire additional theaters, but some of the stockholders of Griffith Amusement Company were unwilling to make further acquisitions. This resulted in the Griffith brothers and other associates organizing a corporation known as Consolidated Theatres, Inc., on May 27, 1929. It commenced business April 27, 1930. L. C. Griffith has at all times since its organization owned a majority of the outstanding stock in this corporation and has been its active managing officer. At the death of R. M. Clark in 1934, L. C. Griffith became president of the corporation and has continued as such to the present time. In the early part of 1931, R. E. Griffith disposed of his stock in Consolidated Theatres, Inc., and has never been an active executive officer in the corporation since that time, but was employed by it each season as buyer and booker of films until the season of 1938-1939. H. J. Griffith has been a stockholder and officer and director in the corporation from its organization until the filing of the present action, but at the time of trial was not a stockholder or director. The theaters acquired and owned by this corporation were in wholly different towns or cities from those in which Griffith Amusement Company was operating theaters, except in Oklahoma City, Oklahoma, where each corporation owns and operates a theater.

On April 28, 1939, the date of filing of this suit, Consolidated Theatres, Inc., owned a 100 per cent. interest in 14 theaters in 6 towns and a financial interest with various parties in 54 theaters in 25 towns, which included 3 theaters in Lubbock, Texas, owned by Lindsey Theatres, Inc., 50 per cent. of whose stock is owned by Consolidated. Also included in the number are 8 theaters in Cuero, New Braunfels, Refugio and Uvalde, Texas, owned by Jack Pick-
122 ens Theatres, Inc., in which organization Consolidated owns 50 per cent. of the stock, but does not operate the theaters or license pictures for it. And included in the number are 9 theaters in Alvin, Bay City, El Camp,

Texas City, Victoria and Wharton, Texas, in which Consolidated Theatres, Inc., owns a 25 per cent. interest, but does not license pictures for them.

3

In May, 1931, R. E. Griffith resigned as an officer and employee of Griffith Amusement Company. He also exchanged his stock in Consolidated Theatres, Inc., for three theaters owned by that organization located at Gallup, Roswell and Hobbs, New Mexico, and removed his residence to New Mexico. During that year, 1931, R. E. Griffith acquired three theaters at Carlsbad, Portales and Clevis, New Mexico. In December, 1931, R. E. Griffith organized a corporation named R. E. Griffith Theatres, Inc., and transferred the said six theaters to that corporation. R. E. Griffith owned the controlling stock interest in, and was the active managing officer of, the corporation until his death in 1943. L. C. Griffith at no time has owned stock in the corporation, or has been an officer or director in it, or interested in it in any manner. H. J. Griffith owned a small stock interest in the corporation but was not a director, officer or employee of the corporation. On April 28, 1939, at the time this suit was filed, R. E. Griffith Theatres, Inc., owned a 100 per cent. interest in 11 theatres in 6 towns and a financial interest with various other parties and corporations in 12 theaters in 7 towns.

4

On March 27, 1936, Westex Theatres, Inc., was organized as a subsidiary corporation by R. E. Griffith Theatres, Inc.

Since its organization, R. E. Griffith Theatres, Inc.,
123 has at all times owned a majority of its stock and R. E. Griffith was in active management of Westex Theatres, Inc., from the date of its organization until his death in 1943. No other corporate defendant aside from R. E. Griffith Theatres, Inc., by virtue of its stock interest, had anything to do with the acquisition of theater interests or properties by Westex Theatres. On April 29, 1939, Westex Theatres, Inc., owned a 100 per cent. interest in 4 theaters in 2 towns and a financial interest in 40 theaters in 23 towns. Included in the list of partly owned interests is a 25 per cent. interest in 9 theaters in the towns of Alvin, Bay City, Texas City, El Campo, Victoria and Wharton, Texas, in which Consolidated Theatres, Inc., owns a 25 per cent. interest.

5

At the time of its organization, Griffith Amusement Company located its headquarters and offices in Oklahoma City, Oklahoma, and has continued to so maintain such head-

quarters and offices. At the time of its organization, Consolidated Theatres, Inc., located its headquarters and offices in Oklahoma City, Oklahoma, in the same offices with Griffith Amusement Company, which have been common headquarters for both corporations, using a common office force, a common agent for licensing and booking moving picture films, and a common administrative service. But the two corporations have at all times been separate entities. The management, control and ownership of theatres and income therefrom have been entirely separate and distinct, and neither corporation has in any manner been connected with R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., except as above stated. The maintenance of a common office and administrative service of the two corporations, Griffith Amusement Company and Consolidated Theatres, Inc., was for convenience, efficiency and economy of administration alone and for no other purpose.

124 6

At no time since their organization have Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc., constituted a single entity in any manner, but have been four distinct entities. All of these organizations have resulted from the ordinary and legitimate growth and development of the business in which those interested were engaged. No two or more of them have combined, conspired or agreed to attempt to control the exhibition of moving picture films, unreasonably restrain trade in them, stifle competition in them, or create a monopoly in the exhibition of such product in any situation shown by the record.

7

In the acquisition of theaters or interests in theaters by the Griffith Amusement Company, neither Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., nor any other defendant had any connection, interest or participation in such theater interest so acquired, aside from any interest they might have as minority stockholders. In the acquisition of theaters or interests in theaters by Consolidated Theatres, Inc., neither Griffith Amusement Company, R. E. Griffith Theatres, Inc., Westex Theatres, Inc., nor any other defendant had any connection, interest or participation in such theater interest so acquired, aside from any interest they might have as minority stockholders. In the acquisition of theaters or interests in theaters by R. E. Griffith Theatres, Inc., neither Griffith Amusement Company, Consolidated Theatres, Inc., nor any other defendant had any connection, interest or participation in such theater interest so acquired, aside from any

interest they might have as minority stockholders. In the acquisition of theaters or interests in theaters by Westex Theatres, Inc., neither Griffith Amusement Com-
125 pany, Consolidated Theatres, Inc., nor any other defendant had any connection, interest or participation in such theater interest so acquired, aside from any interest they might have as stockholders.

8

At no time during the time involved in this action have Griffith Amusement Company, Consolidated Theatres, Inc., L. C. Griffith or H. J. Griffith had any connection whatever in the business of R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., as officers or agents.

9

R. E. Griffith was employed by and continued as license agent for Griffith Amusement Company and Consolidated Theatres, Inc., up to the 1938-1939 season, the last service as such having been performed by him in the licensing and booking of the 1937-1938 season. On April 28, 1939, the date on which this action was filed, R. E. Griffith had discontinued his services as agent to license and enter into such contracts for Griffith Amusement Company and Consolidated Theatres, Inc., and had performed no services of any kind for those corporations since the 1937-1938 season. He was a stockholder in Griffith Amusement Company, but aside from that has had no connection of any kind as director or agent since that time in either Griffith Amusement Company or Consolidated Theatres, Inc.

10

The defendant corporation employed a joint agent in licensing motion picture films to secure economy and efficiency and to obtain the lawful advantages which normally flow from such co-operative effort. The evidence does not sustain the charge that in so doing they combined or conspired to crush competition, to compel or coerce any
126 distributor, to unreasonably restrain trade in interstate commerce, or to monopolize the industry of the exhibition of moving picture films in the territory set forth in the complaint, or during the time covered by the complaint.

11

In the 25 theater situations stressed by the Government, the following findings and conclusions are made:

11-1 Ada, Oklahoma

Ada, Oklahoma, has approximately 15,000 population.

In 1903 there was opened a theater named the Hamby, later called the Strand. In March, 1932, Griffith Amusement Company acquired by purchase from Foster McSwain a 60 per cent. interest in three moving picture theaters, the McSwain, the Ritz and the Liberty. The Liberty, at the time of acquisition, was closed. McSwain had been interested with R. J. Killough and Mrs. R. J. Killough who continued to operate the theaters. In 1933 E. H. Kyser and his sister, Nona Kyser, became interested in the Strand and began its operation. In August, 1936 E. H. Kyser died and his sister continued to operate the Strand until the summer of 1941 when she closed it. In 1936 Nona Kyser constructed and began the operation of another theater named the Ada, which she has operated since that time. In 1935 Griffith Amusement Company and the Killoughs remodelled the Liberty and opened it as the Kiva and have operated it since that time.

Nona Kyser testified that sometime after the death of her brother, E. H. Kyser, E. R. Slocum called on her and inquired whether she wanted to sell the Strand and the Ada, to which she replied in the negative, but told him if she did decide to sell, she would contact him. That during this conversation, Slocum said Griffiths did not want competition in Ada. She testified further that numerous other parties during that period sought to buy her theaters; that she did not contact Slocum any further, but in about six weeks
127 he called on her again and inquired if she desired to sell and she again replied in the negative. That at that time Slocum again asserted that the Griffiths did not want competition in Ada.

E. R. Slocum testified that he made the first call because he had heard of the death of E. H. Kyser and thought the theaters might be for sale. That he made the second call but sharply denied that in either conversation he made the statement attributed to him that the Griffiths did not want competition in Ada. After the second call he pursued the matter no further.

Nona Kyser complains that she was unable to buy or procure the pictures of her choice from major distributors. She testified, however, that the Ada has operated at a profit and that the Strand, while not operating at much of a profit, had been able at all times to operate until she voluntarily closed it.

From a careful consideration and analysis of the evidence, there is nothing that would justify the conclusion that any failure of Nona Kyser to procure the moving picture films she desired to exhibit in the Strand or the Ada was brought about or occasioned by any conspiracy or combina-

tion upon the part of the defendants to control the exhibition of moving picture films, to stifle competition, to unreasonably restrain trade, or to create a monopoly in the exhibition of moving picture films. Upon the other hand, it is apparent that any difficulties experienced by Nona Kyser in the operation of such theaters were the ordinary problems attendant upon the business in which she engaged in ordinary competition and trade.

11-2 Altus, Oklahoma

In 1936 Altus, Oklahoma, had a population of about 9,000.

Since 1928 Consolidated Theatres, Inc., owned a 50 per cent. interest in two theaters, the Empire (now known as the Plaza) and the Rex (now known as the Delta). W. T. Spears owned the other 50 per cent. interest in these two theaters and operated them. These parties also op-
128 erated a portion of each season a theater called the Paramount which was abandoned in 1936. In July or August, 1936, C. C. Hamm came to Altus and opened a theater he called the Ritz. At that time the Plaza (formerly the Empire) had a seating capacity of between six and eight hundred. The Delta (formerly Rex) had a seating capacity of 400 and the Ritz of 425. The Ritz formerly had been a store building and was remodelled into a theater building by Hamm. At the time the Ritz was opened the Plaza was playing "A" pictures and the Delta, "B" pictures of major distributors. Before opening the Ritz, Hamm had made an investigation as to the moving picture film product available at Altus and found there was no product available of the major distributors for the 1936-1937 season except Universal which he obtained and played. Hamm operated the Ritz for about a year. He and his brother had been in various places in theater operations and had left a trail of unplayed pictures of many major distributors which they had contracted to play. In 1937, Hamm sold the Ritz to W. T. Spears and the contract provided that he would not open another theater or engage in the exhibition of moving pictures in Altus for a period of ten years. The sale price was $7,500 which included the "good will" of the seller. The sale was voluntary and mutually satisfactory.

There is nothing to justify the conclusion that the sale of the Ritz theater was brought about or occasioned by any coercion or threats upon the part of the defendants or by any conspiracy or combination upon the part of the defendants to control the exhibition of moving picture films, unrea-

sonably restrain trade, stifle competition or create a monopoly at Altus, Oklahoma.

11-3 Blackwell, Oklahoma

Blackwell, Oklahoma, has about 10,000 population.

In 1937 the Bays theater was owned and operated by Laham Theatre, Inc. The Bays had a seating capaci-
129 ty of 1200 and was well equipped. The owners were not theater men but were engaged in other business. They had been unfortunate in the choice of managers and had the misfortunte to lose one manager by death. In 1937, Malcolm Geiger became connected with the Bays as projectionist and in August, 1938 became the manager. At that time, the Bays were playing Monogram, Republic, Gaumont British and Grand National first run and some Universal second run. In 1938 Griffith Amusement Company was operating two well-equipped theaters, the Rivola and the Midwest, in Blackwell and had been operating such theaters since 1936. The Rivola had a seating capacity of 700 and the Midwest of 400. Both theaters were playing first-run pictures from Fox, Paramount, Columbia, Universal Warners and Loew. Geiger attempted to obtain second-run pictures from Fox, Paramount, Warner, Columbia and MGM but was unable to make such deals with those distributors, but was able to make deals for the 1938-1939 season with RKO first and second run and some second runs with Metro. In the Spring of 1939 the Palace theater was opened by Griffith Amusement Company and played second-run pictures of Fox, MGM, Warner, Paramount and Columbia. In October, 1939, the owners of the Bays theater sold it to Griffith Amusement Company. The sale provided for purchase of the equipment at a substantial sum and for an assignment of the lease that had several years to run at a certain sum per month. The sale, so far as the evidence discloses, was voluntary and mutually satisfactory.

After the purchase of the Bays it was operated for a time and then closed. The local authorities called the attention of the owners to the fact that the physical property was in an unsafe condition and it was thought to be advisable to entirely rebuild the theater. But on account of the war, the building program has been suspended until approval from the proper authorities can be obtained and material and labor can be procured.

130 There is nothing to justify the conclusion that the sale of the Bays was brought about or occasioned by any conspiracy or combination of the defendant to unreasonably restrain trade, stifle competition or create a mono-

poly in the exhibition of moving picture films at Blackwell, Oklahoma.

11-4 Brady, Texas

Brady, Texas, has about 5,000 population.

In December, 1935, Aubrey M. Morgan acquired the Ritz theater by purchase from H. Ford Taylor. Taylor had under contract unplayed pictures for the 1935-1936 season of United Artists and Universal together with some Columbia product, which were assumed by Morgan. He operated the Ritz until November, 1936, when he sold it to Jack Pickens, agent for Brady Amusement Company, Westex Theatres and R. E. Griffith Theatres, Inc. Prior to the opening the Ritz, Morgan had engaged in the moving picture business in the towns of Rule, Eldorado, Odessa, Strawn and Miles, Texas, where he had used product of various major distributors and on leaving each of the towns, left unplayed contracts. At the time he commenced operation of the Ritz, another theater, the Palace, was being operated by Westex Theatres, Inc.

Morgan testified that in a conversation with Len Stocker, who was connected with Westex Theatres in some manner, in either October or November, 1936, he was told that Universal pictures had been purchased by Westex Theatres for the next season. That about or near the same time he was called by Jack Pickens who inquired if he wanted to sell the Ritz to which he replied in the negative. That Pickens told him he was interested in getting "a few little theaters like that against Griff". About six weeks later, Morgan called Pickens and they had another conversation in which Pickens advised Morgan that he was representing
131 Westex Theatres, R. E. Griffith Theatres and the Brady Amusement Company. This conference resulted in a sale of the theater for $2,500 by Morgan to the interests represented by Pickens. Morgan to remove the equipment which was not covered by the sale. The sale was mutually satisfactory. Morgan went to Colorado, Texas, opened and operated a theater for a year and then sold it. He then opened a theater in Snyder, Texas, in 1938. He lost that theater by fire. He then opened and operated a theater at Midlethin, Texas, but failed within the year. From there he opened a theater at Lockney, Texas, operated it for a time and again failed. He then bought a theater in Del Rio, Texas, operated it four months and sold it. It clearly appears from the evidence that Morgan was a speculator in theaters of that character.

He complains that while he operated the Ritz at Brady, he was unable to buy or procure from major distributors the pictures he desired to exhibit.

There is nothing to justify the conclusion that the sale of the Ritz was brought about or occasioned by any conspiracy, nor that a conspiracy or combination existed upon the part of the defendants to control the exhibition of moving picture films, unreasonably restrain trade, stifle competition, or create a monopoly in the exhibition of moving picture films at Brady, Texas.

11-5 Chickasha, Oklahoma

In 1930, the population of Chickasha, Oklahoma, was 14,099; in 1940, 14,111.

In 1937 W. P. Moran and one Isley operated a circuit of theaters under the name of Southwestern Theatres, Inc. Since 1925 they had operated 15 theaters located in Springfield, Missouri, Picker, Pushuska, Tulsa, Chickasha and Oklahoma City, all in Oklahoma. Southwestern Theatres was operating two theaters, the Midwest and the
132 Ismo, in Chickasha in 1937. The Midwest theater was profitable and the Ismo was very unprofitable. At that time, Consolidated Theatres, Inc., was operating the Washita, the Rialto and the Ritz in Chickasha. Sometime during the year 1937 Southwestern Theatres and Consolidated Theatres entered into a partnership contract under the terms of which the Ismo was to be abandoned and the Midwest and the Ritz were to share expenses and profits fifty-fifty. Under this arrangement the Midwest and the Ritz continued to operate until sometime in 1940, when Southwestern Theatres sold its interest in the theaters to Griffith Southwestern Theatres, Inc., not a defendant herein.

The partnership contract and the sale were voluntary and mutually satisfactory and were not entered into with the intent or purpose to unreasonably restrain trade or commerce, stifle competition in, or monopolize the exhibition of moving picture films at Chickasha, Oklahoma, and had no such effect.

11-6 Clinton, Oklahoma

Clinton, Oklahoma had a population in 1930 of 7,512 and in 1940, 6,756.

C. W. Guthrie opened the Ritz theater in 1927. It was later remodeled, but had only a small seating capacity. He continued to operate it until his death in December, 1937. After his death his widow, Myrtle Guthrie, assumed the operation of the theater and has operated it since that time, as she testified, "very profitably". At the time of Guthrie's death, Consolidated Theatres, Inc., was operating, and is still operating, the Rialto and the Del Rio theaters at Clinton, both of which were much larger than the Ritz.

Myrtle Guthrie testified that after the death of her husband many inquiries were made of her by various parties as to whether she was going to continue to operate the theater or dispose of it. That sometime in 1939, more than a year after Mr. Guthrie's death H. J. Griffith, who had been
133 on friendly terms with Mr. Guthrie during his lifetime, stopped at Clinton on his way from Amarillo and called on her. During that call he inquired if she planned to continue the operation of the Ritz or if she intended to sell it. In reply she told him she planned to try to operate it, but if she decided to sell, she would give him the first opportunity to buy. The subject was never again discussed between them.

There is nothing to justify the conclusion that the sets or conduct of the defendants brought about or occasioned any difficulties experienced by Mrs. Guthrie in procuring any moving picture films she desired to exhibit in the Ritz theater, nor that any conspiracy or combination existed upon the part of the defendants which had for its purpose the control of the exhibition of moving picture films, the unreasonable restraint of trade, the stifling of competition, or the creation of a monopoly in the exhibition of moving picture films at Clinton, Oklahoma.

11-7 Drumright, Oklahoma

In 1926 Drumright, Oklahoma, had about 4,500 population.

On January 1, 1926, James G. Bennett began exhibiting moving picture films in two theaters, the Strand and the Midwest. He had no competition until 1934 when a party opened a small moving picture theater called the Rex. The Rex was operated for four or five months when Bennett purchased it and immediately closed it, leaving only the Strand and the Midwest in operation. In 1936 the Strand was partially destroyed by fire and Bennett ceased its operation and reopened the Rex.

Bennett testified that a few weeks after the fire in the Strand, the latter part of July or the first of August, 1936, E. R. Slocum, representing Consolidated Theatres, Inc., called and asked if his theaters were for sale, to which Bennett replied in the negative. He further testified that Slocum, when informed that Bennett was satisfied
134 with his theater investment, made the remark, "You might be making a little money today and getting along all right but you won't be in six months from now if we come in here;" that Slocum further stated that they planned to build a deluxe theater as they thought the town would support such a theater. In his testimony,

Slocum sharply denied he ever made such statements. Bennett testified that Slocum returned a few days later and again took up the subject of the sale of the theaters. This conversation resulted in Bennett giving Slocum an option for thirty days to purchase the theaters for $16,000. The testimony concerning this is as follows:

"A. Slocum came back. Q. What was that date? A. I don't know the date, possibly a week later, it might have been the 20th of July. Q. A week later? A. Yes, sir. Q. Who was with him on that occasion? A. He talked to me alone: I don't think there was anybody present. Q. Where did that conversation take place? A. In this same little office. Q. What was the conversation then? A. Well, he repeated his— Q. (Interrupting.) Just state what he said— A. I don't know exactly. Q. Well, as nearly as you can recall. Q. He repeated his offer of buying the theaters; he said he came back to buy the theaters. Q. What did you say? A. I said no. Q. What did he respond? A. Well, he gave me a sales talk; I guess we talked maybe 30 minutes about price, and so forth, and finally I gave him an option. Q. What threats or intimidation or anything of the kind were exercised by him at that time? A. Well, I don't remember of any threats or intimidation that time. Q. You signed an option at that time? A. Yes; I signed an option. Q. Who drew it up? A. He did. Q. And that was the option given him, an option to purchase your theaters, or rather your sister's theaters, within thirty days time? A. That's right. Q. (By the Court) Did that cover just the one theater or all the theaters? A. That covered all of the theaters. We still had some salvage at the burned theater; it covered that too. Q. (By Mr. Cochran) What was the date of that option? A. That option was dated August 1st, and it ran until September 1st." R. pp. 1326-8.

Sometime about August 15, a letter was received by Bennett informing him that the option would be exercised, and later the sale was consummated. Bennett testified that when the parties come to exercise the option, Henry Griffing, associated with the law firm of Keaton, Walls and Johnston, was with the party and when Bennett was hesitant about going through with the sale, Griffing
135 made the statement to him, "Well, whether you sell to us or not, we are coming into Drumright and when we come in, you will know what will happen to you." Other witnesses who were present testify that Griffing was never alone with Bennett during the entire time of the transfer and that no such remark was made by him.

There was no occasion for such a remark from Griffing and no reason is apparent why it should have been made, and the fact that such a remark was made is far from being established by a fair preponderance of the evidence. The witness Bennett demonstrated that his memory for details is not good and his testimony is not convincing.

There is nothing that would justify the conclusion that the sale of theaters to Consolidated Theatres, Inc., was brought about or occasioned by any coercion or threats upon the part of the defendants, but that it was fairly and voluntarily made and was mutually satisfactory, nor that it was brought about or occasioned by any conspiracy or combination upon the part of the defendants to control the exhibition of moving picture films, unreasonably restrain trade, stifle competition, or create a monopoly in the exhibition of moving picture films at Drumright, Oklahoma,

11-8 Duncan, Oklahoma

Duncan, Oklahoma, in 1930 had a population of about 9,000. In that year J. D. Guest opened the Ritz theater for the exhibition of moving picture films. It had a seating capacity of 192. In 1932 he remodelled it and increased the seating capacity to 365. His father, James H. Guest, was associated with him in its operation. At the time Guest opened the Ritz in 1930, Griffith Amusement Company was operating two theaters, the Palace and the Folly, playing first-run pictures of major distributors. The Palace was its "A" house and the Folly was its "B" house.

136 J. D. Guest testified that he did not open the Ritz as a first or second run house exclusively, but for as many runs as he was able to obtain. The testimony discloses that during the years covered by the complaint, Guest played first and second-run pictures of many of the major distributors and a large assortment of first and second runs of Independent distributors. He contends that he could not obtain from *some* major distributors the films of his *choice* and in some instances, none at all. His testimony in this regard is unsatisfactory as he was not inclined to be positive.

James H. Guest testified that in 1933, or 1934 he was accosted by a man who said he was one of the "Griffith brothers" who inquired if they wanted to sell the Ritz and if they would be willing to take a few hundred dollars and move to a new location, to which he replied in the negative. The witness was unable to identify any of the defendants as the man to whom he talked and was quite vague in both his description of the man and the time of the conversation.

At the time of the trial, Guest was still operating the

Ritz and in 1942 had opened another theater in Duncan named the Tower.

There is nothing here to justify the conclusion that if J. D. Guest has had any difficulty in securing product for the Ritz theater, it was brought about or occasioned by any conspiracy or combination upon the part of the defendants to control the exhibition of moving picture films, unreasonably restrain trade, stifle competition or create a monopoly in the exhibition of moving picture films at Duncan, Oklahoma.

11-9 Elk City, Oklahoma

The population of Elk City, Oklahoma, in 1930 was 5,666 and in 1940 was 5,021.

137 In 1930 Frank Hunt opened the Lamar theater at Elk City, Oklahoma, at which time Griffith Amusement Company was operating the Tex theater, which had been acquired by the Griffith Brothers December 1, 1925. There was no other theater operating there at the time the Rex interest was acquired by the Griffiths. In 1935 Griffith Amusement Company built and opened the Elk theater. At that time the Rex was sold to Hunt, who closed the Lamar and continued to operate the Rex until his death. After the death of Frank Hunt, his widow continued to operate the Rex and is still operating it. Since Hunt closed the Lamar, there have been only the two theaters operating in Elk City.

The Government introduced two exhibits—one (Ex. 186) a contract for first-run pictures between Frank Hunt and Paramount for the 1933 and 1934 season, and the other (Ex. 204) a contract between Frank Hunt and RKO for the 1934-1935 season. The Government contends that its Exhibit 3 shows that Paramount "sold away" from Hunt to Griffith Amusement Company its product for the 1934-1935 season, and that its Exhibit 44 shows that RKO "sold away" from Hunt to Griffith Amusement Company its product for the 1935-1936 season. There is no complaint by Mrs. Hunt and the theaters are continuing to operate as friendly competitors so far as the record discloses. It is pure assumption that the films were "sold away" by Paramount and RKO, or that there was anything sinister in the fact that the distributors in those years sold their product to one competitor in one year and the other the next year.

There is nothing that would justify the conclusion that any conspiracy or combination existed upon the part of the defendants to control the exhibition of moving picture films, stifle competition, unreasonably restrain trade, or create a monopoly in the exhibition of moving picture films at Elk City, Oklahoma.

11-10 Enid, Oklahoma

John Gray left the employ of Griffith Amusement
138 Company and opened a theater, The Gray, in Enid, Oklahoma on July 14, 1935, in partnership with Roy T. Shield. At that time Enid was a city of approximately 28,000 population. When the Gray opened, Griffith Amusement Company was operating four theaters, the Aztec, the Arcadia, the Mecca and the Criterion (later called the Chief) and Max Burger was operating the Ritz.

Before Gray opened his theater he contacted the representatives of several major distributors from whom he failed to obtain product. However, he was able to procure and play Universal 1935-1936 first and second runs, some first and second RKO eliminations, some Metro first and second run "cut backs" and various Independent runs. In September, 1936, Gray sold his interest in the Gray to his partner and left Enid but returned in December. In February, 1937, he opened the Ritz under the name of the Rivoli, which formerly was operated by Burger. On July 6, 1940, he sold the Rivoli to Roy T. Shield. In 1938, Griffith Amusement Company had constructed and opened a theater named the Cherokee.

Gray claimed that while he was able to procure sufficient films, he was unable to procure the films he desired. That while he operated at Enid, he was approached by two men, E. R. Slocum and C. O. Fulgham, representing Griffith Amusement Company, who inquired whether he desired to sell his theaters, which inquiries he answered in the negative, and that upon these occasions these two men uttered what he considered threats to cause him to sell. The language he attributed to these two men was as follows:

"Q. What did Mr. Slocum say? A. He just inquired if I would be interested in selling. I said that I wasn't, and that's about all there was to the conversation. * * * The Court. You can state what the conversation was. * * * A. He said: 'John, would you be interested in selling your theater at the open market equipment price?' I said 'No, sir, I wouldn't,' and that's about all there was, sir. Q. (By the Court:) Was there anything else said about the theater business? A. No, sir. We went and had a cup of coffee, sir. * * * Q. (By the Court:) Did he say anything else about the Griffiths or the theater business in any way? A. No, sir, he didn't." R. pp. 936-7.

"Q. (By Mr. Kallis:) What conversation did you have
139 with Mr. Fulgham at the time mentioned. A. Oh, how's business, and this and that, and then he said something to me about wondering if I would be interested in selling, and I told him I wouldn't, and that was

about all. * * * Q. Did you later have a conversation with Mr. Fulgham? A. I did. Q. When was that? A. I approached him myself. That was in May, as nearly as I can recall, in May in a coffee shop located underneath the Griffith offices. Q. Here in Oklahoma City? A. Yes. Q. May of what year? A. '39. Q. Will you please state the conversation, in substance? A. I approached him myself; I said, 'Claude, is there anything we can do about these free tickets, double bills, and the price war in Enid?' He said he didn't have nothing to do with it, that he wasn't interested; that is, he refused to discuss it. And I said, 'Well, I have stopped all of mine and went back to single bills, and I am going to try it that way awhile, and maybe the other can come about.' And he never answered me, he wouldn't discuss it. Then he did say this, he says, 'Well, would you be interested in selling now?' I said, 'Well, I might, at my figure.' And he said, 'What figure is that?' So I quoted him a figure and he says, 'No, we'—he used the word, we, he said, 'We will give you open market price for your equipment.' And during the conversation evidently I irked him a little on the free tickets or something, and I got back to that subject again, sir, about eliminating all of them, and he made the remark to me, he says, 'We are out to get all of you boys; you are troublemakers.' And that was about all the conversation, sir." R. pp. 940-2.

E. R. Slocum denied he ever had any conversation with Gray about the sale of the Gray theater and testified that at the time of the alleged conversation, he was not employed by or associated with the Griffith interests in any manner.

C. O. Fulghan gave his version of the conversation with John Gray as follows:

"Q. Do you know John Gray, former theater operator in Enid, Oklahoma? A. Yes. Q. Did you have a conversation with John Gray in Enid in the year 1938 with reference to buying his theater, the Rivoli? A. No. Q. Did you ever negotiate or have a conversation with John Gray with reference to buying the Rivoli theater? A. I never have. * * * Q. Did you later in May of 1939 have a conversation with this same John Gray in a coffee shop underneath the Griffith offices in Oklahoma City? A. Yes, I would't swear to the exact month. * * * Q. Will you please state the conversation you had? A. Gray approached me on the matter of getting me to agree to an adjustment of our admission prices of the theaters in Enid. We were operating four or five theaters, I believe four at the time, and he wanted to get us to agree to adjust the admission prices of our theaters. That is, to raise our prices.

Q. What did you say to him? A. I would not entertain his proposition and told him that we would run our
140 business and for him to run his business. Q. Did you have any further conversation at that time? A. The conversation ended with that remark. * * * Q. Did you ever make the remark, 'We are out to get all of you boys; you are troublemakers'? A. Not to John Gray or any other theatre man." R. pp. 2170-2, 2174.

Upon cross examination of the witness John Gray it was developed that he had entered many towns in the territory covered by this controversy and had left behind a rather bad record as to playing and paying for his pictures, which undoubtedly had much to do concerning the desirability of his accounts with distributors. It was also developed that in Enid he was involved in price wars and display wars as to change policies in the exhibition of his pictures which could not be laid at the door of his competitors.

There is nothing that would justify the conclusion that any sales of Gray's interests in Enid, Oklahoma, were brought about or occasioned by any coercion or threats upon the part of the defendants or by any conspiracy or combination to unreasonably restrain trade, stifle competition, control or monopolize the exhibition of moving picture films.

11-11 Gallup, New Mexico

In 1930 the population of Gallup, New Mexico, was about 6000.

In 1928 William Nagle began the operation of a moving picture theater, the El Morro, at which time two other theaters, the Strand (later the Cairo) and the Rex, were being operated by a Mr. Masters. El Morro was a modern deluxe theater with a seating capacity of 877 and at the time it was opened, Nagle was able to procure pictures of his choice from most of the major distributors. In 1930 R. E. Griffith Theatres, Inc., entered Gallup as a moving picture exhibitor, purchasing the Cairo from Masters, later naming it the Chief. In 1936 R. E. Griffith Theatres converted a store building into a theater and called it the Navajo. From that time on the Chief exhibited first runs of major distributors and the Navajo exhibited largely second-
141 run pictures. The Chief and the Navajo each has a seating capacity of 800.

Nagle testified that after R. E. Griffith Theatres entered Gallup, he was unable to buy or procure pictures of his choice from major distributors as he had been able to do prior thereto, except MGM and Paramount. The evidence discloses that he retained those two accounts throughout the period involved and was from time to time able to pro-

cure RKO and Universal pictures. He also testified that R. E. Griffith talked with him on three occasions about entering into some kind of pooling arrangement in their theaters at Gallup and in one of the conversations, about buying or selling, but that nothing came of these conversations and no deals were made between them, and that the conversations were more or less "barter."

There is nothing to justify the conclusion that any failure of Nagle to procure moving picture films of his choice was due to any conspiracy or combination of the defendants to unreasonably restrain trade, stifle competition, control or create a monopoly in the exhibition of moving picture films at Gallup, New Mexico.

11-12 Henryetta, Oklahoma

The population of Henryetta, Oklahoma, in 1930 was 7,694 and in 1940 was 6,905.

Griffith Amusement Company acquired a 100 per cent. interest in the Blaine and Morgan theaters on May 20, 1927, and has continued to operate them since that time. In the latter part of 1937 or the first part of 1938, Joe Love acquired a lease for the purpose of opening and operating a theater. After acquiring the lease he came in contact with C. O. Fulgham, who represented Griffith Amusement Company at Henryetta.

Love testified that he and Fulgham discussed his lease and Fulgham said the Griffith theaters were not making any money and advised him against coming into Henryetta, and in the conversation said if he, Love, came into Henryetta they would "break him out." Love testified that on this occasion he was approached by Fulgham. Fulg-
142 ham agrees that he and Love had a conversation on the subject, but sharply denied that he approached Love or that he said they would "break him out" if Love came to Henryetta. Fulgham testified that Love approached him and asked what he thought of his venture and that he told him that conditions in Henryetta were not good at that time and that the Griffith theaters were not doing well, and that he thought it was a poor venture. Love stated that on account of the discouragement offered by Fulgham, he gave up his lease and did not enter the town of Henryetta.

There is nothing sinister or out of the ordinary in this conversation. These men were on friendly terms and it is apparent the information was being sought by Love. Love testified that Fulgham told him if he did not come into Henryetta, Griffith would be glad to pay the expenses he had been out in the venture. Fulgham denied he made such a statement. It is significant that after abandoning the

proposition, no attempt was made by Love to follow up the offer. Love seeks by his testimony to leave the impression that he was afraid to compete with the Griffith company in Henryetta, but immediately thereafter he entered the town of Wemoka in April, 1938, where Griffith Amusement Company was operating three moving picture theaters.

There is nothing that would justify the conclusion that the defendant Griffith Amusement Company, or any of the other defendants, were in a combination or conspiracy to control the exhibition of moving picture films, unreasonably restrain trade, stifle competition, or create a monopoly in the exhibition of moving picture films at Henryetta, Oklahoma.

11-13 Hobart, Oklahoma

Hobart, Oklahoma, has about 5,000 population.

Charles Mahone entered Hobart in 1918 and began to operate two moving picture theaters, the Palace and
143 the Cozy, with no competition for ten years. During that period he exhibited such pictures as he desired. He constructed another theater which he began to operate in November, 1938, as the Oklahoman. In May, 1928, a Mr. Tolbert opened a theater named the Rialto, operated it for a few months when it was acquired by Consolidated Amusement Company, not a defendant here, remodelled, and reopened on December 6, 1929, under the name of the Kiowa. The lease which Mahone had on the Palace expired and was secured by Jesse James Hale, who operated it from 1929 until sometime in 1936. Mahone and Mary J. James, with whom he had associated himself as a partner in the operation of the Oklahoman and the Cozy, sold the Oklahoman and the Cozy to Consolidated Amusement Company on May 14, 1930, and Mahone went out of the business of exhibiting moving pictures there. This sale was voluntarily made and considered advantageous to Mahone at that time. He had suffered from ill health and wanted to get out of business "for that reason and others." After acquiring the Cozy, Consolidated Amusement Company discontinued its operation and the building was reconverted into a store building and has not been used as a theater since. On July 29, 1932, Consolidated Amusement Company had defaulted on its notes to Mahone on the Oklahoman and a receiver was appointed for the Oklahoman and the Kiowa. Mahone then began to operate the Oklahoman under the receivership, continuing to do so until August 26, 1935, when he and Mrs. James bought the theater at the receiver's sale and again operated it under a partnership agreement. In September, 1932, Griffith Amusement Company acquired the Kiowa

from the receiver, and began to operate it in November, 1934. On March 22, 1936, Mahone again began to operate the Palace and continued its operation until April 3, 1943. The Kiowa had a seating capacity of 1,000 and the Oklahoman, of 600, both theaters being good houses for the size of the community.

Mahone complains that he was unable to procure the character of product he desired to play. But the evidence discloses that he always has had good and sufficient product, and is still operating the Oklahoman.

144 There is nothing to justify the conclusion that the sales of the Oklahoman and the Cozy were brought about or occasioned by any conspiracy or combination upon the part of the defendants, or that any of the acts and conduct of the defendants were such as to constitute a conspiracy or combination upon their part to control or stifle competition, unreasonably restrain trade or create a monopoly in the exhibiting of moving pictures at Hobart, Oklahoma.

11-14 Hobbs, New Mexico

The population of Hobbs in 1930 was 596 and in 1940 was approximately 11,000. It was what is known as an oil boom town and from a moving picture standpoint, both exhibitors and distributors went through some hectic days until the population became stabilized. The population fluctuated considerably during the years 1930 to 1940.

In 1930, Consolidated Theatres, Inc., built the Rig theater in what was known as New Hobbs about a mile and a half from Hobbs proper. The Rig was sold by Consolidated Theatres to R. E. Griffith on May 2, 1931 and by Mr. Griffith to R. E. Griffith Theatres, Inc., on January 5, 1932. The boom in the town of New Hobbs stopped suddenly and the Rig theater was razed and the salvage moved to Carlsbad, New Mexico. In 1931, R. E. Griffith had obtained what he named the Rex theater in Hobbs and operated it until May 6, 1936, when it was destroyed by fire. It was replaced by the Reel which was opened May 26, 1936. R. E. Griffith Theatres, Inc., built the Rig theater in Hobbs, opening it July 28, 1934. The Rig and the Reel were being operated by R. E. Griffith Theatres, Inc., at the time this suit was filed. J. T. Whelan in 1935 was operating a theater in Hobbs called the Roosevelt.

On September 29, 1933, R. E. Griffith Theatres, Inc., licensed a group of pictures from Fox for the 1933-
145 1934 season to be exhibited at Hobbs as first-run pictures. On October 1, 1935, J. T. Whelan licensed a group of 23 pictures for second run at the Roosevelt from

the 1933-1934 group of pictures for which he contracted with Fox to pay a greater rental than was paid by R. E. Griffith Theatres in 1933 for the same films. Both contracts were arrived at by barter and trade at the time of their execution. Whelan was not produced as a witness. W. J. Kupper, general sales manager for the Fox Company, explained the transactions by stating that in 1933, the date of the R. E. Griffith Theatres contract which was for the whole season's output, the pictures had not been produced and when they were licensed no one knew their real value, but at the time the Whelan contract was entered into two years later, the pictures selected by him were well known box office attractions and were a selected group. This explanation is reasonable and justifies the difference in prices, particularly in view of the fluctuating population of Hobbs during those years.

There is nothing to justify the conclusion that a combination or conspiracy existed upon the part of any one or more of the defendants to control or stifle competition, restrain trade or create a monopoly in the exhibition of moving picture films at Hobbs, New Mexico.

11-15 Hominy, Oklahoma

Charles Pettit opened a theater named the Pettit in Hominy, Oklahoma, in 1923 and operated it until his death in November, 1931. During that period, Pettit at one time operated three theaters at Hominy, but at the time of his death was operating only the Pettit. Upon his death, his relatives procured a Mr. Murphy to operate the theater. His management was unsatisfactory and on January 15, 1933, Fred C. Vincent, a son-in-law of Charles Pettit, under an arrangement with the other members of the
146 family, took over the management and operation of the Pettit. Prior to that time, Vincent had had no experience in the moving picture business. He operated the Pettit until it was sold February 8, 1940. When Vincent began the operation of the Pettit, Hominy, which had been a "boom town", had a population of 3,487 but in 1940 the population was 3,267. In 1933 when Vincent began operation, the Pettit was the only theater operating in Hominy and had a seating capacity of 1250, but shortly thereafter, Vincent reduced the seating capacity to about 1000. In 1934, one McClain converted a store building into a theater and opened it as the Ritz. It was later made into a nice theater, seating about 390, and though small, it was a better house in its appointments than the Pettit. Prior to the opening of the Ritz, Vincent always had had his choice

of product from the larger distributors, but had difficulty in getting together with some of them on prices, et cetera, and was not using or playing the product of a number of the major distributors. When McClain began operation he made deals with some of those distributors and played their pictures.

On June 15, 1936, McClain sold the Ritz to the Griffith interests.

Vincent testified that he talked with H. J. Griffith about the sale of the Pettit late in 1937; that the conversation was a casual one; that H. J. Griffith asked him if he would be interested in working out a deal; that he, Vincent, at that time submitted some figures on a rental basis and also for the sale of the equipment. The matter dragged along until sometime in July or August 1938, when Vincent saw H. J. Griffith at a convention in Oklahoma City when he told Griffith that he would still accept the price previously made. In a day or so he had a conference with L. C. Griffith in the office of Consolidated Theatres, Inc. Vincent stated that in that conference he expressed his concern about procuring product for the Pettit, and that L. C.
147 Griffith advised him in substance that he would talk to H. R. Falls, who was the buyer and booker of films for Consolidated Theatres, and see what could be done for him. Later Vincent talked with Falls, who asked him if he would be satisfied with Columbia and United Artists product. That later a certain group of approximately twenty pictures was released by Consolidated Theatres and the distributor licensed the group to Vincent.

The record shows that Consolidated Theatres had entered into a money commitment for a large number of theaters for the 1938-39 season, which provided:

"It is mutually understood and agreed that the Exhibitor is not required to exhibit any definite numbers of features, serials, or short subjects in each individual town or theatre. The money commitment is to be payed off in the collective theatres and towns operated by the various above mentioned theatre companies, * * * namely, * * * Hominy, Oklahoma, * * * the exhibitor has the privilege of playing only the twenty (20) top allocated pictures, plus the six (6) westerns, twenty-seven (27) episodes of serials, and forty (40) reels of short subjects * * *.

"The Exhibitor agrees to notify the Distributor of the pictures to be eliminated within sixty (60) days after release."

It is obvious that in order to accommodate Vincent, its competitor, Consolidated Theatres, Inc., rearranged its

program and released for Vincent the Picture films that it had contracted to play and pay for. Vincent already had at that time RKO and Universal product.

The matter of the sale of the Pettit dragged along until February 8, 1940, when the deal was consummated. During these negotiations, Vincent's wife had passed away and Vincent was anxious to close the deal as he desired to leave Hominy. The sale was voluntary, sought by Vincent and was mutually satisfactory.

There is nothing to justify the conclusion that the sale of the Pettit was brought about or occasioned by any coercion or threats upon the part of the defendants, or by any conspiracy or combination upon the part of the
148 defendants to control or stifle competition, unreasonably restrain trade, or create a monoply in the exhibition of moving picture films at Hominy, Oklahoma.

11 16 Lubbock, Texas

On June 2, 1936, Wendell Beardon and P. E. Smith began operating a moving picture theater called the Tech at Lubbock, Texas, in a building which they had converted from one originally used as a laundry. It was located about a mile and a half from the downtown or business section and was near the Tech College. At the time Lubbock was a rapidly growing city of about 30,000 population aside from Tech College which had about 5,000 students. At the time the Tech was opened, there were five theaters in the downtown district, the Broadway and the Lyric operated by W. A. Mauldin and the Lindsey, Palace, and the Texas operated by Lindsey Theatres, Inc. Consolidated Theatres, Inc., owned 50 per cent. of the stock of Lindsey Theatres, Inc., and bought and booked the moving picture films for Lindsey Theatres at Lubbock.

From March, 1932, to December, 1934, C. B. Akers managed the Lindsey theaters at Lubbock and was familiar with the situation from 1932 to the date of the trial. In June, 1937, Artie Crites became the manager of the theaters operated by Lindsey Theatres, Inc., at Lubbock. In 1938, at the solicitation of Lindsey Theatres, Akers canvassed the situation at Lubbock as to a new theater location and recommended the building of a theater near the Tech College. Upon his recommendation, a lot was purchased near the college, preparations began and plans procured for the erection of a theater, and a sign erected on the lot so procured reading "Home of New Campus Theatre". It developed that the lot purchased was not

zoned for business and some of the residents in the vicinity objected to the theater's construction. An attempt was made through the proper authorities to have the lot zoned for business which was unsuccessful. Another build-
148 ing site was procured and about two years later a theater was erected thereon and named the Tower. When difficulty was encountered in the zoning situation in 1938, it had come to the attention of Akers that the owners of the Tech were desirous of selling that theater. Mr. Akers then, at the solicitation of the attorney for Lindsey Theaters, Inc., accompanied by Artie Crites, had a conference with Wendell Beardon. The parties were unable to get together on a price and the matter was not again discussed.

Wendell Bearden testified that during the conference some threats were made by Akers about controlling the theater business in Lubbock. That testimony is as follows:

"Q. (By Mr. WRIGHT:) What was the conversation you had with him? A. Mr. Akers commented on the theater we had there, about it being nice, and what good sound system we had, and first one thing and another of that nature; then he mentioned the fact about them planning to build a theater out by the campus and asked me if I had heard of it. I told him yes, I had heard of it, and I had also noticed the sign posted on the lot around the corner, and he asked me if I thought there was enough business out by the college to furnish or supply two theaters. I told him I didn't know, but I doubted it. And he says, 'Well, we have intended to have a theater out here for a long time, and we feel like this part of town really belongs to us because we have been in the theater business a long time.' And he says, 'We plan to control the theater business here, if we have to put them here as thick as service stations. Q. (By the COURT:) If we have to what? A. If we have to put them here as thick as service stations. So I told him it was a free country, and that I could do nothing about it. He then asked me if I would be interested in selling. I told him yes, that I would. And he asked me what I would take for it. I told I would take $20,000. He said, "That's unreasonable; we can pay only about $10,000." And I told him we couldn't accept that, that wasn't enough that we had more money in it than that.' That was about the extent of the conversation until he got ready to go. And he stated he would give me until Monday morning, which was the 10th, to call him up and accept the offer that he made, else they would start immediately to construct a theater on the lot that they had the sign on. So I told him that he already

had my answer, that I couldn't take $10,000; that sometime he might have the theater, but I wouldn't give it to him. So that's the last time that I saw Mr. Akers. * * * Q. At that conversation you had with Mr. Crites and Mr. Akers in the Fall of '38, was anything said as to what kind of pictures would be put into the new theater? * * * A. Yes, Mr. Akers told me that when he said they were going to control the theater business if they had to build them as thick as service stations, he said: 'Besides, we are going to put first and second run pictures in our theater that we build out here.'" R. pp. 681-2, 685.

C. B. Akers and Artie Crites testified concerning this conversation and both sharply denied the threatening statements attributed to Akers. Akers testified that he took Crites along as a witness to the conversation for the reason that Bearden had been complaining about the manner in which Lindsey Theatres, Inc., had been operating as to product and he was fearful that any conversation had with Bearden might be misconstrued. His version of the conversation was as follows:

"Q. I wish you would state briefly your recollection of that conversation. A. When we first went in I was introduced to Mr. Bearden by Mr. Crites and I commented on the sound and the appearance of his theater—it was a little larger at that time than it was the last time I have seen it—then I told him that Mr. McWhorter had informed me he wanted to sell and asked him if that was so and he said yes, he would sell anything he had if the price was right. I asked him what he considered a right price and he told me $26,000. I said that was considerable more money than we had in mind and that we had in mind a price of ten or twelve thousand dollars. I told him that we figured on a larger theater and the remodeling cost on top of the $26,000 purchase price would make it prohibitive for the type theater that the Lindseys and I thought should be erected out there. Then he asked me about this lot around the corner, where we had purchased this lot, which was just half a block from there, and asked me if I thought another theater would be profitable in Lubbock, and I told him I thought it certainly would, and even another theater down near Avenue Q might be profitable venture because that section of town was growing. He repeated that his price was $26,000, and I thanked him and left. As well as I remember, that is all that was said there." R. pp. 1981-2.

Artie Crites testified as to his recollection of the conversation as follows:

"Q. Please state the substance of the conversation as you recall it. The COURT: State as nearly as you can just

what each one said. A. In this conversation, we met at the Tech Theater, and I introduced Mr. Akers to Mr. Bearden. We met in the lobby, or inside of the theater, and we discussed a few improvements that Mr. Bearden had made in the theater since I had been in the theater the last time.

We talked for a few moments, and Mr. Bearden in-
151 vited us upstairs to his office. In the office I distinctly remember that Mr. Akers explained to Mr. Bearden that he had heard that he might be interested in selling the properties or the Tech Theater, and if so, that perhaps Lindsay Theatres, Inc., might be interested in the purchase of those properties. I remember Mr. Bearden stating that he would be interested in selling, provided he could get his price. And he quoted a price of $26,000. That I remember Mr. Akers distinctly saying was too much, was much too high in his opinion, and that it was more than Lindsay Theatres, Inc., would be interested in paying, that they would not be interested in paying over ten or twelve thousand. That's the essence of the conversation, that's the important parts of it as I remember. Q. (By Mr. DUDLEY:) That is the way you recall it? A. Yes, sir. Q. To refresh your recollection, I will ask you was there any discussion with reference to making any improvements or modifications of this Tech Theater? A. Well, Mr. Akers at that time stated he would have to make improvements on the theater by enlarging it because it wasn't as large as Lindsey Theatres had planned for their site at the campus theater. Q. In that conversation, was anything said with reference to the new theater which you contemplated building? A. I believe Mr. Bearden made reference to the previous publicity we had given, that a new theater would be built on the Campus theater site, where we had the sign erected, and Mr. Bearden asked if we were planning on building in the near future, or starting construction, and Mr. Akers informed him that we had planned to. So Mr. Bearden asked Mr. Akers particularly if he thought that two theaters could be operated profitably, Mr. Bearden asked Mr. Akers particularly if he thought two theaters could be operated in that locality only, on or near the campus of Texas Technological College, and I distinctly remember Mr. Akers saying, 'Yes,' he thought that two theaters and perhaps even more could be operated profitably because of the increase in enrollment and the extension of the city in that direction. Q. Is there anything else now that you recall, Mr. Crites? A. That's all I recall that was discussed. It was a friendly meeting." R. pp. 2090-2.

In June, 1939, Mauldin sold the Lyric and the Broadway to Lindsey Theatres, Inc., after Mauldin had advertised them for sale together with other theaters owned by him in Tulia and Crosbyton. The sale was voluntary and mutually satisfactory.

When the conduct and acts of the operators of the theaters in which the defendants were interested are narrowed to the last analysis, it seems to have been a controversy with reference to the decision of some of the distributors that having licensed their product for Lubbock, they could not also license the same product to the Tech
152 theater. Bearden and Smith contended that an exception should be made as to the territory in which they operated. Upon this controversy they could not agree.

The court finds nothing in the situation at Lubbock as to leases, sales or contemplated sales that was brought about or occasioned by coercion or threats upon the part of any of the defendants. The court also finds no credible evidence that would justify the conclusion that any conduct or acts upon the part of any of the defendants show that a conspiracy or combination existed upon the part of the defendants to unreasonably restrain trade, stifle competition or monopolize the exhibition of moving picture films at Lubbock, Texas.

11-17 Mangum, Oklahoma

The population of Mangum, Oklahoma, in 1930 was 4,806 and in 1940 was 4,193.

Pat Duffy started to exhibit moving picture films at Lone Wolf, Oklahoma, in 1926. In 1927 he began to operate the Rialto theater in Mangum, Oklahoma, in competition with the Empress and New Show operated by Sam Fringer. In 1929 Fringer closed the Empress and began operating the Temple, which he continued to operate until 1932 when it was foreclosed by the National Theater Supply Company. A Mr. Ortman bought the Temple, operated it for about eleven months until September, 1933, when Duffy purchased it. Upon acquiring the Temple, Duffy began operating the Rialto only on Friday and Saturday of each week. He operated the Temple and the Rialto with no competition until sometime in 1937.

Duffy testified that in 1935, W. T. Spears, who was interested with the Griffiths at Altus, Oklahoma, called on him and proposed to buy the Duffy theaters at Mangum. Duffy priced the theaters at $50,000 which Spears thought was too high. Later Spears returned and suggested that he sell "Griffith Brothers" an interest in the theaters.
153 Following that, Duffy came to the office of Consoli-

dated Theatres, Inc., at Oklahoma City, Oklahoma, to a meeting which was attended by L. C. Griffith, H. J. Griffith and B. J. McKenna. It was suggested that he sell a 25 per cent. interest in the theaters but he did not care to sell. In that meeting, L .C. Griffith stated that "they both needed each other for protection." Duffy further testified that sometime in 1936, E. R. Slocum called on him at Mangum and proposed to buy a 51 per cent. interest in the theaters for the Griffiths and he stated his willingness to sell the 51 per cent. interest "if the film rental wouldn't exceed 25 per cent. of the gross," which did not suit Slocum; that during the year 1936, Slocum conversed with him many times about the sale of the theaters and in one of the conversations made the remark that Duffy "was on the spot and slated to go and that he had better make the best deal he could." E. R. Slocum denied that he ever made the statement so attributed to him in any conversation with Duffy. Duffy testified that in the latter part of 1936 Slocum and E. J. Griffith called on him and offered $20,000 for the theaters and at that time said they "wanted a theater in Mangum and if they couldn't buy Duffy's theaters, would put one in." This statement also is denied by both Slocum and Griffith. Later Duffy came to Oklahoma City and took up the matter of the sale of the theaters at a meeting in Consolidated Theatres, Inc., offices on January 5, 1937. This meeting resulted in Duffy executing an option for thirty days on his theaters at the sale price of $22,000. The option was not exercised because Duffy's lease on the Temple could not be renewed at the same rental provided in the lease. Consolidated Theaters, Inc., then opened the Greer theater. The building had formerly been used as a theater, converted into a mercantile building, and was re-converted into a theater.

The evidence discloses and the court so finds that during all of the time of the negotiations of the sale of his
154 theatres, Duffy was hardpressed for finances in his theater operations, and that the condition of his finances was caused by the general conditions in his community and not by any acts or conduct of the defendants, or any conditions over which the defendants had or exercised any control. The evidence is undisputed that Duffy had all the product for exhibition that he desired to pay for and play during his entire operations. He finally sold his theaters to Consolidated Theatres, Inc., in April, 1939, for $12,000.

There is nothing in the evidence that would justify the conclusion that the sale of the Duffy theaters was brought about or occasioned by any threats or coercion upon the

part of the defendants, or by any conspiracy or combination of the defendants to control the exhibition of moving picture films, stifle competition, unreasonably restrain trade, or monopolize the exhibition of moving picture films at Mangum, Oklahoma.

11-18 Norman, Oklahoma

Norman, Oklahoma, the seat of the State University, has about 10,000 population exclusive of the student body which during the time involved here was between three and four thousand.

In 1928, S. G. Ambrister erected a building, one part of which was constructed as a theater. He leased the theater to J. E. Halbut and Ted Colbert who equipped and operated it as a moving picture house. They later sold their interests to Ray Berry who, with his wife Jaunita Berry, operated the theater as the Campus. Ray Berry died in 1932. When the lease terminated the tenants were in arrears about $1,300 which was absorbed by Ambrister and a new lease dated January 12, 1933 was made to Millard K. Boldman, the brother, and Minnie H. Boldman, the mother of Jaunita Berry, for a five-year term. Jaunita Berry, the active operator, and Ambrister had some difficulties over the lease; she got behind with the rental payments and Ambrister refused to renew the lease. Ambrister then approached the Griffith Amusement Company to
155 lease it. A deal was consummated in 1938 between Ambrister and Griffith Amusement Company for a lease and the name of the theater later changed to the Boomer, but due to remodelling was not opened until November, 1940.

Since 1929 Jaunita Berry has been connected with the operation of another theater called the Oklahoma. Her husband became associated with her in its operation in July, 1930, and continued until his death in April, 1932. During this period of time, the Sooner theater and the University theater were being operated by Griffith Amusement Company. The Oklahoma and the Campus each had a seating capacity of approximately 432, the Sooner of 1100 and the University of between eight and nine hundred. In 1937 Griffith Amusement Company remodelled the old University across the street from the Sooner and opened it as the Varsity.

A considerable amount of testimony has been introduced concerning prices charged, playing change policies, et cetera, none of which has been of any material aid to the court in considering the issues involved. Jaunita Berry has two major complaints: that the Campus was "leased

out from under her" and that her inability to buy and play the product of her choice is in some manner the fault of her competitors in controlling the exhibition of moving picture films.

There is nothing to justify the conclusion that the lease of the Campus theater by Griffith Amusement Company from Ambrister was brought about or occasioned by any coercion or threats upon the part of the defendants or that there existed any combination or conspiracy upon the part of any of the defendants to unreasonably restrain trade, stifle competition, control or monopolize the exhibition of moving picture films at Norman, Oklahoma.

11-19 Phillips, Texas

The population of Berger, Texas, in 1940, was about 12,000 and of Phillips, Texas, was about 6,000. The business district of Berger is about one and a half or two miles from the business district of Phillips. Berger
156 is the older town, Phillips in reality being its residential district. Phillips Petroleum Company's refinery is located at Phillips and the two towns are connected by a paved street or highway built up with residences and business houses.

In December, 1939, Wendell Bearden and P. E. Smith, who were theater operators at Lubbock, Texas, procured a lease on some lots at Phillips and in January, 1940, began the erection of a theater which they completed and began to operate on March 12, 1940, as the Phillips. At the time of procuring the lease, Bearden and Smith contacted by correspondence and telegrams the various major distributors in an effort to procure first-run moving picture films for their theater. They procured a season deal with Warner and a part season deal with Metro, the Warner first runs to be played thirty days after they were played at Berger, but had no offers of product from any other major distributor. At the time they procured their lease in December, 1939, long after the filing of this suit, Griffith Amusement Company had and was operating three theaters in Berger. Soon after Bearden and Smith began to build the Phillips. Griffith Amusement Company began the erection of a theater at Phillips which they called the 66. The 66 was completed and opened about a week prior to the opening of the Phillips. About six months after the Phillips opened, it was damaged by fire but was repaired and reopened about six or eight weeks thereafter. Later in 1941 it was again damaged and almost completely destroyed by fire. Bearden and Smith removed what fix-

tures were saved to Lubbock, Texas, and sold the salvage of the building for $250 and abandoned the theater. Phillips Petroleum Company expanded its refinery and in doing so, it became necessary for Griffith Amusement Company to abandon the location of the 66 and procure a new location. It got in touch with the owner of the
157 lots upon which the Phillips had been located and later abandoned, rebuilt the theater and located the 66 there, where it is still being operated. During the time these two theaters were in operation, the owners at one time had a meeting and discussed "buying or selling" but nothing was consummated in that regard.

All of these transactions occurred after the filing of the action here and are considered only for whatever bearing they might have as to prior transactions disclosed by the evidence.

There is nothing in this situation that would justify the conclusion that there existed any combination or conspiracy upon the part of any of the defendants to control or stifle competition in the exhibition of moving picture films, to unreasonably restrain interstate commerce, or to create a monopoly in such exhibitions at Phillips, Texas.

11-20 Plainview, Texas

The population of Plainview, Texas, in 1930 was 8,834 and in 1940 was 8,236.

Dennis Scaling operated a moving picture theatre at Hale Center, Texas, from 1921 until 1929. He then became associated with Paramount Publix Theatre Corporation in two theaters, one at Enid, Oklahoma, and one at Fort Worth, Texas, as assistant manager of those theaters from 1929 to 1931. In 1932 he went to Plainview, Texas and became associated with C. C. Lindsey of Lubbock, Texas, in the operation of the Plainview theater which they renamed the Ritz. At that time there were two other theaters, the Grenada and the Palace, owned by Oscar Korn, of Dallas Texas, but only the Grenada was operating. Scaling and Linsey, under a partnership arrangement, operated the Ritz from 1932 to the middle of the year 1933, playing some Paramount, United Artists and Independent product. In July, 1933, Scaling and Lindsey transferred their
158 lease on the Ritz to Foster McSwain, R. E. Griffith and Lindsey, with Scaling continuing to operate the theater which they renamed the Texas, as manager until sometime in June, 1935. The Texas, during that time, continued to play Paramount, United Artists and some MGM, RKO and Columbia product. In the meantime, the

R. E. Griffith interests had acquired by purchase the other two theaters, the Grenada and the Palace, from Kora.

The building in which the Texas was being operated was owned by J. H. Massie. R. Q. Silverthorne was the agent of the Massie interests. At the time Scaling was discontinued as manager of the Texas (formerly the Ritz), the lease had expired on the building and had not been renewed but its occupancy was continued under an oral arrangement. The R. E. Griffith interests were notified late in 1935 to vacate the Texas premises, which they did in the latter part of December, moving to a new location where they continued to operate as the Texas. During the controversy over the lease of the premises where the Texas was located, Tower Theaters, Inc., was organized by R. Q. Silverthorne, Dennis Scaling and J. H. Massie, which organization secured a lease on the building where the Texas was operating, and in January, 1936, opened the Fair theater there and operated it for 42 weeks, playing the 1935-1936 Universal product and some United Artists and Independents. The R. E. Griffith interests then continued playing product of the large distributors, which they already had under contract, in the Grenada and Texas theaters.

The Grenada was classed as an "A" theater, with a seating capacity of 1,100, the Fair was next in size and equipment, with a seating capacity of 650, while the Texas, in its new location, was the least pretentious, with a seating capacity of 450, and was classed as a "B" house.

159 Tower Theatres, Inc., opened the Fair in January, 1936, on a policy of four changes of picture per week and continued on such policy until it ended its operation. At that time the Griffith theaters went from three changes per week to four changes per week.

It is claimed that Tower Theatres, Inc., in 1936, was unable to make a 1936-1937 season contract with Universal, MGM and RKO. In October, 1936, Tower Theatres, Inc., sold the Fair to the R. E. Griffith interests for $12,000 and made a ten-year lease to them on the building at a satisfactory rental. Since that time the R. E. Griffith interests, under Westex Theatres, Inc., have operated all of the theaters in Plainview.

The Government, in addition to the acts and conduct of the Griffith interests in acquiring and operating their theaters at Plainview, has stressed two conversations. One was between R. Q. Silverthorne and Foster McSwain in which they were discussing securing product and Silverthorne testified McSwain made the remark, "we might be interested in buying that property" and he submitted him

an offer of $15,000 and McSwain told him he would let him know. The other was a conversation testified to by Dennis Scaling in which he conversed with R. E. Griffith as follows:

"I asked Mr. Griffith if he had any cutback pictures that he was not going to use. He asked Mr. Lockhart if he had made a list of the pictures they were going to cut back for the year. He said no, he hadn't. He said, 'Well, I wish you would make up a list and notify the exchanges to release them for my use.' Mr. Lockhart left the room and then I asked Mr. Griffith if he would let me have some second-run pictures and Mr. Griffith looked at me and said 'No.' He said, 'The town is too small for second-run pictures,' so then I asked him, 'Well, what about your changes since 1936, since I opened the Fair. You have jumped from three changes a week in each theater to four changes, consuming two extra first-run pictures.' He said, 'Well, I had to do that to consume the product that I had under contract.' So I got up to leave and he walked to the door with me. He said, 'Tell your partners, Mr. Silverthorne and this fellow Massey', who was another partner, 'when they get ready to close the Fair Theater, rent the building out for a store building, we will try to buy the equipment.' I said, 'Mr. Griffith, I don't think that will ever happen,' and that was the end of our conversation." R. pp. 190-1.

Since this purported conversation took place alone with R. E. Griffith, who died after this action was filed, there could be no denial, but taking into consideration the cross-examination of the witness and the circumstances surrounding the situation, his testimony is not convincing. Here were two competitors conversing about the business in which they were engaged. One is asking a favor of the other, who quite readily shows a desire to accommodate and grant. They then discuss a policy of exhibiting pictures—the change from three to four pictures a week. The evidence conclusively shows that Scaling opened the Fair on four changes per week, before the Griffith theaters made the change, and thus was in no position to complain about the policy. Then one competitor proposes a sale and the other submits a counter proposition, which is liable to happen any time between competitors.

160

There is nothing to justify the conclusion that the conduct or acts of any of the defendants were of such a character as to coerce the owners or occasion or bring about the sale of the Fair theater. It was a voluntary sale upon the

part of the Scaling interests and was mutually satisfactory. The court further finds that the sale was not brought about or occasioned by any conspiracy or combination upon the part of any of the defendants to unreasonably restrain trade, stifle competition, control or monopolize the exhibition of moving pictures in Plainview, Texas.

11-21 Sapulpa, Oklahoma.

Sapulpa, Oklahoma, had a population of 10,533 in 1930 and 12,249 in 1940.

Alexander Moulder, owner and manager of the Criterion theater, has been engaged in the exhibition of moving pictures at Sapulpa since 1900 and always has had competition. He operated the Empress from 1911 to 1932 and began operation of the Criterion September 12, 1931. In 1931 Charlie Blaine and James Zartaludes were operating the Yale theater. The Criterion has a seating capacity of 1,200 and the Yale, of 750. Sometime in 1931 and 1932 Griffith Amusement Company acquired an interest in
161 the Yale. In 1931 and 1932, Moulder was playing in the Criterion and the Empress first-run pictures of Fox, Paramount, MGM, United Artists and a few from Columbia.

Moulder testified that sometime in April or May, 1937, E. R. Slocum, representing Griffith Amusement Company, inquired if he would sell the Criterion and he stated that he would if he could get his price, which was $75,000. The price was not agreeable to Slocum. Moulder states that in that conversation, Slocum remarked: "We're going to eliminate competition in Sapulpa." That later in the year, in June or July, defendant H. J. Griffith, accompanied by another party (he thinks McKenna at one time and Fulgham at another time), talked with him on two occasions, once about a partnership agreement and once about a sale of the Criterion, that testimony being as follows:

"Q. What was said then? A. Well, there was quite a bit of conversation went on. At that time he wanted to buy us out. He offered me $25,000 and I wanted $75,000. Q. When you say 'he', whom are you referring to? A. Mr. Griffith, H. J., and we could not come to terms. Then I suggested to him, 'How about a partnership', and he 'Well, we don't want two partners in the same town; but we are satisfied with the one we have' and later he says, 'Well, Speedy, we will lower the admission price in the Yale Theater and build another theater in the town and buy your pictures out from under you,' and he says 'Where will you be then?' I said, 'Well, that is for me to worry about.' I believe he told me at the same time that I didn't have a good lease, and I told him that I did."

E. R. Slocum denied that he made the statement Moulder attributes to him and testified that the visits alluded to, occurred in 1936 and that at that time he was representing Consolidated Theatres, Inc. That sometime later he again visited Moulder in company with H. J. Griffith but denied that either he or H. J. Griffith made the statement that the price would be lowered at the Yale and another theater be built and buy Moulder's product away from him.

H. J. Griffith testified that his visits with Moulder were in 1938. That on one visit, which was purely social,
162 he was accompanied by McKenna and upon that occasion he did inquire if Moulder wanted to sell and Moulder said he would if he could get $75,000. He told Moulder it was too much, that the theater was worth $25,000, equipment $15,000 and bonus $10,000. In a later visit, when he was accompanied by E. R. Slocum, he asked Moulder if he had changed his mind about the price and Moulder said he had not. Moulder then suggested a partnership but no deal was made and was never discussed further. He denied that he ever made the statement that Moulder's lease was not good.

C. O. Fulgham testified that he never accompanied anyone on a visit to Moulder and never discussed with Moulder the sale of his theater or was present when it was discussed.

Griffith Amusement Company began the construction of the State theater May 31, 1939, after the filing of this suit, and it was later opened on a second-run policy—playing second runs on its first-run pictures and some second runs of Columbia after the first runs by Moulder. Moulder testified that at the present time he was playing at the Criterion first runs of Paramount, Fox, Columbia, United Artists and some Independents.

There is nothing to justify the conclusion that the defendants conspired or combined to unreasonably restrain trade, control or stifle competition, or monopolize the exhibition of moving picture films at Sapulpa, Oklahoma, but on the contrary that all the things that occurred in the situation were the natural and ordinary result of barter and trade between competitors.

11-22 Seminole, Oklahoma

Seminole, Oklahoma had a population of between ten and eleven thousand.

In October, 1936, Joe Love began the operation of a theater, the Chief, and was still operating it at the time of this trial. It had been an old building which he
163 remodelled into a theater with a seating capacity of 562 and opened it as a first-run house. At the time

he entered Seminole, Griffith Amusement Company was operating three other theaters, the Rex (later called the Seminole) the State and the Rialto. The Seminole played "A" pictures first run of many of the major distributors, the Rialto second runs of the "A" pictures and the State first run "B" pictures. Before going into Seminole, Love learned that of the major distributors only Universal first runs for the season had not been sold. It does not appear in the evidence why he was unable to obtain those pictures at that time. Soon after he opened the Chief, a "price war" developed, together with other inducements to gain patronage for the theaters, for which Love was equally responsible with his competitors.

Love complains that he was unable to procure product he desired to play for some considerable time and had to play the pictures he could procure, but testifies he operated at a profit.

No third-run pictures were being exhibited at the time he entered the town and he was unable to procure them from major distributors for some time, but later the distributors did make sales of such films to Love and his competitors.

There is nothing to justify the conclusion that any conduct or acts of the defendants were the cause of Love's failure to procure product of his choice, or that a conspiracy or combination existed upon the part of the defendants to unreasonably restrain trade, stifle competition, control or create a monopoly in the exhibition of moving picture films at Seminole, Oklahoma.

11-23 Shawnee, Oklahoma

The population of Shawnee, Oklahoma, in 1930 was 23,383 and in 1940 was 22,053.

Jake Jones opened a theater, the Cozy, on premises he owned, and operated it as a silent film theater from 1914 to 1926. The Cozy was the only theater operated by
164 him in 1926 but he owned, the real estate on which another theater, the Savoy, was being operated by A. B. Momond. On July 6, 1926, Jack Jones entered into a contract with L. C. Griffith, R. E. Griffith and H. J. Griffith in which he sold to Griffith Brothers "all of his right, title and interest of every nature and character whatsoever in and to said Cozy Theater and the good will thereof and all personal property, rights, privileges and franchises owned by the first party which is a part of said theatre and theatre equipment or used in connection there-

with." The sale price of the theater was $13,000 and it was agreed that Jones would lease the theater building to the vendees for a period of five years from September 1, 1926 for $450.00 per month. By the same instrument, Jake Jones agreed to lease them the building where the Savoy was located, when he obtained possession of it, for a term of five years for a stipulated sum per month. The Griffith Brothers, on taking over the Cozy, renamed it the Ritz.

In 1927 Jake Jones and associates organized the Seminole Amusement Company, Jones being made president. This company built the Criterion theater which it operated for eighteen months, until on June 14, 1929, it was leased to Griffith Amusement Company for a term of ten years at a rental of $561.61 per month. In 1931 the rental was reduced to $500 per month and in 1932 it was reduced to $400 per month for a period of two years, at the end of which period it was continued at $561.61 until the term expired.

In 1927 Griffith Amusement Company purchased lots and erected the Bison theater at a cost of about $75,000 and which later was equipped for sound. The Bison was a modern deluxe theater, one of the finest in the state for a city of that size.

Either in January or February, 1935, or on June 23, 1934, a conference was held in the Aldridge Hotel in Shawnee, Oklahoma, with reference to the amount of rent on the Criterion for the remainder of the term of the lease.

This conference was arranged at the instigation of
165 B. J. McKenna through Allan F. Hornbeck, Griffiths' agent at Shawnee, who contacted Jake Jones. Jones testified that those present at the conference, besides himself, were H. J. Griffith, R. E. Griffith, B. J. McKenna and Lawrence C. Bocher. His testimony with reference to the conference is as follows:

"A. They first talked about more cut on the Criterion lease and then Mr. R. E. Griffith got up after that and said, 'We want you to cut the rent to $250, and if you don't cut it, we are going to build another house and take your second run away from you, all of your second run pictures away from you.' Q. (By Mr. Wright:) What did you say? A. I swore, and picked up my hat, and got out." R. pp. 326-7.

Lawrence C. Bocher gave his version of what occurred as follows:

"A. Along in the first part of 1933, either in January or February, Jake called me, that is Jake Jones, called me up one day. * * * A. All right. A meeting was arranged at the Aldridge Hotel, and I didn't know what the meeting was supposed to be for. Those present at the meeting, as

far as I remember, was Jake Jones and myself, McKenna, and R. E. Griffith and H. J. Griffith. L. C. wasn't there. Q. And what occurred at that meeting? A. We met in a room in the Aldridge Hotel on the second floor. * * * H. J., he broke the ice as regard to what the meeting was called for, and he stated that they had to have some relief, and the rent should be reduced. Q. Was there any further conversation? A. Yes, sir. I immediately told him that we had already reduced the rent twice, and that when L. C. had met with us that he had promised us that no further reduction in the rent would be asked. * * * So I immediately told him about our former agreement, and I said, 'Possibly that is why L. C. isn't here, because he made the agreement with us that there would not be any more reductions in the rent.' Then R. E., he stated at that time that there would have to be a substantial reduction in rent. In fact, he says, 'We can't pay over $250.' Q. Was there any further conversation? A. And then when I told him there wouldn't be a chance at all to reduce it to $250, he says, 'We will open up another theater and buy all the second run pictures in Shawnee,' and the meeting busted up right then. Q. Do you recall any conversation on the part of Mr. Jones? A. Well, Mr. Jones, he grabbed his hat and said something, well, he swore a little bit, and he said, 'Come on, let's go,' and we walked out, and they were still sitting there.'' R. pp. 3561-2.

166 Both Jake Jones and Lawrence C. Bocher testified that there was but one meeting, concerning the reduction of the rent on the Criterion, and fix the time as January or February, 1933, more than six years prior to the filing of this suit.

The evidence is clear that R. E. Griffith did not attend that conference. He had severed his relations, so far as the conduct of the business of Griffith Amusement Company was concerned, in 1931 and there was no occasion for him to be present at that conference or to engage in it. He was then residing in New Mexico and aside from the testimony of these two witnesses, there is no evidence that at that time he was in the state of Oklahoma. The other persons present at the conference all testify that R. E. Griffith was not present. It is evident that no such statements in that conference were made by R. E. Griffith.

On May 1, 1933, Griffith Amusement Company opened the Victory theater, which had been acquired by it in 1931 in the settlement of a debt and had been closed for some time, and renamed it the Rex. The Rex had a seating capacity of 400 and the Ritz of about 550 or 600. Prior

to the time Jake Jones sold the equipment and rented the Cozy (later the Ritz) to the Griffith Brothers three theaters were operating in opposition to him, the Savoy and the Odeon operated by A. B. Momond and the Victory, by Ray Wellman.

During the time Griffith Amusement Company was operating the theaters it had leased from Jake Jones, the distributors sold Griffith Amusement Company the film product they had formerly sold to Jones. Jones complains that some of these accounts he was never able to recover when he again engaged in the business.

There is nothing in the evidence to justify the conclusion that any leases or sales of theaters to any of the defendants were brought about or occasioned by any coercion, conspiracy or combination on the part of the defendants to unreasonably restrain trade, stifle competition, control or monopolize the exhibition of moving pictures in Shawnee, Oklahoma. It is apparent that all the leases and sales to the defendants at that place were voluntary,
167 that the lessors or sellors were the primary movers, and the contracts were mutually satisfactory.

11-24 Stillwater, Oklahoma

In 1928 Stillwater, Oklahoma, had a population of approximately 6,000 aside from the Oklahoma A & M College which had a student body of about 2,500, and at the time of the trial of this action, the population was about 10,000 and the student body, about 4,500.

Claude Leachman, who had been a student at the College and who had had considerable experience in the exhibition of moving picture, became interested in the theater situation at Stillwater, and acquired the Abbott theater (later the Mecca), in May, 1926. Also in 1926 he had made arrangements to open and operate the Aggie theater but was unable to finance it. He sought out Griffith Brothers for assistance, which resulted in a partnership arrangement in which the Griffith Brothers were to have a two-thirds interest and Leachman a one-third interest in the two theaters, Leachman to operate them, which arrangement continued to the time of the trial. When Leachman began operating the Mecca and the Aggie, there was one other theater, the Camera, operated by F. M. Tull. In October, 1928, Ray H. Russ took over the operation of the Camera, with no prior experience in the exhibition of moving picture films. In 1931, about the middle of the depression, none of the theaters was making money, and Russ, experiencing difficulties in the operation of the Camera, sought out Griffith Amusement Company, which resulted

in a partnership contract in which he and Griffith Amusement Company were to participate fifty-fifty in the operation of the Camera and the Mecca. Russ was to continue the active management at a stipulated salary and Griffith Amusement Company was to do the buying and booking of product. Shortly after the contract was made and during its operation, the Mecca was closed. This
168 arrangement continued for about twenty months when Russ became dissatisfied. Over the objection of his partner, Russ bought certain product, which act, he testified, caused the dissolution of their partnership arrangement.

Russ testified that during the partnership, he had a conversation with R. M. Clark, a representative of Griffith Amusement Company, in which Clark stated: "We are going to make it tough on all independent exhibitors and close them out by controlling the product." Clark is now deceased. Claude Leachman testified that he was present throughout the purported conversation and that Clark made no such statement.

In 1939 the Campus theater was built by Griffith Amusement Company and Leachman, and at the time of this trial was being operated by them.

The Aggie is classed as an "A" house, with a seating capacity of 710; the Mecca is a "B" house, with a seating capacity of 432; the Camera, a "D" house with a seating capacity of 432; and, the Campus has a seating capacity of 432 but is a model theater, classed as an "A" house. The Aggie plays A pictures first run; the Mecca, B pictures first run; the Camera, A and B pictures subsequent run; and, the Campus, A and B pictures second run.

There is nothing that would justify the conclusion that the partnership arrangement between Griffith Amusement Company and Russ was brought about or occasioned by any threats or coercion upon the part of the defendants, or that a conspiracy or combination existed upon the part of the defendants to unreasonably restrain trade, stifle competition, control or create a monopoly in the exhibition of moving picture films at Stilwater, Oklahoma.

11-25 Wewoka, Oklahoma

In 1930, Wewoka, Oklahoma, had a population of 10,401 and in 1940, 10,315.

Joe Love, who was operating a theater, the Chief, at Seminole, Oklahoma, acquired a theater, the Pix, at
169 Wewoka, Oklahoma, in April, 1938, from Ward and Nave who were then operating it. At the time Love acquired the Pix, Griffith Amusement Company was oper-

ating three theaters, the Key, the Paramount and the State. The Key was playing A pictures first run using the product of some major distributors; the State was playing A pictures second run; the Paramount was playing B pictures first run; and, the Pix was playing United Artists pictures first run and pictures of independent exhibitors.

After Love entered Wewoka, a "price war", together with other special inducements to procure patronage in the theaters, developed. The parties were equally responsible for this situation. Love sold the Pix on May 5, 1940 to Chet Humphries and when Humphries began to operate it, the price war and other special inducements to procure patronage ceased.

There is nothing to justify the conclusion that any of the acts or conduct of the defendants brought about or occasioned the sale of the Pix theater from Love to Humphries, or that any combination or conspiracy existed upon the part of the defendants that had for its purpose to unreasonably restrain trade, stifle competition, control or create a monopoly in the exhibition of moving picture films at Wewoka, Oklahoma.

12

The defendants did not condition the licensing of moving picture films in any competitive situation upon the licensing of such films in any other situation, or in any non-competitive situation upon the licensing of such films in any competitive situation.

13

The defendants, or any of them, did not acquire or maintain a closed theater in any of the situations covered by the complaint for the purpose of discouraging or eliminating competition.

170

14

The theaters and the interests in any theater acquired by the several defendants were acquired in the course of ordinary, normal and legitimate growth and development of the business in which they were engaged, and none of the theaters or interests so acquired were acquired by wrongful means, predatory practices, or with the intent to unreasonably restrain trade, or to stifle competition, or to monopolize the licensing or exhibition of moving picture films in such situations.

15

The defendants, or any of them, did not acquire any competing theater by virtue of any combination, conspiracy or agreement upon the part of the defendants, to control,

stifle competition, unreasonably restrain trade, or monopolize the exhibition of moving picture films in such situations. Such acquisitions were for lawful purposes and in the normal course of business, and in each such acquisition, the sale by the owner and operator was voluntarily made upon his part and was not occasioned by any threats, coercion or predatory act or practice upon the part of any of the defendants.

16

In the contracts of sale in which the defendants acquired theaters, there was frequently inserted a clause that the vendor was not to compete with the vendee for a specified time within a specified area, based upon the sale of the good will of the vendor, and in each situation the clause in the contract was reasonable as to time and territory, (except in the situation at Brady, Texas) and such agreements were for a lawful purpose and in conformity with the state statutes in such situations, and were not entered into by the defendants, or any of them, for the pur-
171 pose or with the effect of unreasonably restraining trade or commerce, stifling competition in, or monopolizing the exhibition of moving picture films in any such situations. In the contract of sale in Brady, Texas, the territory covered was unreasonable and the contract was void as to all territory covered except Brady, Texas. As to the time limit and the territory consisting of Brady, Texas, the clause in the contract was reasonable.

17

All joint operation contracts were partnership contracts and were entered into by the parties in good faith and for the purpose of economy and efficiency in operation caused by local conditions. Such contracts were not entered into with the intent or purpose of unreasonably restraining trade or commerce, stifling competition, or monopolizing the industry and they did not have any such effect. All such contracts were reasonable and the result of ordinary business dealing.

18

Griffith Amusement Company entered into what is designated as administrative contracts with its associates and with Consolidated Theatres, Inc., and its associates, by the terms of which it agreed to perform certain administrative services such as keeping all necessary books covering theater expenses; rendering the necessary auditing and bookkeeping services required in the management of theaters; making available preferred operating methods and exhibits and advertising plans; advising with managers of

theaters in respect to advertising and exhibition of attractions; rendering tax and insurance services; acting as agent in licensing and booking of pictures and other attractions; furnishing transportation services in delivering film reels; and many other services, for all of which it received
172 four per centum of the gross receipts of such theaters so serviced. R. E. Griffith Theatres, Inc., entered into like contracts with its associates and its subsidiary, Westex Theatres, Inc., and its associates. These administrative agreements were entered into for legitimate purposes and were not entered into upon the part of any of the defendants with the intent or purpose of unreasonably restraining trade or commerce, stifling competition, or monopolizing the exhibition of moving picture films, and they did not have such effect. Such administrative contracts were not entered into or used by the defendants or any of them for the purpose of compelling or attempting to compel any distributor or distributors of motion picture films to license pictures to the defendants, or to grant the defendants any special privileges, or to unreasonably restrain, restrict or interfere with the licensing of moving picture films to any other exhibitors.

19

The defendants, or any of them, did not compel or attempt to compel any distributor named in the complaint to grant to them, or any of them, any privileges or concessions which were not granted to their competitors, or which gave them any substantial advantage over their competitors.

20

The defendants, or any of them, have not conspired or combined with each other, with their operating associates or with the distributors, for the purpose or with the effect to unreasonably restrain or restrict the terms upon which feature pictures were to be, or were, distributed by such distributors, or made available for exhibition in theaters competing with the defendants.

21

The evidence does not establish the existence of
173 any agreement, express or implied, between the defendants, or any of them, and any distributor which unreasonably restrains interstate commerce in moving picture films, and the licensing agreements between the defendants and the several distributors contain no agreement, privilege or concession which unreasonably restrains interstate commerce in moving picture films in the territory covered by the complaint.

22

There was no agreement between the defendants, or any of them, and any distributor which unreasonably prevented, restricted or restrained the licensing of feature pictures which were not used by the defendants.

23

The defendants, or any of them, did not monopolize or attempt to monopolize, the licensing or the supply of feature motion pictures for either first, second or subsequent run exhibition in any situation. The defendants licensed only such supply of pictures as they reasonably believed would be necessary in each situation to satisfy the demands of the public which they served.

24

In the operation of theaters, both the defendants and their competitors have indulged in the use of bargain prices, price reductions, policy changes and other ordinary policies usually practiced in such situations to secure patronage in their theaters, particularly in Ada, Enid, Seminole, Shawnee, Wewoka, Sapulpa, Oklahoma and Lubbock, Texas, and these practices were acts which normally flow from competition and particularly in abnormal times when competition becomes keen, such as existed during the period involved herein. The parties were equally responsible for such practices and none of such practices upon the part of the defendants, or any of them, was indulged
174 in with the intent or purpose to crush or destroy competition, but was done for the purpose of meeting in the ordinary and natural way the prices of rival exhibitors.

25

There was no agreement between the defendants, or any of them, with the distributors, or any of them, granting to the defendants, or any of them, in their theaters unreasonable clearances over the theater of a competitor.

26

In their contracts with the distributors, the defendants and their associates have not conspired or combined with each other to compel such distributors to grant to them the exclusive privilege of selecting feature pictures released by such distributors, as the defendants deemed suitable for exhibition in the situations where they operated theaters, as and when prints thereof became available, before said pictures were released or made available to any other exhibitor in such situation.

27

The defendant exhibitors did not conspire or agree to refrain from competing with each other in the acquisition and operation of moving picture theaters, or the exhibition of moving picture films, or to allocate territory among themselves in the territory or during the time covered by the complaint.

28

In the licensing of moving picture films, the terms and conditions under which such moving picture films were licensed for exhibition in every situation were dictated and controlled solely by the various distributors, and
175 the exhibitors of the films had no control over the terms and conditions granted.

29

The court finds generally that the defendant exhibitors have not conspired or combined with each other, or with Columbia, Fox, Loew's, Paramount, RKO, United Artists, Universal or Vitagraph, the distributors named in the complaint, to unreasonably restrain interstate commerce or trade, or to stifle competition, or to monopolize or attempt to monopolize the exhibition of such films in either first, second or subsequent runs of feature pictures, and the operation of first and second run theaters in the various towns and situations during the time covered by the complaint.

30

In support of findings of fact numbered, 12, 18, 19, 20, 21, 22, 23, 25, 26, 28 and 29, without reciting the testimony of various witnesses in detail and thus unreasonably extending these findings, reference is made to the testimony of certain witnesses by pages of the record as follows: William J. Kupper, sales manager of Twentieth Century-Fox Film Corporation, pages 2344, 2347, and 2510; William F. Rodgers, General sales manager of Loew's, Inc., page 2307; Paul N. Lazarus, manager of Contract Department of United Artists Corporation, page 3656; Neil F. Agnew, Western sales manager for Paramount Pictures Distributing Company, pages 3484, 3486-3490, 3499 and 3500; Cradwell Sears, Vitagraph agent in charge of distribution, distributor for First National Pictures, Inc., and Warner Brothers Distributing Company, pages 2680-2682, 2696, 2701-2703, 2705, 2710 and 2714; Ned E. Depinet, RKO vice-president in charge of distribution, pages 2724, 2725, 2736, 2737, 2745 and 2746; Abraham Montague, vice-president, and general sales manager of Columbia Pictures Corporation, pages 2752-
176 2758; Frank J. A. McCarthy, Southern sales man-

ager of Universal Pictures, pages 2733, 2763, 2773, 2776 and 2777; and H. R. Falls, purchasing agent for Griffith Amusement Company and Consolidated Theatres, Inc., 1938 to 1946; pages 3190-3193, 3196-3198, 3202-3204, 3207-3213, 3215-3218, 3221, 3222, 3225, 3226, 3232, 3233, 3238, 3239, 3243, 3244, 3246, 3259, 3260, 3274-3276, 3278, 3279 and 3307.

Conclusions of Law

From the above and foregoing findings of fact, the court makes the following conclusions of law:

1

The defendant exhibitors, in their acquisition of theaters and interest therein, had no intent or purpose to build up or buying power to unreasonably restrain interstate commerce or trade, stifle competition, or to monopolize the exhibition of motion picture films, and said defendants have not by reason thereof violated Section 1 or Section 2 of the Sherman Act.

2

The defendant exhibitors, in the operation of their theaters, have not conspired, combined or agreed with each other, or with the distributors, or any of them, to unreasonably restrain interstate commerce in motion picture films in the various towns and territory covered by the complaint, and have not violated Section 1 of the Sherman Act.

3

The defendant exhibitors have not conspired, combined or agreed with each other or with the distributors, or
177 any of them, to monopolize, or attempt to monopolize, the exhibition of first and second-run feature pictures, in the various towns and territory covered by the complaint in which such defendant exhibitors operate theaters, and have not violated Section 2 of the Sherman Act.

4

The Court concludes generally that, due to the failure of the proof to establish by a fair preponderance of the evidence that the defendant exhibitors have conspired, combined and agreed among themselves, or with any distributor, or distributors, to unreasonably restrain interstate trade and commerce, stifle competition, or monopolize the exhibition of moving picture films in the various towns in the territory covered by the complaint during the time so covered, or attempted so to do, the defendants have not violated Section 1, and Section 2 of the Sherman Act, and by reason thereof, the issues generally are adjudged in favor of the defendants.

To all of which findings of fact and conclusions of law, exceptions are allowed the plaintiff.

EDGAR S. VAUGHT,
United States District Judge.

Dated this 9th day of October 1946.

[File endorsement omitted.]

178 In United States District Court

Decree

Filed October 24, 1946

Now on this 24th day of October, 1946, this cause having come on for final hearing and rendition of judgment on the findings of fact and conclusions of law which were filed herein on the 9th day of October, 1946:

It is ordered, adjudged and decreed that plaintiff has established no violation of either Section 1 or Section 2 of the Sherman Act by the defendants, or either of them, and the plaintiff's prayer for relief under Section 4, Title 15, U. S. C. A. is denied. It is further ordered and decreed that the defendants, Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., L. C. Griffith and H. J. Griffith have judgment against the plaintiff dismissing the complaint upon the merits.

EDGAR S. VAUGHT,
United States District Judge.

[File endorsement omitted.]

179 In United States District Court

Petition for Appeal

Filed December 19, 1946

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final order and decree of this Court entered on the 24th day of October, 1946, does hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

WENDELL BERGE,
Assistant Attorney General.
ROBERT L. WRIGHT,
Special Assistant to the Attorney General.

Dated this 19th day of December 1946.
[File endorsement omitted.]

180 In United States District Court

Assignment of Errors and Prayer for Reversal
Filed December 19, 1946

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the final order and decree of said District Court entered on October 24, 1946, in the above-entitled cause, and says that in the entry of the final order and decree the District Court committed error to the prejudice of the said plaintiff in the following particulars:

1. The Court erred in dismissing the suit against each of the defendants.
2. The Court erred in finding that none of the defendants had violated the Sherman Act.
3. The Court erred in finding that the defendants had not agreed to divide theatre-operating territory among themselves.
4. The Court erred in finding that the defendants did not condition licensing of films to one upon the licensing of films to others.
5. The Court erred in finding that the defendants did not intend to restrain competition unreasonably or obtain a monopoly in the areas where they operated theatres.
6. The Court erred in finding that the defendants Griffith Amusement Company and Consolidated Theatres, Inc. combined their film licensing activities "for convenience, efficiency and economy of administration alone and for no other purpose."
7. The Court erred in finding that the defendants had no interest in each other's theatre acquisitions except as stockholders.

181 8. The Court erred in finding that in jointly licensing films the defendants did not combine or conspire to crush competition, compel or coerce any distributor or unreasonably restrain trade or monopolize motion picture exhibition in the area and during the time covered by the complaint.

9. The Court erred in finding that the defendant did not condition the licensing of films in any competitive situation upon the licensing of such films in any other situation, or in any noncompetitive situation upon the licensing of such films in any competitive situation.

10. The Court erred in finding that the defendants' admission price cutting, give aways, and other predatory practices were not intended to eliminate competition or create a monopoly.

11. The Court erred in finding that the defendants' acquisitions of competing theatres and agreements made in connection therewith were not intended to eliminate theatre-operating competition or create theatre-operating monopolies.

12. The Court erred in finding that the sales of theatres made by independent competitors to the defendants were free and voluntary and made without coercion.

13. The Court erred in finding that such sales were not occasioned or brought about by illegal acts of the defendants.

14. The Court erred in finding that the license agreements made between the defendants and the major film distributors did not unreasonably restrain competition in and of themselves.

15. The Court erred in finding that the competitive effects of said agreements was not unreasonably to restrain competition or create a monopoly.

182 16. The Court erred in finding that the terms of said agreements were dictated by the major distributors and that the defendants did not compel or attempt to compel such distributors to give them substantial advantages over their competitors.

17. The Court erred in finding that there was no conspiracy or combination among the defendants to eliminate competition or create a monopoly.

18. The Court erred in finding that there was no conspiracy or combination between the defendants and the major film distributors to eliminate competition or create a monopoly.

19. The Court erred in finding that closed theatres were not acquired or maintained by the defendants for the purpose of discouraging or eliminating competition.

20. The Court erred in finding that partnership agreements with independent operators were not made for the purpose of eliminating competition or creating a monopoly.

21. The Court erred in finding no agreement among the defendants not to compete with each other in operating theatres or licensing films.

22. The Court erred in finding that the independent competitors involved in the twenty-five towns covered by the oral evidence were not subjected to film licensing restrictions in the communities where they sought to operate as a result of a combination or conspiracy among the defendants to control the exhibition of films, stifle competition, unreasonably restrain trade or create a monopoly in said towns.

23. The Court erred in excluding testimony of independent theatre operators in said towns as to conversations with representatives of the major film distributors relating to the exhibition of their films in competition with theatres operated by the defendants.

24. The Court erred in excluding letters passing between these independents and the major film distributors relating to such exhibition.

183 25. The Court erred in permitting witnesses called by the defendants who had not negotiated with these independents for such exhibition to testify as to why such negotiations did not result in a contract.

26. The Court erred in excluding memoranda prepared by representatives of the major film distributors in the ordinary course of business and kept in their files which related to their negotiations of film licenses with the defendants and with independent exhibitors in competition with the defendants.

27. The Court erred in excluding prior written statements signed or authorized by defense witnesses which contradicted their testimony.

Wherefore, plaintiff prays that the final decree of the District Court dismissing the suit may be reversed and the cause remanded for entry of a decree finding that all of the defendants violated the Sherman Act and granting appropriate relief.

WENDELL BERGE,
Assistant Attorney General.
ROBERT L. WRIGHT,
Special Assistant to the Attorney General.

Dated this 19th day of December, 1946.
[File endorsement omitted.]

184 In United States District Court
Order Allowing Appeal

Filed December 23, 1946

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the 24th day of October, 1946, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

BOWER BROADDUS,
United States District Judge.

Dated this 23rd day of December 1946.

[File endorsement omitted.]

187 In United States District Court
Citation

Filed December 23, 1946

To: L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., GRIFFITH AMUSEMENT COMPANY, R. E. GRIFFITH THEATRES, INC., AND WESTEX THEATRES, INC.:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in Washington within forty (40) days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Western District of Oklahoma, wherein the United States of America is appellant and you are appellees, to show cause why the judgment rendered against the said appellant as mentioned in said appeal should not be reversed.

Witness, the Honorable Bower Broaddus, United States District Judge for the Western District of Oklahoma.

BOWER BROADDUS,
United States District Judge.

This 23rd day of December 1946.

* * * * *

PROOF OF SERVICE

Service of the petition for appeal, order allowing appeal, assignment of errors and prayer for reversal, state-

ment of jurisdiction, praecipe, and citation in the above-entitled cause, together with a statement directing attention to the provisions of paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, is accepted and copies received this 23rd day of December, 1946.

CHARLES B. COCHRAN,
HENRY S. GRIFFING,
JOHN B. DUDLEY,
CHARLES B. COCHRAN,
Attorneys for L. C. Griffith, H. J. Griffith, Consolidated Theatres, Inc., and Griffith Amusement Company.

[File endorsement omitted.]

194 In the District Court of the United States
for the Western District of Oklahoma

THE UNITED STATES OF AMERICA, PLAINTIFF
VS.
GRIFFITH AMUSEMENT COMPANY, ET AL., DEFENDANTS

Reporter's transcript of hearing

Now on this 7th day of May, 1945, the above cause comes on for trial before Hon. Edgar S. Vaught, Judge, at Oklahoma City, Oklahoma.

APPEARANCES

Mr. Robert L. Wright, Special Assistant to the Attorney General; Milton A. Kallis, Special Assistant to the Attorney General; Mr. Posey T. Kime, Special Assistant to the Attorney General; Mr. John Brett, Assistant U. S. District Attorney, for the Government.

Mr. Charles B. Cochran, Mr. J. B. Dudley, Mr. Henry S. Griffing, all of Oklahoma City, Oklahoma, and Mr. L. M. Rice of Dallas, Texas, for the defendants.

195 PROCEEDINGS

10:00 o'clock a. m.

The COURT. Are the parties ready in No. 172?

Mr. WRIGHT. The plaintiff is ready.

Mr. COCHRAN. The defendants, Griffith Amusement Company, Consolidated Theaters, Inc., and H. J. Griffith and L. C. Griffith, are ready.

Mr. RICE. The defendants, R. E. Griffith, Incorporated, and West-Tex theaters, Incorporated, are ready. The defendant R. E. Griffith is deceased.

The COURT. Has any order been made with reference to R. E. Griffith?

Mr. WRIGHT. I don't think so. I don't think his death at this time has been officially suggested of record. I assume, of course, he is automatically eliminated as a defendant.

The COURT. Let the record show that the death of R. E. Griffith having been suggested in open court the case is dismissed as to him. Now, gentlemen, we have had quite a few sessions in the nature of pre-trial conferences, a number of conferences on this case. I have spent quite a little time in the last few weeks going over this record and it seems to me that this trial can be very substantially shortened but I would like for the record a rather com-

196 plete statement by counsel of the Government's contentions as to the violations of this Act by each of the defendants, and after we get these statements then a similar statement from the defendants, and we can then make some further suggestions.

197 *Statement on behalf of plaintiff*

Mr. WRIGHT. If the Court please, your Honor will recall this suit is one of a series of three that were filed by the Government in 1939, shortly after the interstate Circuit case was decided by the United States Supreme Court against three different groups of motion picture theater operators who combined their theaters together for film licensing purposes, each of those groups being known to the trade as a theater circuit. All of these three suits charge the various defendants with using the power resulting from combining their theaters together and buying films for the purpose of excluding theater operators outside the circuit from any opportunity to compete with the circuit theaters in licensing feature films distributed by the so-called major distributors. That power is referred to in the trade and in the complaint as the competitive buying power. The principal relief asked in all suits was the dissolution of each circuit in a manner which would deprive those theaters or circuits of that power. The case against the Crescent circuit, involving a group of motion picture operators operating theaters in small towns in Tennessee, Alabama and Kentucky, was finally decided in favor of the Government by the Supreme Court, last December. The case against the Schine Circuit a similar group to that operating in New York, Ohio, and Kentucky, was tried last year at Buffalo, New York, in the Federal Court, and is now under advisement in that court.

198 The defendants in this case are charged with using their circuit buying power to monopolize theater operations in a large number of towns in Oklahoma, West Texas and New Mexico. The corporate defendants are the Griffith Amusement Company, Consolidated Theaters, Inc.

of this city and R. E. Griffith Theaters, Inc., and Wes-Tex Theaters, Inc., both of Dallas, Texas. The individual defendants are H. J. Griffith and L. C. Griffith of this city. As has been pointed out, Mr. R. E. Griffith was originally named as the other individual defendant, but he has died during the pendency of the lawsuit. In addition to the theaters that are wholly owned by the corporate defendant, the circuit includes a number of theaters operated by other companies.

199 I say, I shall refer to the whole group, First, the Griffith circuit, all of the circuit, although each of these defendant corporations, and its affiliated interests would be what are commonly referred to as a circuit in itself. The theory of the Government, briefly stated, is that these defendants have collectively acquired and used the film buying of the circuit with the purpose and effect to eliminate theater operating competition wherever they encounter it in these various towns involved in the complaint, and that such collective activity violates the Sherman Act under the principles announced by the Supreme Court in the Crescent case decided last December and the Interstate Circuit case decided before the case was filed, to which I previously referred. I think the most useful thing I could say at this time would be not to attempt to elaborate on the legal theory but to try and give your Honor a picture of the whole factual proof that the Government intends to put in which would enable you to follow all the evidence as we offer it.

The relationship of the various defendants to each other will be principally proved by interrogatory answers which have already been supplied by the various defendants. I think it is sufficient to say here that the four defendant corporations are interlocked through stockholdings and common officers. Mr. R. E. Griffith was, during most

200 of the period here involved, that is the five years preceding the filing of the suit, the president and general manager of the two Dallas companies. That is of Griffith Theaters, Inc., and the West-Tex, and I believe that Mr. L. C. Griffith was the president of the Oklahoma City companies during this period, and during most of the same period Mr. H. J. Griffith was the general manager of those companies. In general, it might be said that all of the theater operations in which the defendants were interested were operated as a single unit, insofar as film buying was concerned during the five year period preceding the filing of the suit with the exception of a period in 1938 when the Dallas companies made deals with some of the major distributors separately from those made by the

Oklahoma City companies, but at no time have any of these defendants operated theaters in competition with each other.

The COURT. Do they operate in the same territory?

Mr. WRIGHT. In the same geographical territory, yes. They do not operate in opposition in any particular towns, although they have joint interests in many towns. In general, the theaters which are only partially owned by the defendants are operated by local partners except for the bookkeeping and the buying and booking of films which is handled by one of the defendant corporations. The arrangement under which those services are rendered
201 is generally in payment of a percentage of the gross receipts in the theaters in question, to one of the defendant corporations for those services, and both payments are charged as an operating expense, and then the net profits are divided between the local partners, and the defendants based upon the respective percentages of ownership in the theaters involved. The major sources of the feature film supply, that is to say the films which are the principal feature of the entertainment offered by these motion picture theaters are the eight companies which are respectively referred to as Columbia, Twentieth Century Fox, sometimes referred to as Fox; Metro-Goldwyn-Mayer, also referred to simply as M-G-M or Metro or Loew's; Paramount, RKO, Universal, United Artists, and Warner. During the period involved here the Warner films were distributed by a subsidiary, Vitagraph, Incorporated, and First National was also used to designate some of the films distributed by this company. All feature films produced by this company were generally released at weekly intervals throughout the year and grouped together for the purposes of sale in a one year period known as motion picture seasons and those seasons generally began in August or September of each year. That is, the designation of the 1934-1935 season, for example, would refer to the group of films to be released. That is, made available for
202 exhibition in theaters during the one year period beginning in August or September of 1934 and ending in 1935. The films were made available to exhibitors in the territory here involved, and for that matter, throughout the country, through branch offices called "film exchanges" which are separately maintained by each of these distributors but those which serve the areas we are interested in here were located principally at Oklahoma City and Dallas, although some of the area was served with respect to some companies by exchanges at Denver, Kansas City, Missouri and some other point.

203 Each of these offices, or exchanges, are in charge of a branch manager who has under him a group of salesmen soliciting the theaters in the area covered by his branch, and also a booker or bookers, whose duty it is to fix the dates when specific films will be available for exhibition in the theaters licensed and arrange for the delivery of the actual films themselves to the theaters in the territory with which the contracts were made. The form of contract used in making what is commonly referred to in the trade as a sale, of the film product, is actually a license agreement, under which the distributor retains title to the film used and merely grants to the exhibitor the privilege of using the positive print for exhibition in his theater for a specified period of time, after which the print is returned to the exchange for redelivery to another theater. In this way a large number of theaters are served with a relatively small number of prints, kept at each exchange. The negotiations for these license contracts with the small theater operators in the area is generally handled by the salesmen and branch manager, although they do not have authority to approve the contract, the method of negotiation with these exhibitors is generally with the salesmen or branch manager as to the right for a licensing agreement, as to the printed form, which specifies the terms, and so forth. Then, after the exhibitor
204 signs the license agreement, the exchange forwards it to New York City where the principal officers of all of these distributors are located, for rejection or approval there. If the contracts are approved, a copy is signed by the distributor and returned to the exhibitor and then prints are delivered to him in accordance with the terms of the contract, and arrangements are made from time to time with the booker at the exchange in question.

The Court. These defendant corporations, are they strictly exhibitors?

Mr. Wright. Yes, your Honor, the defendants are engaged only in the theater operating end.

The Court. They have nothing to do with production or distribution?

Mr. Wright. Of course, under our theory, they have a great deal to do with the distribution in the sense that we expect to show that the function of distributing films in this territory, by virtue of the contracts that were made, were virtually turned over to these theaters.

The Court. But they purchased them as exhibitors?

Mr. Wright. Yes, that's right.

The COURT. Now, these producers, do they limit their offer of the sale of these films to any particular class or group, or are they open to everybody?

Mr. WRIGHT. In general I think it is safe to say
205 the distributor desires to get the widest possible distribution of his films, and is interested in getting the maximum revenue out of any territory, and the obvious way to get the maximum revenue, would be to have the film exhibited and seen by as many people as possible.

The COURT. Do you contend that under the law the producer would have the right to sell his films to anyone that he desired?

Mr. WRIGHT. That is a qualified right, that's right, but it is subject to many limitations. He really does not have the right to refuse to sell films to some one simply because that person's competitor has asked them not to do it. I don't think there is any question about that.

The COURT. Suppose there are two theaters in a city and the producer desires to sell a picture, his feature picture to either one of them. Do you question the right of either one of them to enter into a contract for the purchase without regard to the other?

Mr. WRIGHT. No, not at all. We do insist that he does have the right to dispose of them competitively, but he must make them available under a competitive basis where competitive factors must be considered.

The COURT. Assume that there are five theaters in a city and here is an important picture which the producer
206 is offering for sale, do you contend that he would have to dispose of that to the highest bidder, or on what basis would the competition be?

Mr. WRIGHT. Normally, I suppose that in the ordinary course of business, he would first offer any particular film to an account that had been using his films on a particular run, and I suppose that if he could not make satisfactory agreement out of that account he would then offer it to another account.

The COURT. It is largely as any other commodity would be sold?

Mr. WRIGHT. It is quite different to an ordinary commodity, if the Court please. I was going to discuss the terms of the license agreement later on, but—I was going to continue on with the method of negotiation and then cover the terms of the agreement actually made. In dealing with large circuits of theaters, such as these defendants, which operate in several exchange territories, the negotiations

are usually handled by the regional office executives, who have supervision over the territory involved, with the assistance, of course, of the branch manager, who supervises the performance of these contracts in their respective territories. In the ordinary license agreement made during this period, the films were generally designated simply as those to be released during a particular
207 season as contracts were frequently made before any of the pictures that were sold or licensed had been made. Generally the license only specifies the number that are covered by the license, and the terms are based simply on various classifications in which the numbers of films are to be placed when they are released. The license will just say two productions at thirty-five per cent, or four at $50 flat rental and so on down the line. Then those films are designated in those various brackets as they are released. These terms may be a percentage share arrangement or a fixed flat rental, or a guaranteed flat rental against the percentage of gross receipts that the theater takes in during the exhibition of the film. The printed agreement, and when I say form agreement, I don't want to be understood as suggesting that all these distributors use one printed form—there are variations in the forms used by all, but the characteristics that I am about to discuss are present in all of them. In those printed forms there is generally a space for the specified run, the clearance, and the particular theater or theaters in which the film is to be exhibited, and the minimum admission price that is to be charged during the time that that clearance is licensed or exhibited. The runs specified is usually designated simply as first, second, third, and so forth indicating the sequence in the towns in which the theater is located, and the theater which is licensed to exhibit the
208 picture. The clearance period specified in the license is generally a statement of the number of days that must elapse before the film shown on the run licensed may be exhibited in another theater in the town or on a later run or in some other town. The admission price provision is generally a statement of the minimum admission price that must be charged for children and adults respectively at matinee and evening performances respectively. The printed forms also provide for the maintenance of the admission prices specified in the contracts by the theater enjoying the particular run and clearance privileges granted by the license agreement. Of course, one obvious result of such clearance and admittance price restrictions is to prevent the subsequent showing of the film in a competing theater, and attracting business from the prior run the-

ater. The clearance and admission price restrictions are in that sense a very particular protection from competition, which is granted to the prior run theater, and attracting business from the prior run theater. The clearance and admission price restrictions are, in that sense, a form of protection from competition which is granted to the prior run theater. Another form of such protection is found in provisions which prevent the distributor from licensing a run to a competing exhibitor on any terms after the conclusion of the run licensed to the prior exhibitors. In legal theory such restrictions have
209 been justified as essential to the distributors to exploit particularly the limited monopoly granted to him by the copyright law, as he owns the copyright on each of the pictures he distributes. However, it is obvious that restrictions of this character are subject to abuse if they are controlled by exhibitors instead of by the distributors under the copyright. Our proof will show that such restrictions have been used by the defendants in this suit to suppress competition of exhibitors who have attempted to compete with the circuit theaters. Some of these restrictions can be spelled out of the express terms of the agreement that these theaters collectively made with the major distributors. Others rest on implied agreement, which must be inferred from the conduct of the major distributors in dealing with the defendants and with their competitors during this period. The five-year period with which the complaint is primarily concerned begins with April, 1934 and ends with April, 1939, when this suit was filed. That, therefore, overlaps six motion picture seasons, and we shall offer in evidence the principal agreements which the circuit made with each of the distributors mentioned during those seasons, with the exception of United Artists.

The COURT. Are those uniform?

Mr. WRIGHT. I beg pardon?

210 The COURT. Are those contracts uniform?

Mr. WRIGHT. No, those agreements are not uniform. Those are specially negotiated typewritten agreements made by the defendants with each distributor. Your Honor may recall that the suit was originally filed, that in addition to the charge of conspiracy among these exhibitor defendants, there was a charge of conspiracy among the distributor defendants also, but that was eliminated from the complaint by us, and there is no charge that is to be tried of collective action by the various distributors, except, of course, as such action might have been produced by the concerted action of the defendants. With respect

to each of these seven distributors we will show that during most or all of these six seasons their feature films were licensed to the circuit by the so-called master agreements which simply provided for the exhibition of the films in most of the towns where the circuits operated theaters for a blanket annual rental, which was allocated among these towns by the defendants, and the payment for the films was made in accordance with the allocations.

211 These agreements in each case included a substantial number of what are called closed towns, as well as towns in which there is competition. By "closed towns" I mean in which the circuit owns or operates all of the theaters. The competitive towns are those where someone operates in opposition to the theaters of the circuit. Of course, the aggregate rental for the circuit, involving as it did a very large number of towns, always greatly exceeded any particular rental which any single operator in any of these competitive situations might offer for films. These special agreements generally license the films for first run in all of the towns that were covered with the exception of Oklahoma City and Tulsa, which are not involved in the suit.

The allegations of the complaint are limited to the communities outside those large cities but they didn't specify any particular theater at which the film had to be played at any particular time. Generally, they would simply make a film available for use in the theater the circuit operated in these towns, and they also did not compel the independents to play the films in any particular order. In this connection, it should be noted that the printed license form on which the independents are normally licensed provide that the films must be played in the order of release. Frequently, under minimum admission prices as specified in the blanket agreements that were made with the de-

212 fendants, or if they were stated they were generally as low as any theater playing the film licensed to that run subsequent to the circuit theaters, would be permitted to charge. The result of this method of doing business was that no regular exhibition of major films on subsequent runs by exhibitors outside the circuit who operated theaters in the circuit's towns was possible. There is no way of determining when or under what conditions the films would actually be exhibited by the circuit theaters until either after the season in which they were released had ended or at such times during the season as the defendants might see fit to release or make available films which they had under contract. These contracts, I will not attempt

to outline in any detail at this time, as I think each of them will speak for itself when it is offered. I will only summarize here the periods that were covered. As to Fox, Columbia and Warner, separate master agreements were made as to each of the six seasons, 1933-34 through 1938-39. As to Loew's, the pictures released through the 1933-34 and '34-35 seasons were served under the agreement called a franchise which covered the five seasons beginning with 1931-32. There were separate master agreements. Thereafter, a separate master agreement was made with Loew for each of these succeeding seasons. The circuit
213 deal was not made by these defendants with Paramount for the 1933-34 season and the three succeeding seasons were covered by another franchise made with it, and the '38-39 season was covered by master agreement made with the Dallas defendants, and with the Oklahoma City defendants respectively. A master agreement was made by the circuit for Universal for each of these six seasons except for the 1935-36 season. RKO made a master agreement with the circuit each season with the exception of 1934-35 and 1938-39 as to the Oklahoma City defendants. In 1938-39 Dallas bought RKO. The Oklahoma City companies did not. The five operating seasons were covered by another franchise which included both the Dallas and Oklahoma City companies. United Artists operated on a somewhat different basis from the other distributors that are involved here, and they do not produce the pictures that they release but merely act as a distributing agent for a number of producers, but generally make only a few films apiece of each season. They ordinarily sell, or sold the films they release on separate contracts made for the pictures produced by each distributor producer and did not sell any smaller groups than used by the other defendants, and they also released a much smaller number of pictures each season, generally from 15 to 20 or 25 as against the 50 or 60 features that these other distributors would release. However, in the 1937-38 season
214 a circuit deal was made for the United Artists product released during that season with the Oklahoma City defendant and a full deal was made for the 1938-39 season with all of the defendants. We expect, in short, to show by these contracts themselves that there was no opportunity for competitors of the circuit to make regular season deals for current films of these major distributors except during such seasons when these deals were not desired by the defendants for their circuit. In addition to the master agreement and the franchises which the

defendants made with the major distributors, we will offer the testimony of independent theater operators intended to show the effect that this method of doing business had upon them. They fall into three general classes. First, those who attempt to compete with the circuit theater and then were either bought out by the circuit or joined it by a pooling arrangement. Second, those which were bought out by the pool before there was any opportunity for licensing discriminations to occur. As to those, the defendants acquired interests in more than 100 theaters during the four years immediately preceding the filing of this suit, and our proof will be limited to representative cities of each class. Third, those independents still in business who have attempted to compete with the defendants during the period in question. Most of those will be called as there are only a comparatively few number of
215 them left. The situations where the independents attempted to compete are of two general types. One where the circuit came into an independent town. That is the one where the independent was established, and two, where the independent entered the town where the circuit was established. In each case the circuit's buying power was used to prevent the independent from licensing major films, and to see that those they did get were licensed on the discriminatory terms which gave the circuit theaters unfair advantages.

The COURT. Did the defendant exhibitors have anything to do with the contracts made by the distributors and these independent exhibitors?

Mr. WRIGHT. Yes. The master agreements which we shall offer by their very terms imposed severe restrictions on agreements which the distributors could make with the independent competitors of the circuit. The form of this discriminatory treatment would sometimes be a refusal to license the independent opposition feature pictures which were not used by the circuit theaters at all, and sometimes they refused to license a subsequent run in the independent theater of product which the independent circuit used on a prior run. In other cases, the distributors would refuse to negotiate with the independent for a continuance of a run that he was then enjoying butw ould sell the run to the circuit with no opportunity for a competitive negotiation of any kind. In other words,
216 the license granted to the independent would compel the independent to charge admission prices for a run following the circuit theater which is as high or higher than the price charged by the circuit at prior exhibitions of the same pictures.

The COURT. Just in that connection, in order that I may understand, assuming that we have a very valuable picture, say, "Gone With The Wind", and the price is fixed for the first run on that picture. Now, if they were to contract to run that same picture at a later date at a greater reduced price, would not that affect the first run?

Mr. WRIGHT. Oh, inevitably. I suppose that the licensing of films on subsequent runs, but that in itself would affect the revenue received from prior runs. Generally, I think it will appear where a number of runs are licensed, however, that the normal practice is to have a purported admission price differential which is related to the value of the difference in value of the film to the public, as to whether it has the first chance to see it in the town or the second or third or fourth.

The COURT. Would the first chance to see the picture entitle the exhibitor to charge a higher price than the second chance?

Mr. WRIGHT. Normally the licensing agreement with the prior one, that the first run exhibitor will require him to charge a maximum price, which is the highest
217 price charged in the town, or area in which there are tentative theaters involved.

The COURT. For instance, here is a downtown theater which runs this picture "Gone With The Wind." I merely use that as an illustration, and they have a charge we will say of 25 cents. Now, say there are some fifty theaters out in the outlying sections of the city which the people attend, and if they found out that they could see that picture for 15 cents 60 days later or 90 days, and they were permitted to run that picture say at 15 cents instead of 25, would not that affect the first run?

Mr. WRIGHT. I think it probably would but I suppose the theory on which the distributor would license several runs of the picture in every situation is that he can better his over-all revenue he gets from the area by having it shown in a number of theaters instead of one theater on an exclusive run, although it may cut down the receipts. I suppose the receipts of the prior run theater would be less under any subsequent run arrangement than if he were given an exclusive first run.

The COURT. Suppose the producer or distributor makes a contract for exclusive showing of a picture in a town. Do you think that would be a violation of the Act?

Mr. WRIGHT. I think it would depend on the circumstances under which it was made. I can conceive

218 of situations in which I think an exclusive run might be perfectly proper. In no case would the regular season deal for first run product which the circuit had been playing be offered to independent competitors, except in the season when the defendants declined to make a split deal which was confined to the area interest I have already noted and the exceptional years in which some of these distributors did make a circuit deal with the defendants. In cases where independent theaters were acquired by the circuits, that is, interests in independent theaters were acquired by the defendants prior to any actual theater competition between them in the same town, the defendants' known power to control the film supply in the seller's town was sufficient to induce him to sell the pool his theater prior to an actual demonstration of what that control could do to him in his town. In such cases a mere suggestion that the defendants were going into the independent town if he didn't sell or pool was generally enough to induce a sale to the defendants and pool his theater with the circuit.

Our proof will also show the manner of the defendants' control of major film supply exercised collectively through the making of these circuit deals, and they will then determine how many films a town ought to take and how many a theater ought to get and what the admission prices should be. In conclusion, I think it must be said
219 there cannot be any real dispute as to the actual extend to which the defendants succeeded in eliminating theater competition in the towns where theaters in the circuit are operated or the agreements which were in effect made with respect to terms on which films were to be licensed between them and the major distributor in these written agreements. Similarly, there cannot be much dispute as to the licenses made between the independent competitors and the same distributors. As we said in the trial briefs we filed in December, 1943, from the acquisition of these theaters, it is apparent from the terms of these master agreements and franchises which made them possible, that these agreements with major distributors are illegal per se. By offering the testimony of complaining witnesses in addition to these agreements, such additional proof is necessary, in our view, because the relief sought here is not merely an injunction against the making of such agreements by defendants in the future, but actual dissolution of the defendants, circuit as well.

The Court. In that connection, let me get your theory. Do you question the legal right of the circuit to deal with the distributors or a number of theaters?

Mr. WRIGHT. Why, I think it depends again on the circumstances under which the deal was made. The purpose and effect of the deal would determine its legality. I suppose if there were no competitors involved and it was simply a means of saving film rental, there might be nothing illegal in that, but that is not the case we have here.

The COURT. Supposing with that condition existing an independent theater owner said "Well, I am going to enter a town where the circuit has exclusive control at this time." What would you say as to the effect upon him?

Mr. WRIGHT. I should say the theory of the Sherman Act is that anybody should have an opportunity to enter any town, at least compete with the man who is there for the privilege of licensing film.

The COURT. But if the other man has a contract for the exclusive showing of a picture in that town, do you think that contract then should be violated in order to give the new man an opportunity to show the picture?

Mr. WRIGHT. If he has an exclusive contract of that kind I think it would depend on the circumstances under which that contract had been made. If that contract had been made for the purpose of excluding people from entering those towns, I should say that was not a valid agreement and that it would not be a proper excuse for refusing to serve the independents. I think that is the situation we have here. In short, we expect to show by the testimony when taken as a whole that the competitive opportunities, theater operations that the Sherman Act was intended to guarantee not only illegally eliminated in the circuit towns in the five year period preceding the filing of this suit by this agreement, but that these opportunities cannot be restored until the defendants are compelled to divest themselves of theater holdings illegally acquired and dissolve the ties which bind their 200 theaters under any film buying and each of their theaters stand on its own feet in competing for films. That is all I have.

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The COURT. The defendants may make their statement.

Statement on behalf of defendants

Mr. COCHRAN. Unless your Honor particularly desires to have our statement at this time we would like permission to reserve our statement. The statements which have been made by counsel for plaintiff have been largely general statements such as we have in the trial brief and do not offer the opportunity for a statement by the defendants relative to the facts expected to be proved in each particular situation. Now, I think it would be of much more value

to your Honor if we reserved our statement until we see just what testimony is produced as a result of this general statement. We attempted to get particulars for a long period of time and we still do not have them in this statement of facts.

The Court. What the Court has in mind is, the Court has to determine sooner or later what the law suit is
222 about. The plaintiff has stated in rather general terms its theory of the case and the Court would prefer to have some statement, even though it might be general, as to the position of the defendants with reference to the claims made by the plaintiff. I think it would be helpful to the Court in understanding the issues.

Mr. Cochran. Very well. At the outset it will be our contention that the Griffith Amusement Company was the outgrowth of the exhibition of motion pictures by the Griffith Brothers starting in a very small way down in Texas, in probably about 1917, or maybe before. There were three of these brothers, L. C. Griffith, R. E. Griffith and H. J. Griffith. R. E. Griffith is now deceased. The other two are living. The Griffith Amusement Company was organized about 1926 or 1927, and at that time the three Griffith boys were operating several theaters in Oklahoma and a few in the state of Texas; operating them as acquired. The corporation over the next few years acquired additional theaters. Its activities and acquisitions practically ceased along about 1932 or '33. At the time of the organization of the Griffith Amusement Company there was a corporation organized, I think, under the laws of the State of Delaware known as Universal Chain Theatrical Enterprises which was organized for the purpose of acquiring interests over the United States in theaters just as an investment
223 proposition and a deal was made by the Griffith Brothers with this concern whereby the Universal Theatrical Enterprises would advance a certain sum of money which would be used in the acquisition of theaters by the Griffith Amusement Company. The control of the operations of this Griffith Amusement Company was by the contract placed in the Griffith Brothers. In other words, they did not permit this outside corporation to have the control of the operation of those theaters. The idea of Griffith Brothers in acquiring these various theaters was, of course, to make profitable investments. At that period the motion picture industry, although it had been in existence for probably ten years, was still in the period of uncertainty, we might say, and also in the pioneering stage, particularly in the state of Oklahoma. At that time there

were very few first class places of exhibition outside of the principal cities. This corporation acquired its interest primarily in the smaller towns in Oklahoma, the thought being they would be able to bring to these towns theaters and physical equipment of the type and character which would give the people of the smaller towns the opportunity to enjoy the same type of amusement, of motion pictures, as the people in the cities, and that prices would be such as would enable them to see these pictures. Their idea was that a venture of that kind would prove to be successful replacing what was at that time commonly referred to as the "shotgun" type of operation. That is where
224 they would take a store building and move such equipment as they had in and out and place a few chairs in there and a screen and without much other equipment to install a projector and exhibit motion pictures. Also, they had in mind that in the state of Oklahoma, as in some of the other southwestern states, there were periods when one section of the state or one section of the community would be enjoying prosperity and other sections would be going through dust storms and drouth and so forth, and that a spreading of the investment would offer an opportunity to better cope with these conditions which were periodically occurring and which might bring disaster to a person operating in one section alone.

These acquisitions, as I have stated, were continued until along about 1932 or '33 when the Universal Theatrical Enterprises got into financial difficulties, and had to commence to sell off the interests which it had in theaters in the various parts of the country. It held on to its interest in the Griffith Amusement Company until about 1934 when the properties were ordered sold at a receiver's sale, or a bankrupt sale, and at that time Mr. L. C. Griffith decided that he wanted to make this an entirely local or state owned operation and get away from any outside connections whatever, and so he brought in capital and
225 raised the amount of money that was necessary to acquire the interests that had been outstanding in the Universal Theatrical Enterprises, and that stock was acquired and since that time the ownership has been entirely in the Griffith Brothers and in those people who were brought in, at that particular time, living in various places in Oklahoma. I believe all of them live in Oklahoma at this time, and there has been very little change in the stock ownership in the Griffith Amusement Company during that period of time. Along in 1930 or 1931, Universal Chain Theatrical Enterprises declined to put up any additional

money under the terms of this contract, so for a while the Griffith Brothers in acquiring new interests where an opportunity came to purchase a theater which looked like a good investment, they would place that before the Universal Chain Enterprises and give them an opportunity to come in as a Griffith Amusement Company investment, and if they declined to do so, then the Griffith Brothers, if they desired to make the investment, went ahead and acquired the property. Those properties, so acquired, became the neuclus of all the Consolidated Theaters, Inc., the name of which is now Griffith Consolidated Theaters, Inc. The ownership of the stock in that company is also entirely local with the exception of the interests which R. E. Griffith or R. E. Griffith Theaters has in that corporation.

Those acquisitions have continued to some extent
226 on down to the present time, although there have been comparatively few acquisitions since the filing of this suit, and in connection with the development of these theaters, I think it is important that the Court bear in mind that the motion picture industry has been a developing industry. Changes have been numerous and important. As I said a moment ago, at first the exhibition of motion pictures started off in any kind of a building with a few chairs, and a screen and projecting machine.
227 To a large extent, until Griffith Amusement Company started acquiring and improving and building theaters in this state, that was the type of exhibition that existed in most of the smaller towns in this state.

Upon entering the theater business in this state, the Griffith Amusement Company commenced to remodel and to build additional theaters throughout the state, and have built theaters which have furnished the small towns with places of amusement which compare favorably with places of amusement in the larger cities.

Then in those days, the exhibition of pictures was the exhibition of silent films. We have been accustomed for a long time to talking films, but those were the days of the silent films. There were several companies, producing films, but in the early days those films would be sold to some person exhibiting films or to some person who had some kind of an exchange in a local area, and he, in turn, would sell those pictures or license those pictures to various persons engaged in the motion picture industry. At that time there were very few of the companies, which are now engaged in the distribution of motion pictures, engaged even in the production of pictures. There have been great changes in the production and the distribution and

in the companies engaged in it during that period of time. Before the end of the silent days, however, the producers of motion pictures, most of them, decided that it
228 would be more economical and that the public could be better served if they would arrange for the distribution and licensing of their own pictures, and so several of the companies who were engaged in the production business, at that time, embarked on the distribution of motion pictures and established in cities, such as Oklahoma City, Dallas, and Kansas City, throughout the United States, exchanges which, as Mr. Wright has explained, were in charge of a local manager, and through which these producers would distribute the pictures which they produced, the contract being made, and made only, upon the approval of some home office executive, and not by the branch manager. Some of the companies that had been engaged—some of the larger companies that had been engaged in the exhibition of pictures entered on the production and distribution of pictures, and so finally the pattern developed where there were several companies engaged in the distribution and exhibition of motion pictures.

In this particular area there have been very few theaters operated by companies which are engaged in the production and distribution of motion pictures. Exhibition companies of that kind are referred to as affiliated or producer-owned circuits. Outside of Okhahoma City, I believe there is no operation of theaters by any concern that is connected with any producer or distributor. The
229 Griffith Amusement Company, the Consolidated Theaters, the Wes-Tex and the R. E. Griffith Theaters have no connection whatever with any producer or distributor.

Along in 1928, or about that time, talking motion pictures were produced, whereby there was a synchronizing of sound with the exhibition of the motion picture. That development was something new, and something which brought great debate in the industry as to whether it would be a success or whether it would be a failure. The initial exhibition of pictures with sound effects were not any too successful. The sound equipment was patented and the installation of the equipment of that kind was extremely expensive. The question came to the producer and distributors as to whether they were going to acquire licenses and produce talking pictures, or whether they were going to stay with silent pictures. The controversy was very heated. During the year of 1928 Warner Brothers was, I believe, the first to successfully produce a talking motion picture, and it was the first to put on the market the sea-

son's product of talking pictures. That was for the season of 1928-29. The other companies were not prepared to go ahead at that time, and it was not until the following season that the other major producers of that day were able to offer any substantial number of talking pictures.

From the exhibition angle the question immedi-
230 ately presented itself to the various exhibitors as to whether that particular exhibitor was going to make the investment which was necessary, if he was to exhibit talking pictures, and that was a very serious problem. Griffith Amusement Company has, throughout the history of its operation, and the other companies operated by them or any or all of the Griffith brothers, have always been willing to back their judgment with money, if they could acquire the money, to go ahead. They believed in the future of these talking pictures, and they immediately commenced to take advantage of what they thought to be a turning point and a great change in the exhibition of motion pictures. They arranged just as rapidly as they could to install sound equipment in their theaters. They were among the first in this state, Oklahoma City and Tulsa not excepted, to make contracts with the holder of the patent for the installation of talking equipment. And we find in the towns in which they operated their patrons were enabled, almost as soon as the patrons in any city, in Oklahoma City, to see and hear Al Jolson in his first talking picture that was presented, and which was such a great hit, a production of Warner Brothers licensed by Vitagraph, I believe.

That development in the motion picture industry presented another opportunity. Here were these exhibitors
231 who were either not properly financed or who were unwilling to venture further investment which would have to be made on talking pictures who tried for a time to operate their theaters on silent basis and found it to be unsuccessful and unprofitable, and who desired to sell out. Griffith Brothers took advantage of the opportunity which was presented to acquire theaters which they thought would be a profitable investment, and so additional theaters were acquired. At that time it was believed, and we believe it still the law, that they had the perfect right to acquire these theaters, that it was a legitimate business, and the decisions of the Supreme Court of the United States had specifically held there is no objection to the size, there is no objection to the person who has judgment and foresight and initiative and courage, to spread out, and not limit his operations to one particular area, and certainly this record will abundantly reveal that Griffith Brothers

possessed all of these qualifications. It will further reveal that they did not exhibit, during that period of acquisition or since that time, the various practices which were found to exist in the Crescent case, which Mr. Wright referred to, and which was the basis of the holding of the Court that certain relief should be granted in that particular instance.

About this time, the time of the development of the talking picture, or probably shortly thereafter, we
232 had a further development in the motion picture industry where the producers started to advertise their various stars in order to build up say, Will Rogers, or Shirley Temple or Al Jolson, or those various stars who were under contract with the several producers, to build up for them such a reputation that there would be a desire on the part of the public to see and hear those particular stars, and therefore a demand on the part of the public that the exhibitor produce that particular star for their benefit. As a part of the exploitation of these stars some distributor developed the idea of what is commonly referred to in the industry as block booking, probably a rather inaccurate expression, but the producers, some individual producer in the first instance, desirous of taking the greatest possible advantage of his stars, would condition the licensing of his better pictures showing these stars, that the public desired to see, conditioning the licensing of those pictures on an agreement that the other pictures of stars of lesser value or persons who were not stars at all would be licensed, and probably other product of that particular producer. In other words, each produced started into the licensing of just as much of his product, features, Western, two-reel subjects, news, and so forth, as it possibly could, but no producer had enough of the feature product to supply any one theater. Probably they had an idea at one time,
233 some producer did, that it would produce enough profit, but anyhow it didn't happen. That venture on the part of the producer, which started it, I don't remember which one it was that started it, that venture was followed by others, by other producers in the industry, and it has been sustained as being legal by the Circuit Court of Appeals in the case which involved Paramount Theaters. They sustained that method of licensing pictures, that is, that they had a right to attempt to sell all of their product to an exhibitor before they attempted to sell anything else than the entire amount of their product. Also the other producers were in competition with Paramount and with each other in attempting to license their product, and the various smaller companies. At that particular time, I

think Paramount, Metro-Goldwyn-Mayer, Warner Brothers and Fox, and RKO, were among the so-called major producers and distributors of motion pictures. There were other companies that were producing a large number, but they were not generally recognized as being quite as large, but nevertheless they had pictures, which were perhaps just as good, but they were coming on. It has been by competition between the various producers and distributors that there has been a development where companies have risen from a small beginning to larger producers, and that has continued. We have in recent years, other companies,
the Republic, PRC., Monogram, Grand National,
234 and other companies that are coming along by a
process of growth and development, natural growth and development in the industry, and are producing pictures and offering them to the public. The point I desire to particularly emphasize is the fact that the exhibitor, whether it was one of these distributors or someone else, in the licensing of motion pictures had to try to adjust itself to conditions which existed in the industry over which it had no control. It was a growing industry, a developing industry, and it had to do the best it could, under conditions under which pictures were made available.

Most of these producers at that time wanted to license their pictures at the beginning of the season, or as near the beginning of the season as possible, in order that they might have contracts which they could use for the purpose of raising money, most of which they were borrowing, and I think most of them still borrow large amounts of money that go into these costly productions of pictures. They would license these pictures in advance production of the pictures for the season, specifying the number. It was a practice over which the exhibitors had nothing to do, and which, if the exhibitors had had anything to do with, it probably would have vetoed it because they naturally would prefer not to have what was commonly referred to in
the industry as blind buying or blind selling, that is
235 the selling or licensing of these pictures by the producers, a season's product, without knowing what the picture was going to be like. But that was the condition in the industry. These defendants had nothing whatever to do with it.

Going back, far back in the history of licensing of motion pictures, and incidentally all of these motion pictures are copyrighted, they are works of art, and are copyrighted, and as Mr. Wright stated, they are merely licensed to the exhibitor—going away back in the history of the industry, the pictures have been licensed on a series of runs

where more than one run is to be exhibited in a town. The first exhibition is commonly referred to as the first run of the picture. In a town such as Oklahoma City there may be fifteen runs, each being licensed on some basis which will enable the subsequent run to follow the runs which proceed it. In a place like Shawnee, say, there will probably be three or four runs now, speaking as of this date. In a town like, say, Maud, Oklahoma, only one run is licensed in a town, and so forth.

The runs which would be licensed in a town prior to the entry of the consent decree in 1940, in the case of United States vs. Paramount and the other distributors, was determined entirely by the particular distributor, the individual distributor. That distributor might decide that he didn't want but one run of his picture in Oklahoma
236 City, and if that was his position or decision, he had a perfect right, under the law, not to license but the one run of his picture. Or that distributor might decide that a picture like "Gone With the Wind" that he is going to first bring it on as a road show, and make terms and conditions under which he would guarantee the exhibitor that that picture would not be returned at all until say a year or two years after the exhibition of that road show. And there would be various other terms and conditions, all of which that distributor had the perfect right to impose under his copyright. He didn't have to license it at all, he owned that copyright, and owning the copyright he could dispose of a part or all of it, and dispose of it under the conditions which he wanted to dispose of it on.

The COURT. Is it your theory, say that here is a valuable picture shown in Oklahoma City, we will say the distributor decides to exhibit it at the State Theater, now if some of the other theaters in the city want to run that particular picture, is it your contention that they have or have not the legal right to demand that they have that picture to run?

Mr. COCHRAN. Prior to the consent decree there was no legal right in any exhibitor to have the picture on any run, and that was exhibited by another exhibitor, to have it on a run subsequent to that time, he had no right—
237 in other words, that right was in the owner of that copyright.

The COURT. When was that consent decree?

Mr. COCHRAN. November 20, 1940. In that consent decree it was provided in substance, it recognized the theory of licensing pictures on runs, but it provided that unless for good cause shown each of the five company distribu-

tors who were parties to that decree, must license its product on some run to any exhibitor in any town desiring that product. That was by reason of an agreement between the parties and it was entered into by the five distributors who were parties to the consent decree. Universal, Columbia, and United Artists, although parties to the suit, were not parties to the decree, and the order was never made as to them, but as to the others, that is the order, and it has been complied with since that time. The decree provides that in the event a party claims he is entitled to a run and it has been denied him, that he makes his application for arbitration and it is heard and the machinery is set up whereby the determination is made as to whether or not he is entitled to a particular run, and whether or not he has the right to make the demand under the particular circumstances existing in that town.

The distributors, during that period prior to November 1940, went through several different periods in
238 regard to their methods of determining what runs they would license in a particular situation, or rather not particular situations, but under certain conditions, and various distributors had different ideas in regard to that matter. These are practices that the distributors decided upon and the exhibitor had no control over it whatever.

For instance, there was a time when one of the distributors decided that in certain of its towns, I think probably that does not enter into any situation that is involved in this suit, but in certain of its towns, it decided it was going to sell an exclusive run, that it was not going to license its product to any other exhibitor in the town. That was not stopped by reason of any governmental action; it was not stopped because it was a violation of law; it was stopped simply because that distributor decided that that was not the best way to handle its business. It was trial and error proposition, and after they tried it, it was abandoned.

Also some of these distributors had, at another time, a practice that they would not license more than one run in a town of less than a certain population, unless the conditions in that town showed that an exception should be made. That may be considered as a rather arbitrary method of fixing the thing, whether or not it is, these defendants have nothing to do and had nothing to do with that
239 practice; it was a practice that existed and applied both to these defendants and everybody else. I think that practice continued probably until the time of the consent decree and was one of the things that caused the

Government to desire to have the agreement that they would not apply that particular rule. Anyhow it was departed from, so you have those various stages, and you may have other various methods that entered into the picture.

Back around 1930 the distributors of motion pictures had what is commonly called a standard form of exhibition contracts. Two of the provisions in that standard form of contract were attacked by the Government in suits brought under the anti-trust law, and the Supreme Court of the United States, somewhere in the early 1930's, held that those provisions of the standard contracts were illegal restraint of trade.

The distributors were acting at the time they drew that complaint, the history will show, they were acting under advice from counsel who were giving them the benefit of their best judgment under the decisions that existed at that time, and they thought those were proper restraints. They proved to be wrong. There again the distributors had nothing to do with it; they simply had licensed their pictures pursuant to the terms of those contracts as long as they were sued.

240 As soon as this decision came out, or even prior to that time, I believe as soon as the government questioned that practice by the filing of the suit, that the distributors, several distributors abandoned that standard form of contract, and each of the companies through their legal department produced its own version of a printed form of contract.

Those forms of contract have been changed from time to time for each of the years involved in this case. Some of the companies have a different form of contract; some of the distributors have made changes only two or three times during that period. I think that since the consent decree was entered, that each and every one of the distributors have changed their printed form of contract in the licensing of motion pictures, and none of the distributors have any set formula or price. In other words, they would have a difficult job, the OPA would, in marking up a ceiling price on a motion picture, because there had been no fixed price over the years. The licensing of motion pictures from the very beginning of the industry has been a matter of bargaining between the individual exhibitor and the individual distributor. The witnesses commonly refer to it as a horse-trading proposition. The distributor starts in with the idea that he wants to license to an account that he has decided to sell. Mind you, as your Honor suggested, there is no duty or obligation that this motion pic-

241 ture of the season's product of any company shall be placed on the auction block. They are not licensed that way. But even if the law required it, so far as the defendant exhibitors are concerned, they have no control of it, but the law does not require it.

The COURT. What do you say to this: Suppose, say in Oklahoma City the Criterion, dealing with a distributor, and makes a contract for its picture, and he wants to impose a condition say that that picture will not be shown in certain other theaters, what do you say to a contract of that kind?

242 Mr. COCHRAN. Your Honor, answering it directly with the privilege of an explanation, I will say that an exhibitor has the privilege of making that identical contract. The Government, I imagine, will contend that he has not.

Now, in the Interstate case, the United States versus the Interstate Amusement Company, the court there held the exhibitor did not have the right to enter into an agreement with the distributor that it would not license a picture to the opposition if it were to be played on a double bill. That is where two features were to be played on the same bill. There the distributor entered into an agreement with the Interstate that it would not license its picture to some opposition theater to be played on a double bill. Also in that case I believe the agreement provided that it would not be licensed to an opposition theater to be played for less than a certain down price. The Court held that those agreements were not agreements which were properly a part of the copyright privilege. In other words, they went too far there because there the exhibitor who had the product licensed on certain runs was attempting to prescribe that the picture should not show on a double bill or should not show for the minimum admission, but the courts recognize that so far as provided that the picture was not to be exhibited by the opposition until a certain period had

243 expired, which is known as clearance, and that conditions of that kind they have the absolute right to impose those conditions, and I maintain they have also held that it is a proper part of the copyright, that they can say "We are going to license this picture entirely and exclusively to one person." That is largely academic in this case because I think we are not going to have any such a situation of that kind. I say that our theory is in this case that there will be no competent evidence showing or tending to show that these defendants, or either of them, have imposed any conditions on the licensing of product by a distributor to their opposition. In other words, the

limitations that have been placed in these contracts have been limitations that have been placed by the distributor in making its deal with the opposition or refraining from making its deal with the opposition.

Going back for a moment, as I say, the individual exhibitor has a right to bargain for the best terms he can obtain, and the distributor has the right to get the very best terms it can, and the changes are, from our standpoint, that the distributor has exacted terms from us that have been harsh and they have exacted from opposing theaters terms that have been harsh, but we are not in any way responsible for those terms. I mean the terms imposed on the opposition, and so far as we are concerned, we
244 obtained the very best contract that we could, from a standpoint of terms and conditions which are recognized as legal and binding provisions.

Going back and stating our theories in regard to some of the things that have been stated here by counsel for the Government, I will answer first the proposition that it is charged that there was an agreement between these several corporations for allocation of territory, and that they would not compete with each other. We say that there was no such agreement. The history of the development of these corporations will show why it is that the Griffith Amusement Company is operating in certain towns and why the Consolidated Theaters Company happens to be operating in other towns, and why it is that R. E. Griffith Theaters is operating in certain towns and the Wes-Tex in other towns. Generally speaking, and just as a general historical background, L. C. Griffith and R. E. Griffith, who were the older brothers, and H. J. Griffith, the youngest of the three, were acting jointly in the management of the Griffith Amusement Company and the Consolidated Theaters. I mean so far as the actual administration of the companies was concerned, up until about 1930. I may be off a year or two on some of those propositions. During that period of time, R. E. Griffith was what was known as a buyer of pictures. That is, he was the man who
245 was recognized as the best equipped to deal with and cope with the highpowered salesmen of these national distributors of motion pictures in trying to arrive at a deal acquiring and licensing motion pictures. He was recognized as a man of fine ability in that particular line. The distributors all recognized him as being a hard trader, but they also recognized that his companies which he had represented since the organization of the first companies, and the partnership which it had represented since about 1917 in dealing with these various companies, that

when their contracts were made that they could rest assured they were going to be fairly carried out. There were adjustments made and modifications made, but they were made on the basis of the contract being deviated from only if a mutual and satisfactory agreement could be entered into. About 1930 or 1931, for personal reasons, which I think it will not be necessary to go into, it was decided by L. C. Griffith and R. E. Griffith that they should go their separate ways. Rather, that R. E. Griffith should cease to be connected with the management of the Griffith Amusement Company and the Consolidated Theaters. At that time R. E. Griffith disposed of his ownership of stock in the Consolidated Theaters Company. He maintained his investment in the original company. He also maintained his connection as a director, and I believe an officer of that company but he left Oklahoma City. He
246 moved to Roswell, New Mexico, and when he disposed of his interests in Consolidated Theaters it was largely an exchange whereby Consolidated Theaters traded to him for his stock in Consolidated the theater interests which it had in Roswell, Clovis, Hobbs and possibly some other New Mexico towns.

Now that was the beginning of the R. E. Griffith Theaters, Inc. Then R. E. Griffith left what we call at the present time the L. C. and H. J. Griffith Association, or the Griffith Brothers Association here at Oklahoma City, and went into a new territory with the idea of starting anew for himself. I think after that he probably went to Denver for awhile and then finally went to Dallas, Texas, where his home was at the time of his death, and where the home of R. E. Griffith Theaters and Wes-Tex Theaters is. R. E. Griffith was a genius along certain lines, a man of great ability, a man of great weaknesses and a great plunger, a gambler if you please, so far as the industry was concerned, having the greatest confidence in the world in the industry and its future, and in his ability to meet the situations as they came up. He borrowed money and bought theaters. He expanded his R. E. Griffith Theaters Company. Then the time came when he wanted to expand still further and it was deemed advisable that he organize the Wes-Tex. I am getting on to the other part of the defense and I may not have this exactly correct but generally speaking it is. He
247 organized the Wes-Tex Theaters which had other ownership and money came in from other sources in addition to that, which he could borrow and which he had in it. After he left the Griffith Amusement Company organization, or after he left Oklahoma City, the question came up as to his participation, future participation in the

licensing of product for the Griffith Amusement Company and Consolidated. Up to that time, as I will explain to you, he was the principal buyer and Horace Falls was his first assistant. L. C. Griffith and his associate in the operation of the Griffith Amusement Company, Consolidated, decided that Horace Falls, and I believe that H. J. Griffith should take over the buying for the Griffith Amusement Company, and Consolidated. R. E. Griffith was going to buy for the R. E. Griffith Theaters but contended that because he still had an investment in the Griffith Amusement Company, that he should stay in and participate in the licensing of the pictures for that company, and he did so for some years, the licensing of the pictures being negotiated by R. E. Griffith and Horace Falls and for a period by H. J. Griffith. There was no thought at that time or at any other time that by licensing pictures all at the same time for the Griffith Amusement Company and Consolidated and R. E. Griffith Theaters, and then later Wes-Tex, there was no thought of any coercion or intimidation of any distributor, and
248 there was none. These distributors were all national organizations. While the amount of rentals which were paid on these licensing contracts by the Griffith circuit were substantial amounts, nevertheless, so far as the total amount of rentals received by any or either of these distributors in their national licensing of pictures, it was just a small amount so there was no thought, there was no purpose or intent of using the so-called buying power or in combining the licensing of these pictures in order to coerce or intimidate, or as counsel has said in his trial brief, boycotting, and there was none. The joining of these companies was a matter of convenience. First let me say, up until recent years there had been no difference in the way the Griffith Amusement Company and Consolidated Theaters, R. E. Griffith Theaters and Wes-Tex licensed in 1937-38 from the way Griffith Brothers licensed their pictures when they had a circuit of two towns or when they had a circuit of 25 towns or a circuit of 15 towns and when Griffith Amusement Company had a circuit of 22 towns and R. E. Griffith had a circuit of say 20 towns. No difference whatsoever. It was the same way of handling and no more coercion, no more power by reason of the number of theaters they had to force terms, force conditions, force schedules of competitors or anything of that kind. Counsel has referred to the fact that they combined and made
249 so-called master contracts. Now, up until about 1931-32 there were none of these so-called master contracts made. Separate contracts were written for each of the

towns but they were negotiated all at the same time. In other words, if you are dealing with Paramount and trying to license pictures for 15 towns you are certainly not going to consume the time in making an absolute separate deal in regard to each one of them. I mean by that, set up a separate date and talk to Shawnee and another date and talk to Norman. You are going to go ahead with the entire deal bargaining in regard to the whole thing as one proposition, and initially they made just several contracts, beginning about 1931-32 with one or two of the distributors. When they made this deal they simply wrote a letter and said "Here is the substance of the agreement which we have entered into after negotiating in regard to all these towns", and they made a memorandum. That is all, these so-called master agreements are. They are memoranda of the agreements which had been negotiated with the understanding that as the branch manager had time he would write out a separate contract for each one of these situations and they would become the contract gotten under the memorandum. Other companies adopted that policy later. Probably Griffith thought it was a good idea. However it came about that was the way it was handled. Some of the companies later instead of writing their separate contracts first wrote a little memorandum contract, and then they wrote a contract in more detail but relating it to all the various towns. There is no difference in the way those contracts were made than a separate contract made for each individual town. The bargaining was done in the same way, but it is just a situation such as if you and I were representing some oil company in regard to the drilling of a well, we would sit down with our clients and decide on the essential terms of the contract, and then we would dictate a memo in connection with it, and then afterwards we would draw up a more formal contract. Counsel has referred to the fact that these contracts do not provide for the theaters where the pictures are to be played, the minimum admissions and things of that kind. I think you will find that the contracts either cover the essentials or provide that a standard form of contract be hereto attached, which becomes a part of it or that individual and separate contracts were later to be entered into, and they were, so far as the allocation of rentals was concerned.

I think the testimony will show in most instances the distributor negotiated on the basis of amounts for certain towns. Griffith may have had a different amount in mind. When they got through the distributor doubled up the

amount it was willing to deal for. Griffith did not agree.

The double amount was placed in there with the
251 understanding that the Griffith Amusement Company then might make the allocations of those rentals to the particular towns, subject to the approval of the particular distributor, and those allocations were made for each and every individual town, and either allocation sheets were made later, or in some instances there were so-called work sheets or deal sheets which show the details of the arrangements which were made. So far as those allocations are concerned, that certainly cannot constitute any violation of the law. It cannot result in any injustice to anyone. Griffith, of course, after the agreement had been made with the distributor preferred to make those allocations because a distributor frequently would have a very different idea about what the rental in the particular situation should be than Griffith would have. Griffith's idea would depend upon the amount that had been grossed in the individual situations for the particular period and prospects for the coming season. Things might influence it which the distributor would care nothing about whatever, and so the exhibitor, simply in the matter of the allocations for its own use and benefit for the payment of these pictures would make these allocations to the various towns and would pay for the product on that basis. So far as the minimum admission price is concerned, my understanding is that in this territory, regardless of what con-
252 ditions may be in the east, in this territory in the towns in which there is competition and towns in which there is no competition in the Griffith circuit, there is no distinction in the way they arrive at the admission prices which are to be charged. Their admission prices are low. By all standards they are low. They have not been placed low in order that they might eliminate competition. They have been placed low for the reason that these defendants have always believed that they should keep the price of admission in the towns in which they operate as low as they could with the thought of trying to give the greatest number of members of the public the opportunity to witness and to see these motion pictures, but I think in this particular territory that the distributors have never been interested, certainly until recent years. In most of these small situations, in prescribing the amount which should be charged by an individual exhibitor, most of the distributors have understood that they would not permit the exhibition of their pictures, whether it was by Griffith or by anybody else, for a less admission price than 10 cents for children

and 15 cents for adults, but with that limitation and except in cases where their product was to be licensed on the basis of a payment of a percentage of the admission price, they have not been interested in fixing the maximum amount or
the amount which was to be charged just so it ex-
253 ceeded the 15 cent admission price. Further, Griffith
has never made any contract with any distributor or had any understanding with any distributor, with any opposition, that it should charge any particular price. The distributor may have made a mistake in judgment as to what price it would fix for some exhibitor to charge the Griffith Amusement Company or one of these defendants, but it was not by reason of any threat to coerce, or intimidation of any kind or character on the part of these defendants or any of them, but it was the act of the distributors pursuant to its well recognized right to fix the terms and conditions on which it would license its product. Reference has been made here to the fact that these defendants operate theaters in many instances in which they own 100 per cent, and in other instances they operate theaters for interests in theaters in which there is a joint ownership with others and where others operate the theaters. It is true that there are towns which will be involved in this case in which the defendants own 100 per cent of the theaters which they are operating and the theaters are operated by the particular defendant which owns them. There are now and have been since the very beginning of the operation of Griffith Brothers, even prior to the Griffith Amusement Company, towns in which they operate
jointly with some other person. For instance, one
254 of its early ventures was at Fairfax, Oklahoma,
where Griffith Brothers own the Tall Chief Theater, I believe it is, with a man by the name of Moore, away back in the early days before the Griffith Amusement Company. There was a case where in some small town, I forget the name of it, Griffith Brothers owned a theater jointly with Adam Hornbeck, Hornbeck, I believe, and Griffith Brothers, and Hornbeck sold his interest in the theater and Hornbeck went to Shawnee, and decided Shawnee was a good town to move to and induced Griffith Brothers to go in with him in the operation of a theater. That was back in 1926, and Adam Hornbeck is still operating with Griffith Amusement Company jointly in the town of Shawnee. We might go on down the line. There are a number of those situations where arrangements have been made on a basis of that kind, not where they have coerced any man who is operating a theater to permit them to have

a joint interest, but where the party who went in with them either desired to go in and requested to join them or where some man operating in the same town decided he would like to be made a so-called partner in the operation and they went into the operation and have continued to operate throughout the years. One of the outstanding features of this case, I think, will be the fact that all of these partnerships with these various defendants, that these partners have been satisfied and have gone
255 ahead managing these theaters, and as local managers they are part of the community in which they live. They have been a party in the management of the Griffith Amusement Company and there has been no monopolistic practice or coercion or intimidation. It is just simply a proposition of a concern which has vision and foresight, which has the advantage of its qualified men it can draw on to go and license and book films and to administer the various operations and various phases of the operations where they have gone in with individuals in the joint operation of this theater.

(Hereupon Court adjourned until 2:00 o'clock p. m. this day.)

256 AFTERNOON SESSION

May 7, 1945, 2:00 o'clock p. m.

PROCEEDINGS

Mr. COCHRAN. Shall I proceed, your Honor?

The COURT. Yes.

Mr. COCHRAN. There is another matter that I failed to mention in regard to the allegations relative to the licensing of product by these defendants. I understood Mr. Wright to say that but for the season 1938-39, the pictures were licensed by all these defendants jointly from each of the distributors. I may have misunderstood him, but if that was his statement, it is erroneous, because beginning with the season 1938–39 the R. E. Griffith Theaters and Wes-Tex Theaters licensed their product by separate negotiations, and separate contracts with the various distributors, and Griffith Amusement Company and Consolidated Theaters licensed their product by a separate contract with the various distributors, and negotiations were separately had. That arrangement was started prior to the time that this suit was instituted, in April 1939, and had no connection whatever with any suit or threatened
257 suit. L. C. Griffith and R. E. Griffith simply could not agree on the plan for licensing the pictures, principally because R. E. Griffith liked to go to New

York City and carry on his negotiations with the various distributors there, and L. C. Griffith and his associates in the Griffith Amusement Company and Consolidated Theaters felt that it would be less expensive and more satisfactory all the way around if they would carry on their negotiations here in Oklahoma City, and that the managers, the general sales managers, or the district sales managers could come from New York down here and negotiate with them instead of them going to New York where there was a lot of distractions and so forth which might take their minds and their time off of the negotiations for the product. So, beginning with the '38-'39 season there was a separation of the licensing of the product. Which is another evidence of the fact that these parties did not consider that there was the so-called buying power advantage in a large number of theaters, from the standpoint of obtaining better terms, but merely a matter of convenience and economy in the licensing of the product that was being licensed by a group who were financially interested in the same group of theaters.

Another important matter to bear in mind is the fact that in the early part of 1939 and prior to the time this suit was threatened and was filed, and prior to the time that
258 there was any knowledge of any such suit would be filed, Mr. H. J. Griffith, the youngest of these brothers, who had been for a time the general manager of Griffith Amusement Company, decided that he was going to leave the State of Oklahoma and leave, we might say, the dominating influence of his elder brother, L. C. Griffith, and he was going out for himself. So he left Oklahoma City and removed to Kansas City, and established his home there and acquired him a few theaters, and he has owned and has been operating those theaters since that time. And subsequent to that time he has not participated in any way in the management or operation of the Griffith Amusement Company, or the Consolidated. And about that time, or shortly thereafter, he disposed of all his stock interest in both the Consolidated and the Griffith Amusement Company, not because of anything connected with this suit, but because he wanted to get some money to go out and get some theaters of his own. I believe the evidence will show that the only interest which he has in any of these theaters, of Griffith Amusement Company or Consolidated, and I forget which company it is he is interested in, is that he is trustee for his children in a small stock ownership which is carried as an investment in one or the other of these companies. Since that time he has not been a director or officer of either of those companies.

Also, R. E. Griffith, after he left Oklahoma City,
259 did not attend, while he was a director and I believe, assistant secretary or something of that kind, he attended none of the meetings and did not participate in the management of the Griffith Amusement Company or the Consolidated.

In November 1943 R. E. Griffith died, and his estate does not have any representation on the board of directors and, in fact, since the time of his removal he has not controlled or managed in any way the Griffith Amusement Company or Consolidated, the only participation in its affairs being, as I have stated before, that for the period from about 1931 until 1936 he did participate, along with Mr. Falls, in the licensing of product where these companies negotiated and licensed at the same time.

Reference has been made to certain franchises. The Government, I think, refers to a franchise as being a licensing agreement which covers a period of more than one year. It might be for two years or three years or five years, and there have been franchises for longer periods than that.

In the Crescent case, which has been mentioned, there were a number of those franchises. Practically all of their contracts, I mean their licensing agreements, with the various distributors during, at least, a portion of the time, and for most of the time, was in the form of long term
260 licensing agreements, I think most of them for five-year periods.

Counsel for the Government has not stated whether he considers the franchise to be illegal in and of itself. I think he makes no such contention. At any rate, we contend there is nothing illegal about the making of a licensing agreement by an individual company, licensing its product for a period of five years, and that separate distinct, from an intent and purpose to monopolize, an illegal monopolization, franchise might be taken with all of the distributors with which a distributor might be dealing, or it will be a question of intent.

In this case, however, we have no franchise situation that, in my judgment, calls for any serious consideration. There are very few franchises in any of the Griffith situations. There was a period in the history of the motion picture industry when franchises were the order of the day. The distributors seemed to want to make contracts tying up an exhibitor for a number of years to take their product. That probably was a part of the development that I have outlined heretofore, where each was attempting to be sure he was going to have certain outlets for his product. At any rate, they negotiated franchises with circuits and with independent exhibitors.

The evidence in this case will disclose there was no
261 distinction between individual exhibitors and circuits so far as negotiations and making of contracts, franchise contracts, were concerned. It was just a thing that the distributors were doing if they could agree on satisfactory terms with the exhibitor with whom they were dealing and with whom they felt they were safe in making long time contracts. But the defendants in this case were not very favorably inclined to franchise arrangements and made very few of them. Their first experience in entering into a franchise was one they made with Metro-Goldwyn-Mayer in 1930. That was the first franchise they made. That was before the R. E. Griffith Theaters were organized, and it was at a time when it was a comparatively small circuit of theaters. It was at a time when the Universal Theatrical Enterprises had an interest in the Griffith Amusement Company, although they were having very serious differences at that time for reasons heretofore stated. But the Universal Theatrical Enterprises had nothing to do with the making of the franchise; that was a negotiation by and between R. E. Griffith and L. C. Griffith, for the Griffith Amusement Company and by representatives of Metro-Goldwyn-Mayer for the distributor. They entered into a memoranda for a franchise, a five-year franchise, and the testimony, I think, will show that franchise was never placed in any formal shape, because they
262 were not able to agree to some of the details of that franchise, so that in practical operation what happened was that for the first year the product was served under that memorandum agreement and for each succeeding year a separate memoranda was entered into, which amounted practically to the making of a separate contract. That was the Metro franchise, and that was the only five-year contract. Mr. Wright was in error in saying that it extended from the seasons of '31-'32 for five years. The first year was the 1930-31, there were five seasons, four subsequent to the 1930-31 season.

The next franchise that was entered into was one that was made—now, at the time of the Metro franchise, that it was entered into, Griffith Amusement Company could have made franchises with each and every one of the distributors, if it had desired to do so, if satisfactory terms could have been agreed upon, but it didn't do it, and at the time this contract was made, this franchise was made, it had no other franchise, and it was not until the season of 1934-35 that it made its next franchise, which was a three-year franchise, with Paramount. In other words, it covered the

product of the 1934-35 season and for the 1935-36 season, and the 1936-37 season. At the expiration of that franchise it was not renewed, and the usual annual licensing contracts were made thereafter.

The record will show that for the season 1933-34 Paramount did not license its product to Griffith Amuse-
263 ment Company or Consolidated in any of their situations. That was not due to the fact that Griffith Amusement Company or Consolidated were insisting that it license its product in all its situations, and if it didn't do so in all of them, they would not take it in any of them. In other words, there was nothing resembling a boycott of Paramount product at all, but it was this situation: Paramount at that time considered themselves to be the big boys in the distributing end, and probably incorrectly, it thought it had the finest pictures, and such a large number of pictures with stars with such magnitude, that no exhibitor could afford to do business without their pictures, if it could license them. Griffith Amusement Company and Consolidated before that time had preferred to license their pictures largely on what we call a flat rental basis as distinguished from a percentage arrangement, and that was particularly true in regard to Paramount. Paramount decided it was not going to license its product to Griffith Amusement Company on a flat basis for the season 1933-34, and in addition to that, it decided that it was going to have its best pictures played on what is referred to as preferred playing time, that is, Saturday, and Sunday and Monday, and Saturday and Sunday primarily, preferred playing time and good holiday days, that it was going to have its pictures played then; it didn't make any
264 difference about Metro or Warner pictures that Griffith might want the public to see; it was interested in seeing that its pictures should be played during those times. And it had a right to do that, it was perfectly within its rights, but it was the difference between the parties in their bargaining positions, Paramount insisting on certain things and that it would not deal on any other basis and Griffith saying, we cannot do that, in fairness to the public, we cannot do that, so they could not get together, and for that reason their product was not licensed in 1933-34, but for the season 1934-35 they were able to get together and made this three-year franchise, and Griffith Amusement Company had a franchise with Metro and with Paramount.

The next franchise that was acquired by Griffith Amusement Company and Consolidated was a franchise with RKO, that was entered into in 1935. In March 1935, for

the 1935-36, 1936-37, and 1937-38 product, three years there. And at the end of that franchise it was not renewed, so that when this suit was filed, the three franchises I have mentioned had expired and they had not been renewed, and I believe the record will show today that so far as the franchises with any distributor, I mean by that, contracts for more than one year, it has no such franchises.

Again I want to emphasize the fact that during that period no one considered the making of franchises il-
265 legal. It was not for the purpose of excluding any opposition or anything of the kind; it was simply a matter of making contracts that were considered perfectly legal, and I think they were legal.

In the consent decree the five major distributors, consented that so far as the franchises were concerned, they would not enter into any future franchises, but it didn't attempt to disturb the franchises made prior to April 1939.

Counsel has made some reference to clearance provisions in the contract. I had thought that the clearance provisions would probably be considered moot in this case, so far as the five distributors are concerned who were parties to the consent decree, for the reason that the consent decree provides that in the event the distributor shall impose on any so-called independent theater operator and exhibitor clearance provisions in favor of some other theater which he considers unfair, that he can take that before the arbitration board and they can determine what is a reasonable clearance. In other words, the government has never contended that as a part of the copyright privilege the distributor can impose clearances between these runs, and the distributors have uniformly done so. On the other hand the Government in the consent decree took the position that because of the capacity in
266 which the defendants in that case were operating as producers, distributors and exhibitors, they should have an arrangement whereby an arbitration board should have the privilege of determining what a reasonable clearance provision should be in any particular situation. That is a question of fact, and so, they consented to it; they said, yes, that is all we want, is a reasonable clearance provision protecting the first run or any prior run against encroachment such as has been mentioned by your Honor this morning. In other words, it is recognized that the subsequent run should not be permitted to be exhibited and displayed in such a manner as to destroy that thing which the prior run has licensed and paid for, so the conditions are imposed.

Back a number of years ago the distributors, about the time that the standard contract that I mentioned this morning was put into effect, the distributors started a movement, attempting to have meetings with the exhibitors, in the various zones in which they operated, to see if some kind of mutual agreement could be reached to what would constitute in that particular area, a reasonable clearance, and there were some agreements of that kind worked out in various parts of the country. In one case that went to the courts and it was held that the parties, while they had a right to fix the thing separately in the exercise of their independent judgment or as an agreement between
267 it and the person acquiring the right, under the agreement, that the various distributors should not and could not get together and agree on what clearance would be imposed in a certain situation. But the facts are that in the Oklahoma City area there were never any such agreement entered into by the distributors or any of the exhibitors, and the facts will further disclose that so far as the Griffith interests were concerned, when the question came up they opposed the matter of any such arrangement at all, and they wanted to leave the matter in the hands of the distributors to determine what should be a reasonable clearance, and where necessary, by agreement with the party who acquired an interest under a licensing agreement.

268 So that there was no agreement among distributors in this area so far as I have been able to ascertain, and I believe there was none. In the Crescent case and Schine case and perhaps in the Paramount case in New York the Government contended all the amount of clearance that was granted pursuant to agreement between a distributor and individual exhibitor, the defendants in those cases when they came to looking into the situation so far as these defendants are concerned they found that most of the contracts had absolutely no provision in regard to clearance at all, so now, as I understand their position, they say that because the defendants did not have a clearance agreement written into their contract, that is evidence of the fact they were violating the law and so forth. I haven't been able to follow it. The fact is that in the Oklahoma territory, without regard to whether it was a man operating one little theater in one small crossroads town in Oklahoma, or an independent circuit such as Griffith, or whatever the situation was, that they are just back in the days prior to the consent decree and that there are no clearance agreements. There were isolated cases and a few contracts where you found most of these,

but very few, indeed, and it was just the normal course of business.

In Oklahoma City and Tulsa where they had a number of runs and probably in some of the territory, one or
269 two of the larger towns, there were some clearance provisions, so there will be nothing in this record to show any violation of the Sherman Anti-Trust Act in regard to clearance. We think the evidence will also show that so far as the Oklahoma situation is concerned, that the clearance was already taken care of in the matter of the number of prints that were available for use. Counsel for the plaintiff has explained to you that a certain number of positive prints are made in California, or in New York, and are shipped to these exchanges, and a varying number of positive prints are sent by the several distributors, and as to each distributor the number will vary, depending on the picture which is to be licensed. The distributor has absolute control over that. The number of prints that are sent depends not only on any attempt to restrict or restrain trade in any way, but is a matter of economy because these prints are expensive to make. At any rate, they control those prints.

Now, say that Paramount will furnish, or coming back to that picture "Gone With The Wind", say that the Oklahoma City exchange, because of the importance of the picture, was furnished with five films. Those five films must make the rounds of every theater in this state in which your picture is licensed and that particular picture would be licensed in practically all of them;
270 where the town had a first run theater it would be licensed first run. Then after the first runs had been served it would come back for a number of more important towns and run second run and then come to others and run third run, and so forth, until at Oklahoma City it would make about 15 runs in all. Manifestly, those five prints cannot be available for every theater on the same day. It just cannot be done. Therefore the distributor in its license agreement says that the film will be booked into the various theaters after the print is available, provided there is a print for use at that time. That is a matter in the control of the distributor, so we have the distributor controlling those availability dates and there will be nothing in this case to show that there was any unfairness in the method in which the distributors exercised that privilege, and they try to do it in a capable manner, and I think there will be no evidence to show it was not done, but whether or not that is the case, it was handled, so far as the defendants in this case are concerned, by the distribu-

tors and without any compulsion and without any agreement on their part with the distributors as to what should be done with the opposition, but by reason of the lack of a sufficient number of prints it usually happens that for any particular distributor a print would not be available in any situation for second run until about 90 days,
271 from 60 to 90 days after it had been exhibited first run. Well, that would ordinarily be considered sufficient clearance between the two runs. They couldn't get it earlier if they wanted to, and so there was no agreement in regard to it, therefore no violation of the law in that regard.

Some reference has been made to closed towns. That is the expression that is used, "closed towns." That term, which is true in regard to many of these expressions which the Government used in this case and will use, and I may say use to a considerable extent in the industry, is a misleading statement. I believe counsel said that it did refer to a situation in which there was no competition, and in that sense I am willing to accept the use of the term, but I am not willing to agree that any of the towns in the Griffith circuit were closed towns in the sense that there was any exclusion of anybody from that area. There are a number of these towns in which there never has been but one theater. There are towns in which the Griffth Amusement Company has been operating since the early days of the Griffith Brothers in which there has been no opposition whatever, and some of them in which there is but one theater. Again I want to say, that wherever the situation presented an opportunity to increase the number of theaters in a town in order that there might be a broader exhibition of pictures at prices which would be
272 within the range of everybody, these defendants provided those facilities. For instance, an ideal setup, say you have a situation in which you have no competition, an ideal setup in the town if it is of sufficient size to warrant it, is for the exhibitor to have a nice, deluxe theater with all the modern equipment of every kind and convenience for the benefit of the public, and in order that the pictures may be shown to the best advantage and where there might be exhibited the very best picture produced by the exhibitors in making motion pictures. That would be called an A house. Then there would be another theater representing not such a large investment, but notwithstanding a fine theater building and place of exhibition as compared with the olden days where they would have exhibited the pictures first run of a type which is known as the B type

pictures. That is, a picture which is not of such value and magnitude as the first run, as the A pictures which would be played in the A theaters.

Then coming along to later years, after a lot of experimentation there would be places where the distributors would license the product for the second run exhibition and where the product could be handled there in such a way as not to unusually check the operation of the first run house. There would be a second run place where these better pictures might be brought back a considerable time
273 after exhibition in the first run house and there exhibited at a lower price for the benefit of those who felt they were not able to see them at the higher prices. That would be an ideal situation, regardless of whether there was competition or no competition, and the Griffith Amusement Company in all of its situations has always attempted to broaden its base of activity wherever it could legitimately do so, in order that the public might have the advantage of this broader operation. So there have been a number of theaters built and acquired. We take the position that there is nothing in the law that says there is any limit on the number of towns in which the Griffith Amusement Company can operate theaters. There is nothing in the law that says there is any limit to the number of theaters that the Griffith Amusement Company may operate in a given situation. It is the method of operation that would be in conflict with the anti-trust laws and not the fact that it acquired theaters in a number of towns that would be controlling. There is nothing in the Sherman Act to prevent them acquiring a number of theaters in several of their situations and nothing that would require them to place an additional theater in any town where they felt conditions did not warrant it. Also we contend that these defendants have a perfect right to license the product they are able to license, so far as is necessary to meet the require-
274 ments of these various theaters. There again we state this in order to show that the policy of the operation of these theaters has nothing whatever to do and has not been related to the fact they had competition or no competition. The policy has been geared to the economic and efficient operation of the theaters, giving the type of service that the public seems to require and at prices they require.

In that connection, there has been very little of so-called double billing of product in the Griffith Amusement Company and Consolidated Theaters. Now, mind you, this double billing has been another development that has come along with the years. Some of us wonder why it is that

any person would want to go to a moving picture theater and sit through two six reels or more of film along with the shorts and so forth, which exists, but motion picture exhibitors in various parts of the country, mainly in the east and on the west coast in their experiments have found there are members of the public, the theater going public, who will give up their amusement dollar more readily to see a double bill than they will to see a single bill, so many of them have gone to double bills.

Where there has been a charge of attempting to monopolize product there has frequently been a charge that the exhibitor whom a charge of that kind is made against, would attempt to double bill for the purpose of
275 wasting product as they say. In other words, licensing more product than they needed to use on their normal program and then double bill in order to waste that product. There will be no evidence of that kind in this case. The policy of these theaters has been based entirely on efficient and economy of operation with the purpose of drawing the largest box office they possibly could in the various theaters.

Again referring to these closed towns, as I have said, there are towns, in which there is no competition and where there has never been any competition and there was no competition when Griffith put in the first theater that was ever put in the town. There has never been any competition since that time and there has been no exclusion. There are towns where there are concerns opposing the defendants that decide to sell out for various reasons and where Griffith or other defendants felt they could use that particular theater and in their normal expansion and growth they acquired it. They acquired it properly. They have a perfect right to make acquisitions of that kind so there will be no proof, as I take it, by any credible evidence that the Griffith Amusement Company or the Consolidated Theaters have on any occasion excluded anybody from coming into the town so as to come within the illegal monopolization defined by Section 2 of the anti-trust laws. In other words, that monopoly there
276 does not mean that you are the only one who is operating a theater but the authorities all say that is an exclusion of persons from coming in by a means in unlawful restraint of trade, but there is nothing of that kind in this case.

The statement was made that the Griffith circuit in the licensing of its pictures was able to license a product in every situation in which it operated. Again, attempting

to emphasize the fact that by reason of the economic position in which it found itself it attempts to boycott any distributor that would not license it its product in every situation in which it operated. Now that will not be the evidence. We will have situations and in that particular it is far different from the evidence in the Crescent case and far different from the evidence in the Schine case. The evidence will disclose in this case that the theaters—first that these defendants are people with whom many of these distributors have been doing business for a period of nearly 30 years. There is that same kind of relationship between these defendants, and some of these distributors up there would be between the groceryman that has been running the corner grocery for a period of 30 years, and he has patrons and customers who have been doing business with him from the day he first opened his doors, and they each rely on the integrity and good business operations of the other and they continue to do business with each
277 other and there is nothing wrong about that, so these defendants in this case occupy that position in regard to most of these distributors. They are just people who have grown up with this industry. They have established themselves by their industry, by their integrity as being people who are good customers and who they wanted to do business with. Now that cannot be said for all of the so-called independent opposition. "Independent" as used here, I take it, is being used in the sense of the meaning of that term in the industry. That is, a person who operates one theater or theaters in one town as opposed to operating theaters in more than one town. It cannot be said of all of the independent operators that they are people that the distributors care to do business with. As has been suggested already in this case, the distributor has a right to select his customers. Acting independently it can absolutely refuse to do business with any exhibitor that it desires not to do business with, and its reason can be a good sound reason or not. It doesn't make any difference. On the whole they have preferred to do business with the Griffith Amusement Company, or because, as I say, they have a history behind them, a record behind them of good showmanship, of good theaters, of integrity, good business management and things of that kind that have naturally caused them to be selected as customers if the dis-
278 tributor could once get over that question of how much they were going to require them to pay for the product and how they were going to require them to pay for it, and the facts further show that so far as Griffith is concerned, it will appear that in every situation, in the

towns in which these defendants are operating, that they are operating the best theaters in the town with the exception of possibly one town in the Griffith Amusement Company and Consolidated Theaters district, and the testimony will further show that in that town there are some of the distributors who for years have preferred to do business with the opposition and others who prefer to do business with Griffith, and they have come on down to this same date, some of them preferring the one and some of them preferring the other. In several of the other towns where individual distributors were doing business with some customer other than Griffith they have continued down to this present time to do business with that opposition. In other words, they continued to do business with the opposition until that opposition decided to go out of business and sold their theater to Griffith, and so it is not a fact that the distributors have licensed Griffith in all of their situations in all of these years, and there isn't anything to the proposition that there is any boycott or any coercion in regard to the matter.

279 The statement was made that pictures were licensed to Griffith without an opportunity being given to the opposition to make a contract to license these pictures. There again the exhibitor has nothing to do with it. These defendants haven't anything to do with that. That is a matter that is within the discretion of the individual distributors. Through the years they have determined that it is not good business on their part to go to one exhibitor and say, "What will you give me for this picture?" And then go across the street and say, "What will you give me for it?" and then back again and so forth. They have found pictures cannot be successfully licensed on that basis from their standpoint. They don't want to do it and no court has ever required it ever be done, and I don't think any court will ever require they license their pictures on that basis, but at the beginning of the season that distributor determines the exhibitor to whom it desires to license its product, and it tries to make a deal with that concern before it approaches the other exhibitor at all, and if it can make a contract it does so, and if it cannot, it doesn't leave the thing in the air. It goes on over to the other man and tries to make a contract with him, so there is nothing different in the way the Griffith defendants are treated in this particular than

280 the manner in which the product is licensed to exhibitors of every kind and character operating throughout the United States.

Then there was a statement made that there is a clause in these various licensing agreements with the Griffith Amusement Company that constitutes an illegal restraint of trade and some violation of the Sherman Anti-Trust Law, that provision which in many of the contracts provides that these defendants are not required to play the pictures in the order of their release. Now, I imagine your Honor has grasped the meaning of that, but I will briefly explain it. As I told you before, under the old practice these pictures were licensed at the beginning of the season before they were produced. Then they would be produced along during the season. Some of the pictures would not even be produced during the one-year period. They would be produced throughout the season at no regular intervals. They might promise you sixty pictures and release forty. They were not obligated to release the full number of pictures that were licensed. They didn't specify how many they would license in a week and when they would make them available. They were doing the best they could, but that was just one of the problems the exhibitor was up against in these contracts.

First, I will say that some of the contracts of the distributors carried clauses during a portion of this
281 period, but printed contracts, in which it was provided that the exhibitor agreed to exhibit these pictures in the order of their general release as available, subject to availability. They might not be made available. In other words, they might be released in a certain order and then when the exhibitor would go in to book that picture, said he wanted that picture in his theater on a certain date, the distributor will say, "Sorry, but we only have three prints of that picture and it is already booked for the period of a month and we can't give you a date until a certain date," so it just could not be booked in the order of its release, and there was the exhibitor agreeing he was going to book it in the order of release, the distributor having a complete out by saying that the picture was not available. Now, as a matter of practice, it will be shown that none of these distributors ever invoked that clause against any exhibitor who had an agreement of that kind in his contract, ever invoke that rule if that man was playing his pictures in a bona fide manner. In other words, if he was not delinquent, or he was going ahead and trying to do the best he could to carry out the contract, they never invoked the rule that it had to be played in the order of release, if the picture was available, but the man who licensed pic-

tures beginning with the season and along about
282 March 1st it appeared where he had licensed sixty pictures and there had been forty of them released up to that date and he had played only two of those pictures, maybe had not dated any of them and was not fulfilling his contract at all, then it was the habit to say: "Here is a good picture; here is Gone With the Wind, that is a good picture. You surely want to book that and we will not let you book that picture in your theater until you have booked these pictures on which you are delinquent." That was ordinarily the way they carried out their contract in regard to booking in the order of release. In addition to that, the contract itself carried a clause which gave them the privilege of not booking in the order of release. Every one of those contracts contains exceptions which are going to be very material in this case. In these contracts that the Griffith Amusement Company made after about 1930, at a time when they were a comparatively small circuit, there was coercion there at all, but just as a matter of horse trading, and as a matter of practical operation of their theaters, and tied in with another agreement—mind you, I said the distributors liked to license their pictures at the beginning of the season in order that they might finance their production over the season, borrow money. It took a lot of money to carry on these operations. To the exhibitor who was not entirely
283 financially responsible these pictures would usually be shipped out C. O. D. and sent out for exhibition and the money would come in in driblets throughout the year. They were very much interested in getting as much of this money in from any exhibitor at an early date as possible, and so with independent exhibitors and with affiliated circuits and with the independent circuits, anybody that was responsible, that they could make a deal with, they provided for those payments in weekly installments, a weekly payment plan for the money, and so they proposed this proposition to these defendants, "That we would like to have you pay for these pictures on a weekly payment plan so as a part of that same agreement, it was written into these contracts that the exhibitor would pay for these pictures, so much at various periods, but provided that you need not play these pictures in the order of their release for the reason that that provision for them to pay for these pictures at intervals, which required them to pay for pictures as fast as they had been released, there was no incentive for them not playing these pictures as speedily as possible, and of the desire of the distributor for results, the playing in order of release clause had been

fully complied with." In addition to that, the Griffith Amusement Company had, it is provided in another part of the contract provided they would make these pic-
284 tures available, one-third of them I believe, within a certain number of days after national release day, another one-third within a certain number of days and another one-third within a certain number of days, in order that they might have a little protection on this question of when pictures would be made available for them. In practical operation, the distributors handle their product with the Griffith circuit just as they did with anybody else and the pictures were played off promptly and played off satisfactorily and there was no discrimination and no violation of the law in connection with the clause in playing the pictures out of order of release.

The statement is also made by counsel that one of these distributors, United Artists, distributed pictures which it did not produce, and that is true. In other words, United Artists produced no pictures. It is not true that all of the pictures distributed by the other distributors are pictures which that particular distributor produced. In other words, throughout the years you will find that each one of these distributors has distributed pictures made by others, but for which it is acting as an agent in licensing. In other words, most of them licensed pictures which they produced themselves and pictures which others produced, and in addition to that there are many pictures produced and licensed through other channels entirely and the channels through which various pictures are licensed
285 from year to year, that is, pictures produced by others than the so-called eight majors which might be licensed this year by Universal and next year by PRC and another year by Republic and so forth. Now I think it is well to close with this observation. There is much more to the matter of licensing a picture than the booking of pictures into the theaters than the ordinary person realizes. I think even those of us who have been connected with these cases for a considerable time do not fully appreciate the work in detail involved in the licensing of pictures even for one single theater. Then when you come to the matter of booking pictures, that is, arranging the play dates, the date on which a picture is to play and the particular play date to occupy what program and grouping other amusements along with that particular program, making up the program, that is indeed a big job when you come booking into a particular theater the product from some eight different distributors over the period of a season without having information as to just when those

pictures can be available for you until you go to the distributor and ascertain when the picture will be available. That was a big job. The licensing of pictures was a big job under the old method of licensing by the five distributors who were parties to the consent decree and it is a bigger job now. Under that consent decree it is
286 provided no picture can be licensed by the parties to that consent decree—the distributor cannot license any of its pictures until they have been produced and trade shown. In other words, Paramount now, before it can license a picture to anybody in this exchange area must produce that picture. The positive print must be here in Oklahoma City. They must pick a time to exhibit that picture down there in that exchange or some other place where it is available for the exhibitor or all of the exhibitors of this trade area, this exchange area, to come in there and see that picture and determine whether that is a picture they want to license for their theater. In consenting to that decree it broke down to some extent the manner of block booking. It was broken down to this extent: On the operation prior to the consent decree the distributor would license all of its product for the season at one time. Now the consent decree provides that Paramount, for instance, cannot license any one group more than five pictures. That is, it will produce five pictures and place them in one group, and offers those five pictures to an exhibitor to license. Now manifestly, while those terms of the consent decree were presumably imposed for the benefit of the exhibitor, all exhibitors, and while it certainly has its advantages, it is certainly an advantage I take it for the experienced picture show man to be able to see the picture before he
287 licenses that picture. Nevertheless, there is a great deal of additional work to the licensing of those pictures where you are going to have to go down to that exchange and night after night view those pictures, and you can see what a tremendous job that is, therefore, as a matter of convenience these circuits utilize the services of a man like Horace Falls, who is the buyer for the Griffith Amusement Company and Consolidated. They use his services as a man who is experienced over the years and who lives here and can conveniently go down there and license those pictures instead of having the manager from Shawnee or the manager from Guthrie and all over the state come in here and do that particular work. They can stay at home and attend to the physical operation of those theaters and do a good job there. The Griffith Amusement Company through Falls can attend to the job of

licensing those pictures and booking those pictures into the theater. In addition to that, the percentage of gross receipts that the Griffith Amusement Company receives for those services in licensing those pictures for theaters are administrative services such as keeping the books and records and attending to the wage and hour law requirements and a multiplicity of reports which are made to the various bureaus that all business men have to make and which an individual theater owner couldn't attend to.

288 The COURT. Do I understand you to say the consent decree provides it is necessary to show a picture to a prospective purchaser before it is licensed to him?

Mr. COCHRAN. He doesn't have to see it but it must be trade shown so far as five distributors are concerned. Columbia, United Artists and Universal do not have to trade show their pictures.

The COURT. How would you license a picture before it is produced?

Mr. WRIGHT. I think there is one correction that should be made. There was a trial period of one year when that method of trade showing in blocks of five was pursued. The method has been continued by them since the '41-42 season, since they find they can make more money licensing pictures that way. It is now a matter of choice.

Mr. COCHRAN. I will correct that to this extent: Under that consent decree, Universal, United Artists and Columbia were not parties, and the requirement of the Government in regard to the method of licensing and trade showing, was limited to a period and to be continued if in the meantime they went ahead and tried their lawsuit and forced those three companies to do the same thing. They did not proceed with that lawsuit, therefore the compulsory feature of that thing has expired, but those distributors have gone ahead. That case is still pending

289 and feeling that since the Government required it before they still insist that ought to be done, they have voluntarily gone ahead and followed that method of licensing their product, so that as to all the companies except the three I have mentioned, their pictures are not now licensed until they are produced and trade shown. I hope I have made that clear. I think maybe I confuse your Honor in describing conditions prior to the consent decree. That was the period in which they were licensed prior to production. That is why I said it was important to bear in mind the change which took place prior to the consent decree.

The COURT. The consent decree was in 1940, wasn't it?

Mr. COCHRAN. November, 1940. So far as Universal and United Artists are concerned, they have continued to license their pictures very much in the same way that they always did. In other words, they did not agree to the requirement of the Government. They said we have a right to license them in this way. That is the way we are going to continue to license them, and they have gone ahead and licensed their pictures. In the first place, they took the position that, "We are not as strong as those other companies. We are smaller. We need to license these pictures in this way to properly finance our operations
290 and we are going to do it if it is not a violation of the law," and they have continued to license their pictures before they are produced, and the contracts are made very much as they were in the past, so far as the contracts with Griffith Amusement Company and the Consolidated are concerned. These three concerns where they did have contracts with them, they are principally selective contracts under which a certain number of pictures are licensed, and there is a clause in there that provides that within a certain length of time many of the pictures they make which are not selected they are automatically cancelled and they can go ahead and license them from anybody they want to.

In this rather disjointed way I have tried to give you a history of the situation. I am sorry to have taken so much time. If there are any particular matters your Honor would like to ask me about I would be glad to have you do so.

The COURT. I think I have a very clear conception of the position of both sides. I think that while this has taken time, it has been time well spent.

291 Mr. RICE. Your Honor, the only excuse I would have to trespass further on your time would be to give you a little more of the history of the Griffith interests in Texas and New Mexico. I shall not do so, if you would rather I would not.

The COURT. You cannot trespass on the Court's time. You have to try your lawsuit.

Mr. RICE. May I say that giving a lawyer who represents these people the opportunity to talk is like a salesman with his foot in the door, there is no telling what is coming next.

I shall try not to cover these specific points which Judge Cochran has so fully discussed.

In 1930 business, of course, was not good anywhere, in any line. In fact, in that year, however, R. E. Griffith left the group with which he had been associated for years in

Oklahoma and went to New Mexico, and as a starter in the enterprise which he invisioned then, he secured by trade certain theaters in New Mexico, small in number, and located in several towns, the details I will not touch. He carried with him a friend, Fred Morley, of long acquaintance, a skilled showman, and other persons skilled in the performance of duties relating to the industry, and within a short time set up an office where he bought
292 pictures or through which he bought pictures, as we say, from the distributors from which he booked pictures into his theaters, and which office bought supplies and the like for his theaters and in general supervised the operation.

He was an ambitious man, not of money, not a greedy man, but a man who was a builder, to the last moments of his life he was a builder. In fact, he practically went off and left the theater business and built something new. That was the characteristic of him, and when he went out, so to speak, for himself, and he did go for himself, he went into a new country, New Mexico, practically a business frontier, and in his last venture he went to Nevada. One by one he gathered around him certain associates, each with a particular flare, a particular competence, to each of whom he assigned a particular job. He believed then that to serve the community in which his theater might be located, or his theaters might be located, whether one or more, he must give to the public the best service, in the sense of good seating, good lighting, good projection, good ventilation, good air cooling, and so forth, and upon the screen he must have the best pictures he could buy. So, in dealing with the public, through his theaters, renting to the theaters his seats, and that was all he had to sell, he wanted to give to every theater he owned the best service available, and that meant manpower.

292a He didn't grow so rapidly. In 1933 he acquired no theaters; in 1934 two. I have skipped a year. In 1930 he went out by himself, and in January 1932 he started business by contributing to his new corporation, the R. E. Griffith Theaters, Inc., these theaters which he had acquired, and from then on, it became the corporate entity. In 1932 he had just a few; in 1933, he acquired none; in 1934 a few. And nearly all of those theaters which he acquired immediately after '32 were built by himself. Then he made several arrangements which in the aggregate gave his group a larger appearance, at least. He bought minority interests, twenty-five per cent or less in several groups of theaters which were already in operation, under common management or associated management.

Now, as he went into each of these towns he did what Judge Cochran has so fully told you, he examined the properties to see if they were the kind of theaters he wanted to operate. We will show the Court that they ranged from adobe houses in New Mexico, ninety feet deep and very narrow, to great barns or houses that had not had anything done to them in several years; that instead of having installations in them to prevent echo and so forth, they had tin roofs, and some flat floors, and instead of having air conditioning or cooling, they didn't have adequate ventilation, and many of them had no rest rooms. They
293 were theaters of people who had let the parade pass them. They were operated as they had been operated for twenty years before; all they had to do was to put up a bed sheet, get a projection machine and let the show run night and day. They had no ideas of exploitation of the product by selling the pictures to their community; they had limited ideas, many of them. They didn't know how to book pictures. Incidentally R. E. Griffith, we will show you, never told, nor did anyone with authority, of him or of his board of directors, ever tell anybody that he was coming into his town, nor did he ever tell anybody from whom he bought or with whom he became associated that he, R. E. Griffith, could buy pictures better or cheaper than the man he was buying from. He did tell them he knew how to run theaters; he did tell them he knew how to sell his wares to the public; he did tell them he knew how to book pictures. We will show you, your Honor, that in some cases men who were operating along, from lack of experience, had the habit of booking the cheapest pictures they had on week-end engagements, because they thought "If I can buy a $12 picture and do $100 worth of business, I have made $88, and that is real money." By showing them the error of their ways, he got them to book the best pictures for the week-ends, and maybe paying $100, but making $200. He showed them how to sell their programs to the com-
294 munity a month in advance; he showed them how to sell pictures that should be shown, but wouldn't be shown, if left to the determination of the little fellow who was afraid of highbrow pictures; he showed them how to sell them. He furnished them with information on the construction of theaters and the remodeling and re-decoration of theaters. With this difficult problem of sound, his services were important; he showed them what sound to get and how to install it, and through the services furnished through his home office he helped these people get back up with the times which had gone past them. Some of these people, your Honor, are now operating in towns with one

theater, and in more than one instance, the man who is Griffith's partner in that town built the theater, and being the very first theater in that town.

There seems to be something sinister in the mind of the Government about the aggregation of a group operating units together. Shall we eliminate, shall we start eliminating units in New Mexico where there was one theater built originally by this pioneer alone, one theater in one town, and other towns, several in number, where there was one theater built by somebody else who gladly sold his interest in such theater to Griffith to get the advantage of his experience, his vitality, his vigor, and the organization
295 which he created? We will show to the Court, I think, that far from just wanting theaters which were to possess some mysterious power over the distributors, he would go to the people with whom he was negotiating and say, "I don't want the theater unless I can get you; I don't want an interest in your house, you couldn't give it to me, unless I can get you", because he knew he was dealing with problems which only manpower could solve.

It is interesting here to note that Mr. Wright, so far as I remember from his opening statement, never accused these people of buying more pictures than they could use. Am I right? Did he ever say in his opening statement that they ever bought more than reasonable programs of exhibitions? If so, I know not where he said it.

It will be interesting to see how far apart these facts which we shall develop to the Court, will show, not as I have done here hastily, the acquisition, if the Court permits, of every theater in the towns of the circuit, acquired and why they were acquired. It is interesting to see how far from the real reasons for the acquisition of these several units, one by one, is the statement by Mr. Wright that they were acquired, I suppose he said that, I know he said they were operated, with the purpose and the effect of eliminating competition, suppressing competition, injuring competition, not in the disjunctive but in the conjunc-
296 tive, with the purpose and effect of eliminating it.

My friend, John Caskey, over here is a Methodist preacher's son. I guess the Court has realized that I am a Methodist or Baptist preacher's son myself, but we remember when we used to sit listening to the old men preach that the only interesting thing was the illustrations, the stories they told. John Caskey's remark illustrates the experience of the real economic field in which we have been working for all these years and through which the Government, through the complaint in this case, seems to want to attack.

I walked into a drugstore to get a package of cigarettes. Not having followed my father's teaching, I have the habit. I stood there in a long line. As I got there the man ahead of me bought the last package and he was a monopolist, he got all there was, there wasn't any more, and he automatically excluded me from enjoyment. John puts another illustration. When Nero had the circus and the Christians were gored by the bulls, that was exclusive entertainment, he had a monopoly, not on bulls, but certainly on Christians; and one of my associates injected the remark that there was no second run for the Christians.

Now, Mr. Wright talks about exclusive contracts, and he didn't talk about them very satisfactorily, to me, at least, and perhaps not to himself, to tell the truth.

297 The Court said: Would it be all right to make a contract for the exclusive exhibition of a motion picture? Well, would it be all right to make a contract for the exclusive appearance of Heifitz or Deanna Durbin? I think so. Would it be all right to make a contract for the exclusive exhibition of one of them? If so, would it be all right for three or four or five? Just when does it get to be wrong?

It was significant to me, and I am still interested and waiting to hear what Mr. Wright meant by saying under some conditions it would be all right. What are those conditions? Is it one of the conditions that no more than fifteen theaters can do it? Why not five, why not one? Who is to determine these things except the law of competition?

Now this circuit so-called, that R. E. Griffith built up, is in two parts. We can assure you that we will show the division of the interests between the Wes-Tex Theaters Corporation and R. E. Griffith Theaters Corporation is entirely proper, done on sound business methods and for sound business reasons, and with no sinister implication whatsoever. We shall show the same thing as to the buying of pictures for these two comparatively new enterprises

298 through the person of R. E. Griffith, now conducted through Ray Higdon, that it was done for sound reasons and worthy purposes.

We shall show in this circuit that far from being guilty of predatory practices, such as hinted, of going into a town and buying or erecting a theater and thereupon taking away from exhibitors enjoying a certain product, taking that product away from him.

You remember the Supreme Court mentioned the scared mules. I don't think you will find any scared mules in this case. I don't think that Mr. Wright, with all of his astuteness and his assistants will dig up any scared mules who

got so scared that the fellow had to sell them. It doesn't exist. These men bought what they needed in the area.

The fellow in front of me got a package of cigarettes, I didn't get any, or I got one and he didn't get any.

I went into five stores trying to buy a shirt; I got one, and it was the last size 16 in this shirt company's store, and it is a shirt shop; the last shirt, and I am a monopolist because there was not enough for Mr. Wright, if his laundry didn't come back like mine didn't, or Mr. Cochran's.

Of necessity, anybody who deals in motion pictures for exhibition gets certain exclusive rights and of necessity not through our control, not through any fault of any exhibitor. There are not enough pictures at any time so that everybody can buy them at his will and run them at his will. The exhibitor deals in intangibles; he should have some assurance that he has something to sell; he has nothing but vacant seats. If I am opening a theater, I certainly want to establish myself and I want to establish a stock of merchandise sufficient to take care of the people I expect to serve, with reasonable reservations available. When a motion picture theater operates, when it builds a house or when it gets a house, is there something wrong in his saying to those who make these things, which he doesn't and there are only so many of them, "Let me contract with you, and with you, and with you, and with you, until my shelves are full, until I know that the people who want to see entertainment in the form of motion pictures will be reasonably—in reasonable quantities or excessive quantities, if you like, so they may come into my house to see your pictures on days that I determine." If it is wrong for a man to be farsighted, to buy what he can get at a price he can pay, sufficient to offer his people assurance of entertainment and the variety of entertainment, then everything is wrong in the business and we better know it. Remember, we can not make pictures. We might try it, and we are at liberty to try it, but we cannot make them. They are made by other parties. Those that are made, we have no interest in. If Mr. Wright buys a dozen shirts and he sells no shirts today, his shirts are on the shelf for tomorrow. That is a far cry from the conditions with the motion picture theaters. No matter at what price he buys them, if the exhibitor puts upon the screen what we call a motion picture today and nobody comes his investment is forever lost in the particular film for that day, and his investment per diem in the theater has become sterile for that time. There is no tomorrow at the box office.

A great many of the practices which Mr. Wright complains about come out of the very nature of the business, starting with the creative dream of the producer or author and winding up in celluloid in the form of pictures, with the natural desire of people to escape from realties, and every step of it, as we will show the Court, harassed by uncertainties.

If I could tell the producers, any producer of motion pictures within five per cent or ten per cent or forty per cent of what the picture he is working on will yield at the box office, I wouldn't work three days a month, and I wouldn't have to practice law; I would be filthy rich. I am saying that because nobody can tell, even with the skill of L. C. Griffith, he couldn't sit in a studio and watch a
301 picture being planned and shot and tell that producer what it is going to be like at the box office, and after the picture is made he couldn't tell very well, but whatever he could tell about it through his experience is most valuable not only to him financially, but to the public whom he desires to serve. He couldn't tell whether a picture, at Clinton or Duncan or Lovington, New Mexico, whether the people will stay away enthusiastically or not, but the producer who made it thought everybody in the world would rush to see it, that all the exhibitor had to do was to open the door and stand to one side.

From the characteristics of the uncertainty, and based upon the uncertainty in the production problem itself everybody in this business is somewhat of a gambler; if they were not, they would go broke today. When we draw a picture of these things, where we find good theaters, that have the best equipment possible to obtain for the money, you just josh that the thought of a man who puts that kind of money into a rat hole and makes it work, who has the initiative and that ability, and that is the kind of initiative which the Government would seek to destroy.

I don't think of anything else that Judge Cochran did not cover. As I say, being a Methodist, I had to give my testimony, your Honor. And this is interesting to me that here in this room is Fred Morley or Ray Higdon who
302 now does the buying for R. E. Griffith circuit, and Rip Payne is around here somewhere, and my associate here, and myself also, and I get enthusiastic about R. E. Griffith, and of the success of that circuit, not what he is talking about, not any power they had, except the vitality and the vigor and the venturesome spirit that led them to take chances that ordinary business men would not take. We have seen how the theaters have helped the war drives and the Red Cross drives and helped the war effort,

and it is a far cry from the day when R. E. Griffith started in the theater business. It has become a respectable, dignified institution and was made such through the efforts of these men throughout Texas and Oklahoma.

We will show your Honor by positive proof, not upon mere denial, not upon a negative pregnant or otherwise, but affirmatively, that we have actually not restrained commerce but we have stimulated commerce between these United States of America.

THE COURT. Anything further for the defendants?

303 (Hereupon Court adjourned until May 8, 1945, and it was agreed the following proceedings might be had outside of the presence of the Court.)

Offers in Evidence

Mr. WRIGHT. Plaintiff's Exhibit 1 for identification is an agreement produced by counsel for the WesTex Theaters, Inc., dated October 15, 1936, between Mrs. J. N. Massey, Foster McSwain, C. C. Lindsey, WesTex Theaters Incorporated, by R. E. Griffith, president, for the lease of the Fair Theater at Plainview, Texas, for a period of ten years beginning November 1, 1936.

Plaintiff's Exhibit 2 for identification, is a stipulation of ownership and operating agreement dated June 25, 1935, between Foster McSwain, R. E. Griffith Theaters, Inc., by R. E. Griffith, President, C. C. Lindsey, concerning the operations of the Granada and Palace Theaters at Plainview and properly known as the Ritz Theater in Plainview, referring to a prior contract dated June 13, 1933, made between the same parties.

Plaintiff's Exhibit 3, for identification, is a bill of sale dated October 15, 1936, from Tower Theaters, Inc. to WesTex Theaters, Foster McSwain and C. C. Lindsey, of equipment in the Fair Theater at Plainview, Texas, containing an agreement that neither the Tower Theaters, Inc., nor Denis Scaling or R. Q. Silverthorn, will engage in, directly or otherwise, the theater business in Plain-

304 view. Signed for Tower Theaters, Inc., by R. Q. Silverthorn, President and Denis Scaling, Secretary and Treasurer.

Plaintiff's Exhibit 4, for identification, is a memorandum agreement between Westex Theaters, Inc., Foster McSwain, Hazel Lindsey, Layette Lindsey Thompson, relating to the operation of the Grenada and Fair Theaters at Plainview, Texas, which provides for the making of booking contracts with R. E. Griffith Theaters, Inc., or other firms or corporations, compensation paid said persons not to exceed 4 per cent of the gross of said theater for such

buying and booking services. The term of the contract is 21 years. It is dated March 25, 1938, signed by F. L. Stocker, Vice-President on behalf of Wes-Tex Theaters, Inc. and by the other parties individually.

305 Mr. WRIGHT. The exhibits marked as Plaintiff's Exhibits 5 through 49, inclusive, and 49-A for identification are all of the agreements produced in response to the subpoenaes duces tecum served upon L. C. Griffith, H. J. Griffith, Griffith Consolidated Theaters, Inc., and Griffith Amusement Company, returnable May 7, 1945, which called for each written agreement (excluding film licenses) made by you since January 1, 1934, with any other defendant or defendants which relates to the ownership, operation or control of one or more motion picture theaters, the licensing of films for exhibition therein, including joint ventures, pooling agreements, booking contracts, etc.

Each written agreement (excluding film licenses) made with you between January 1, 1934, and January 1, 1940, in which one or more parties agreed to restrict the use of premises owned or controlled by them to non-theatrical purposes or agreed to restrict the operation of theatres owned by one or more of them in any way, or agreed not to compete in operating theatres.

Each written agreement (excluding the film licenses) made with you between January 1, 1934, and January 1, 1940, in which you agreed to license or book films for exhibition in motion picture theatres operated by other parties to said agreements.

Each written agreement made with you between
306 January 1, 1934, and January 1, 1940, by which you receive any share of the profits of motion picture theatres operated by other parties to said agreements.

Plaintiff's Exhibit No. 50 for identification is a copy of subpoena duces tecum served upon Griffith Amusement Company, returnable May 7, 1945, calling for the production of specific documents described in paragraphs Numbered 1 to 35, inclusive.

Plaintiff's Exhibit No. 51 for identification is letter contract between Loew's, Inc., and addressed to Mr. Horace Falls, Griffith Amusement Company, Oklahoma City, Oklahoma, and signed by Falls and W. B. Zollner for Loew's, dated October 8, 1937.

Plaintiff's Exhibit 52 for identification is a folder containing the contract between Paramount Pictures, Inc., and Griffith Amusement Co. et al. for the 1940–41 season, (7 contracts), produced in response to paragraph 29 of Plaintiff's Exhibit 50 for identification.

Plaintiff's Exhibits 53, 54, and 55 are the contracts between United Artists Corporation and Griffith Amusement Co., dated February 5, 1937, for "You Only Live Once" (3 contracts), produced in response to paragraph 32 of Plaintiff's Exhibit 50 for identification.

Plaintiff's Exhibits 56, 57 and 58 are the contracts between United Artists Corporation and Griffith
307 Amusement Company, dated February 5, 1937, for five Samuel Goldwyn pictures entitled "Dodsworth", "Come and Get It", "Beloved Enemy", "Shake Hands with Murder", and "The Woman's Touch", (3 contracts) produced in response to paragraph 33 of Plaintiff's Exhibit 50 for identification.

Plaintiff's Exhibits 59, 60 and 61 are the contracts between United Artists Corporation and Griffith Amusement Company, dated February 5, 1937, for 5 Selznick International Pictures titled, "Garden of Allah", "Prisoner of Zenda", "A Star is Born", "Adventures of Tom Sawyer", "The Man with a Young Wife", (3 contracts) produced in response to paragraph 34 of Plaintiff's Exhibit 50 for identification.

Plaintiff's Exhibits 62, 63, 64 and 65 are the contracts between United Artists Corporation and Griffith Amusement Company, dated April 17, 1937, for the following pictures: "Gay Desperado", and "History is Made at Night", (4 contracts), produced in response to paragraph 35 of Plaintiff's Exhibit 50 for identification.

No documents were produced in response to paragraphs 1 to 16 inclusive of Exhibit 50 for identification, or paragraphs 18 to 28 inclusive of said Plaintiff's Exhibit 50 for identification, or paragraphs 30 and 31 thereof.

308 In response to paragraph 2 of the subpoena duces tecum served on Consolidated Theaters, Inc., returnable May 7, 1945, the contracts marked for identification as Plaintiff's Exhibits 66 and 67 for identification respectively were produced, which are the contracts dated February 5, 1937, for "You Only Live Once", between United Artists Corporation and Consolidated Theaters, Inc.

The contract between Paramount Pictures, Inc. and Griffith Consolidated Theaters, Inc., dated November 4, 1940, for group S-12 product for 1940-41 season called for by paragraph 1 of said subpoena was heretofore produced and marked for identification as Plaintiff's Exhibit 52.

Mr. Caskey. Pursuant to subpoena duces tecum addressed to Paramount Film Distributing Corporation, returnable May 7, 1945, paragraph 1, produced license agreement dated July 19, 1933, between E. H. Kyser, operating the Strand Theater, Ada, Oklahoma, and Paramount Pictures

Distributing Company, Inc., first run, and marked for identification as Plaintiff's Exhibit No. 68.

License agreement dated October 13, 1933, between E. H. Kyser, operating the Strand Theater, Ada, Oklahoma, and Paramount Pictures Distributing Co., Inc., second run, marked for identification as Plaintiff's Exhibit 69.

Contract dated July 19, 1933, between E. H. Kyser operating the Strand Theater, Ada, Oklahoma, and
309 Paramount Pictures Distributing Company, Inc. relating to the picture "Marx Brothers Production", first run, marked for identification as Plaintiff's Exhibit No. 70.

License agreement dated October 31, 1933, between E. H. Kyser operating the Strand Theater, Ada, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to the picture "Marx Brothers Production", second run, marked for identification as Plaintiff's Exhibit No. 71.

Contract modification dated September 6, 1934, between E. H. Kyser and Paramount Pictures Distributing Company, Inc., marked for identification as Plaintiff's Exhibit No. 72.

Cancellation of contract between E. H. Kyser and Paramount Pictures Distributing Co., Inc., dated September 5, 1935, marked as Plaintiff's Exhibit No. 73 for identification.

Cancellation contract dated July 24, 1935, between E. H. Kyser and Paramount Pictures Distributing Co. Inc., marked as Plaintiff's Exhibit No. 74 for identification.

Spot booking exhibition contract dated July 24, 1935, between E. H. Kyser operating the Strand Theater Ada, Oklahoma, and Paramount Pictures Distributing Company, Inc., marked as Plaintiff's Exhibit 75 for identification.

Paramount spot booking exhibition contract dated
310 August 24, 1935, between E. H. Kyser operating the Strand Theater, Ada, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to two pictures, to which is attached cancellation of contracts dated December 5, 1935, between the same parties, marked as Plaintiff's Exhibit No. 76 for identification.

No agreements of the nature set out in paragraph 2 of the subpoena have been found after due search, and none are produced at this time.

311 Pursuant to paragraph 3 of the subpoena, produced license agreement dated July 18, 1933, between C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, and Paramount Pictures Distributing Company, Inc.,

first run, marked as Plaintiff's Exhibit No. 77 for identification.

Contract modification dated October 12, 1934, between C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to one picture, marked Plaintiff's Exhibit No. 78 for identification.

License Agreement dated July 18, 1933, between C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, and Paramount Pictures Distributing Company, Inc., first run, relating to the picture "The Marx Brothers Production", marked as Plaintiff's Exhibit No. 79 for identification.

License Agreement dated October 23, 1933, between C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, and Paramount Pictures Distributing Company, Inc., second run, relating to 15 pictures, marked as Plaintiff's Exhibit No. 80 for identification.

License Agreement dated October 23, 1933, between C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, and Paramount Pictures Distributing Company, Inc., second run, relating to the picture "The Marx Brothers
312 Production", marked as Plaintiff's Exhibit No. 81, for identification.

(Whereupon, court recessed until May 8, 1945, at 9:00 o'clock a. m.)

313 PROCEEDINGS

May 8, 1945, 9:00 o'clock p. m.

Mr. CASKEY. Pursuant to paragraph 7 of subpoena duces tecum served upon Loew's, Incorporated, returned May 7, 1945, I produce license agreement dated October 20, 1931, between Jake Jones operating the Ritz Theater, Shawnee, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation, second run.

(The above instrument is identified as Plaintiff's Exhibit No. 82 for identification.)

Pursuant to paragraph 17 of the subpoena duces tecum served on RKO Radio Pictures, Inc., dated May 7, 1945, I produce license agreement dated November 28, 1939, between Jake Jones, operating the Ritz Theater, Shawnee, Oklahoma, and RKO Radio Pictures, Inc., first run, Shawnee, relating to 52 pictures, to which is attached memorandum change of contract dated March 14, 1940, and memorandum change of contract dated March 9, 1940.

(The above instrument is identified as Plaintiff's Exhibit No. 83 for identification.)

I produce license agreement dated September 7, 1934, between Jake Jones, operating the Ritz Theater, Shawnee, Oklahoma, and RKO Distributing Corporation, first run, relating to 50 pictures, to which are attached eight
314 memoranda changes of contracts dated respectively September 30, 1936, November 1, 1935, March 27, 1935, January 18, 1935, December 27, 1934, December 20, 1934, January 23, 1935, and December 24, 1934.

(The above instrument is identified as Plaintiff's Exhibit No. 84 for identification.)

I produce license agreement dated September 7, 1934, between Jake Jones, operating the Ritz Theater, Shawnee, Oklahoma, and RKO Distributing Corporation relating to the picture "Cimarron."

(The above instrument is identified as Plaintiff's Exhibit No. 85 for identification.)

I produce license agreement dated September 7, 1934, between Jake Jones operating the Ritz Theater, Shawnee, Oklahoma, and RKO Distributing Corporation relating to 30 pictures, second run, to which is attached memorandum change of contract dated April 26, 1935.

(The above instrument is identified as Plaintiff's Exhibit No. 86 for identification.)

I produce license agreement dated September 17, 1935, between Jake Jones, operating the Ritz Theater at Shawnee, Oklahoma, and RKO Distributing Corporation relating to the picture "Becky Sharp" first run.

(The above instrument is identified as Plaintiff's
315 Exhibit No. 87 for identification.)

I produce license agreement dated September 17, 1935, between Jake Jones, operating the Ritz Theater, Shawnee, Oklahoma, and RKO Distributing Corporation relating to the picture "Becky Sharp" second run.

(The above instrument is identified as Plaintiff's Exhibit No. 88 for identification.)

I produce license agreement dated November 28, 1938, between Jake Jones operating the Ritz Theater, Shawnee, Oklahoma, and RKO Radio Pictures, Inc., relating to the picture "Sixty Glorious Years."

(The above instrument is identified as Plaintiff's Exhibit No. 89 for identification.)

316 I produce license agreement dated November 28, 1938, between Jake Jones operating the Ritz Theater, Shawnee, Oklahoma, and RKO Radio Pictures, Inc., relating to fifty-four features, first run, to which is attached three memoranda change of contract, dated respectively November 29, 1939, August 18, 1939, and July 25, 1939, marked as Plaintiff's Exhibit 90 for identification.

I produce license agreement dated November 28, 1938, between Jake Jones operating the Ritz Theater, Shawnee, Oklahoma, and RKO Radio Pictures, Inc., relating to thirty features, second run, to which is attached four memoranda change of contract dated respectively March 11, 1940, February 13, 1940, January 19, 1940, and February 27, 1940, marked as Plaintiff's Exhibit No. 91 for identification.

I produce memorandum change of contract dated August 6, 1940, relating to the Ritz Theater, Shawnee, Oklahoma, marked as Plaintiff's Exhibit No. 92 for identification.

I produce license agreement dated February 23, 1939, between Jake Jones operating the Ritz Theater, Shawnee, Oklahoma, and RKO Radio Pictures, Inc., relating to six O'Brien features second run marked as Plaintiff's Exhibit No. 93 for identification.

In response to the subpoena duces tecum served upon Twentieth Century-Fox Film Corporation, return-
317 able May 7, 1945, paragraph six thereof calling for all license agreements made by it with Jake Jones for the exhibition of feature films released during the 1931-1932 season for exhibition in the Ritz Theater at Shawnee, Oklahoma, none have been found after June 1st, and none have been produced.

318 (The following proceedings were taken before the Court.)

Mr. WRIGHT. Last night we had a number of documents marked for identification which appear in the record, and I now offer eight stipulations that we have just had marked as Plaintiff's Exhibits 94 through 101 for identification, which relate to the documents or the photostatic copies of documents which were subpoenaed from the distributors' files, and identified in pre-trial depositions in the spring of 1944. There is one stipulation covering each company. No. 94 is the one relating to Paramount Pictures; No. 95 is RKO; No. 96, Loew's; No. 97, United Artists; No. 98, Twentieth Century Fox; No. 99, Universal; No. 100, Vitagraph and Warner; No. 101, Columbia.

The COURT. Will you state just briefly the substance of those. I think you can do it without referring to each one of them.

Mr. WRIGHT. I don't think they need to be read into the record at this point. I might outline——

The COURT. Those are the agreements between the producers and defendants?

Mr. WRIGHT. The stipulations cover more than that. Here is in substance what they cover: These stipulations between the Government and defendants cover——

Mr. COCHRAN. May I interrupt? I think you missed
319 the point of the Court's question. He wanted to know if they are stipulations between the producers and the Government, and they are stipulations between the defendants and the plaintiff relating to the documents taken from the files of the producers.

Mr. WRIGHT. That is correct.

The COURT. These photostatic copies of contracts are contracts between the producers and the defendants?

Mr. COCHRAN. They are documents in the files of the producers and he is not now offering the documents themselves but he is merely offering the stipulations relating to the documents.

The COURT. Very well.

Mr. COCHRAN. I think it would be well for him to go ahead and state the scope of the stipulations, which can be done in a very general way.

320 Mr. WRIGHT. Each of these stipulations covers master agreements made between the defendants and each of these distributors during the seasons 1933-34 through 1938-39, and some others, and it also covers certain memoranda and correspondence which was found in the files of these distributors, which relates to those contracts, and it also covers correspondence found in their files passing between the distributors and these defendants, and it also covers correspondence found in their files passing between the distributors and some independent competitors of the defendants and it also covers certain contracts found in their files which were made between the distributors and independent competitors of the defendants.

Now, the scope of the stipulation varies as to each class of document. As to the contracts which are signed——

Mr. COCHRAN (interrupting): Will you pardon me? Inasmuch as there are some eight of these stipulations and each of them is substantially the same, would it not be well to read the portion of the stipulation found in paragraphs 4, 5, 6, and 7 which cover the various classes that you have been talking about? Would you mind stating it that way?

Mr. WRIGHT. Yes. I can do that. Plaintiff's Exhibit
321 94 for identification, for example, relates to Paramount. I think I may as well read the whole stipulation, and it will give your Honor the best idea of the scope.

Stipulation re exhibits

"Whereas, representatives of the plaintiff herein have had photostatic copies made of certain contracts, letters and other documents taken from the files of Paramount Pictures Incorporated; and

Whereas, each photostat has had an identifying number or letter placed on its face; and

Whereas, these identifying numbers begin with P-1 (A to AA, inc.), and end with P-120-(1 to 39 inc.)."

I might explain there that in numbering each of the company's documents, a preface was attached corresponding to the name of the company, and then where a document is given one number consisting of one or more pages, the pages were successively numbered as a, b, c, and so forth.

"Whereas, some photostats have been riveted or stapled together and carry a numerical number for the entire group so fastened together and carry alphabetical designations for each and every page thereof;

Now, therefore, the parties hereto do hereby stipulate as follows:

1.

That the photostats above referred to were made
322 from originals as found in the files of the above named company, which were assembled and produced by it pursuant to subpoena duces tecum issued by the plaintiff, and each is a true and exact reproduction of the original of the document as such existed in the files of such company at the time the photostat was made.

2.

That in the trial of this case no objection will be made to the admissibility in evidence of such photostats on the ground that the originals of the documents photostated are not offered.

3.

Documents identified as P-120 (1 to 39, inc.), are the respective printed forms of licensing agreements used by the distributor in licensing its product during the seasons 1933 to 1942, respectively; that wherever any contract described in this stipulation contains an agreement that 'distributor's standard license agreement', 'standard form of exhibition contract', or other words of similar import shall be a part of such contract, the standard form for that year as identified in this paragraph shall be considered a part thereof as if it were physically attached thereto."

That was made necessary because in originally photostating the documents in some cases the at-
323 tached standard forms are the backs which contained many of the provisions were not originally photostated.

Mr. Cochran. In that connection, I think it well to note for the record that the printed forms of contracts for Universal have not yet been attached. We were not able at

the time the stipulations were signed to attach those contracts and we signed the contracts with the understanding that during the course of the trial you would get copies, if you could, and, if not, we would in some way manage to get for the record and for the use of the Court copies of the Universal contracts.

Mr. Warner. We wrote for those some months ago and have not as yet received them but hope to get them for you before the end of the trial, and as soon as they are received, we will incorporate them into the record.

Paragraph four reads, "that the documents identified as P-1 (A to X, inc.), P-2 (A to C, inc.), P-3 (A to G, inc.), P-4 (A to G, inc.), P-5 (A to AA, inc.), P-6 (A to K, inc.), P-7 (A to J, inc.), P-8 (A & B), P-10 (A to L, inc.), P-11 (A to D, inc.), P-12 (A to C, inc.), P-13 (A to D, inc.), P-16 (B to E, inc.), P-20 (D, E, F & G), P-23 (D to G, inc.), P-114C, P-119 (A to E, inc.), are photostatic copies of contracts which were duly executed on behalf of said distributor and which were signed on behalf of the
324 respective exhibitors by the representatives thereof whose names appear signed thereto, except that such portions of said contracts as do not appear in said photostats are contained in exhibits P-120 (1 to 39, inc.)," those are the standard forms "that said documents were executed on or about the respective dates of said instruments and the authority of the persons executing such documents will not be questioned by either party.

5.

That documents identified as P-4 (k), P-90 (A, C, D & M), P-96 (A & B), P-99 (A & B), P-101 (A), P-102 (B), P-103 (B, C & D), P-110 (A), P-111 (A, B & C), and P-112 (F), are photostats of letters written by officials, employees or agents of or on behalf of one of the defendant corporations to the respective addresses thereof, and on the dates respectively appearing thereon." That paragraph refers to correspondence passing between these defendants and the distributors.

"That the documents identified as P-26 (A), P-26 (B), P-27, P-28 (A & B), P-29 (A), P-30, P-32, P-33 (A), P-34, P-35, P-37, P-38 (A), P-41 (A), P-42, P-43, P-44, P-50, P-51, P-55, P-57 (A), P-58, P-61 (A), and P-62, are photostats of contracts duly executed by the parties thereto, except that such portions of said contracts as do not appear in said photostats are contained in ex-
325 hibits P-120 (1 to 39, inc.)."

That paragraph, I believe, refers to the contracts made between these distributors and independent operators competing with the defendants.

"That the documents identified as P-1 (Y to AA, inc.), P-4 (H, I, J, L & M), P-14 (A to D, inc.), P-15, P-16 (A), P-17, P-18 (A & B), P-19 (A to C, inc.), P-20 (A to C, inc.), P-21, P-22, P-23 (A to C, inc.), P-24, P-25 (B), P-26 (A), P-28 (C to F, inc.), P-29 (B), P-31 (A & B), P-33 (B & C), P-36 (A & B), P-38 (B), P-39 (A to D, inc.), P-40 (A to D, inc.), P-41 (B), P-45 (A & B), P-46 (A & B), P-47 (A & B), P-48 (A & B), P-49 (A & B), P-52 (A & B), P-53 (A to D, inc.), P-54 (A & B), P-56 A to E, inc.), P-57 (B), P-59 (A to D, inc.), P-60 (A & B), P-61 (B), P-64 (A to D, inc.), P-65 (A & B), P-66 (A & B), P-76 (A), P-77 (A), P-81, P-82 (A & B), P-83, P-84, P-85 (A to D, inc.), P-86 (A to L, inc.), P-87, P-88 (A to D, inc.), P-89 (A to E, inc.), P-90 (B, E to L & N to BB, inc.), P-91 P-92, P-93, P-94 (A to L, inc.), P-95 (A & B), P-96 (C to E, inc.), P-97 (A & B), P-98 (A to D, inc.), P-99 (C), P-100 (A to D, inc.), P-101 (B, C & D), P-102 (A, C & D), P-103 (A & E), P-104 (A & B), P-105 (A to E, inc.), P-106 (A to D, inc.), P-107, P-108, P-109 (A to D, inc.), P-110, (B), P-112 (A to E, inc.), P-113 (A & B), P-114 (A, B, C, D & E), P-115 (A & B),
326 P-116 (A to D, inc.), and P-117 (A to E, inc.), P-118 (A to D), are photostatic copies of documents which were made from the originals in the files of the above named company and which were assembled and produced pursuant to subpoena duces tecum issued on behalf of the plaintiff. It is understood, however, that the defendants do not agree that the documents were signed by the persons by whom they are purported to have been signed, or that the statements contained in said documents were made by persons having authority to make the statements. It is further agreed that when the documents described in each and all of the foregoing paragraphs, are offered in evidence they shall be subject to all objections which might be urged if the original documents were offered in evidence."

Now, this last paragraph relates to the inter-office correspondence of the distributors which was found in the files and their correspondence with persons other than the defendants.

Mr. COCHRAN. Except the clause which gives the right to make objections to all documents, that relates to all documents.

The COURT. In other words, the force and the effect of this stipulation is to make these photostat copies the same as if they were the originals that you are offering and they would be subject to the same objections.

327 Mr. Wright. I think it goes further than that. Of course, as to the contracts, there is no question about the execution and the authority to execute.

The Court. If there is some objection, then it will be with the same force and effect as if being urged to the original document?

Mr. Wright. Yes, sir.

Mr. Cochran. My point as to all of these documents, they will be subject to the same objections as if the originals themselves were introduced in evidence, except as to those documents where we specifically agree that they were executed with authority and so forth.

Mr. Wright. Yes.

328 Mr. Wright. I offer the stipulations of evidence.

Mr. Cochran. Mr. Wright, you were to furnish us three copies of each of those stipulations.

Mr. Wright. Very well. I will offer in evidence the document previously marked as P-1, A to AA, inclusive, described on its face as an agreement dated September 15, 1934, between Paramount Pictures Distributing Company, Inc., and Griffith Amusement Company.

The Court. That will be Exhibit 94, A what?

Mr. Wright. I think for the sake of keeping our own records in order it would be preferable if these exhibits that are identified this way could be admitted under the same numbers.

The Court. I don't mean that but that comes under the stipulation——

Mr. Wright. The stipulation relating to it is 94.

The Court. That is the stipulation. What are your numbers there?

Mr. Wright. P-1, A to AA inclusve, 27 pages.

The Court. Is there any objection to the offer?

Mr. Cochran. That is a document covered by the stipulation, but I think in presenting this case now in order that we may follow the testimony as it goes through,

329 and not be completely in the dark, that counsel should refer to the portions of this contract which he thinks are material to the issues here, and its purpose in relationship to the points he is making in the case so we can follow him. In other words, this is a contract between some of these defendants and involving certain towns and also certain supplemental agreements. He is just offering it as a lump and the several documents should be separated and each one of them may be explained to the Court in order that you may grasp the thing as we go through.

Mr. Wright. I shall be glad to follow that procedure.

If we do that with each of these documents we are going to consume a very considerable amount of time.

The COURT. Just so that we may understand each other, how do you expect the Court to know the portion of this exhibit which you consider material?

Mr. WRIGHT. I regard the whole exhibit as material. I am offering it in its entirety and there are no parts that I would single out and say they are material and that the others are not material in any event.

Mr. COCHRAN. Counsel has made the statement in his opening statement and trial brief that there are certain clauses in these various contracts that he considers illegal per se. As we go through, certainly somewhere in this case we ought to get down to particulars and we
330 haven't had them yet, and we just cannot follow that.

The COURT. Perhaps it would be better to go ahead and introduce the documents and then at a later time analyze the various documents which will give you the information before you have to meet them.

Mr. DUDLEY. We prefer that analysis take place now. It will help us in preparation and it will help the Court to get the theory as this case goes forward. If they go in here in bulk and come back later on we will not save any time. It will certainly help us in the preparation of our theory of the case. I think you should analyze them now.

Mr. WRIGHT. I assumed that is what we did when we made an opening statement and when we filed the trial brief here sometime ago, in which we gave a general description of these documents and described in general terms the particular provisions and the characteristics of the documents that we thought made them illegal.

The COURT. Then you are relying on the entire exhibit?

Mr. WRIGHT. Yes.

The COURT. Then I see no occasion for an analysis. If, however, there are certain portions of them on which you rely and certain portions on which you do not rely, I think the analysis should be made, but if you are
331 relying on the whole document I see no occasion for any analysis.

Mr. COCHRAN. He is offering several different documents jointly. I am objecting to that because to some of them I may want to make objections. For instance, the documents which he is offering cover some documents which are in paragraph 4; some documents which are in paragraph 7. It is just impossible to follow him in his method of presentation. I still think the Court should try to give us an opportunity to grasp this thing as we go through.

The COURT. Just state what it contains, then, Mr. Wright.

Mr. WRIGHT. I will first want to comply with Mr. Cochran's suggestion and first offer the document identified as Exhibit P-1, A through O, inclusive. That is this agreement I have referred to and which covers the general terms of exhibition of the Paramount pictures in the various theaters in towns operated by the Griffith Amusement Company which are listed on page B and page E, Griffith Theaters, Incorporated, which are listed on the same page and Consolidated Theaters, Incorporated, listed on the same page, and then a number of affiliates. Lowenstein Theaters operating at Ardmore; North Central Oklahoma Theaters operating at Blackwell and on page C, it covers Blackwell Amusement Company operating at Blackwell;
332 Cleburne Theaters, Inc., at Cleburne, Texas; Clinton Theaters, Incorporated, operating at Clinton, Oklahoma; Gainesville Amusement Company operating at Gainesville, Texas; Charles Blaine Theaters operating at Henryetta, Oklahoma; Lindesy Theaters Incorporated, operating at Lubbock, Texas; Coleman Interests operating at Miami, Oklahoma; Fred Morley Theaters operating at Midland, Texas; Reno Theaters, Incorporated, operating the Reno Theater in Oklahoma City; Eastern Oklahoma Theaters, Incorporated, operating the Yale Theater at Okmulgee; R. H. Williams interests operating theaters at Tonkawa; W. J. Moore, operating the theater at Fairfax; Walmur Amusement Company operating two theaters at Bristow. Those parties are collectively designated as the exhibitors.

Mr. COCHRAN. Did you give the date of that contract?

Mr. WRIGHT. I have already, yes. It is September 15, 1934, and on page D it appears that the seasons covered are the three years commencing respectively on August 1, 1934, August 1, 1935, and August 1, 1936, and the 1934-35 '36-37 seasons inclusive. The document covers all of the distributors short subjects, news reels and features to be released during those periods except for such photoplays
as to which the distributor would be required to ob-
333 tain the consent or approval of the producer or other party to the terms and conditions of licensing the exhibitions thereof.

There is also a provision that the road showing or prevue or pre-release of any photoplays during these seasons shall not be deemed a general release.

Mr. COCHRAN. I am just wondering if at this time it might be agreed that all of the pictures released by the

various producers of motion pictures are subject to the copyright laws of the United States and are copyrighted under the copyright laws of the United States?

Mr. WRIGHT. They are all in fact copyrighted. I haven't any information as to whether or not they were properly entitled to the copyright at the time it was granted. Of course, there is no question about the fact they are copyrighted when made.

This page D then provides for the terms of rental to the exhibitor. That is, all of these companies that I named, collectively agree to exhibit each flat rental feature, short subjects and news reels, licensed hereunder for the exhibition period of one to four consecutive days, and the exhibitor shall have the privilege of prevuing all or any of such photoplays on the night prior to the regular engagement upon making a request to the exhibitor for such privilege.

The agreement also provides that in each of the
334 following cities the class A feature photoplays are to be exhibited for an exhibition period of two to four consecutive days each. Two of the class A features are to be exhibited for three or four consecutive days; two of the class B features are to be exhibited two to four consecutive days and two of the class B features are to be exhibited for three or four consecutive days. Then the towns named are Lubbock, Texas; Shawnee, Oklahoma; Okmulgee, Oklahoma; Bartlesville, Oklahoma; Ardmore, [illegible]rman and Blackwell.

[illegible]he agreement further provides that in the City of [illegible]da, each class A and each class B feature shall be exhibited for two or three consecutive days. I am now referring to the page marked E, and the exhibitor agrees to pay the distributor as licensees for the license to exhibit the features licensed hereunder during the first year of the agreement, that is the 1934-35 season, the following sums: In the class A, meaning the best theaters and on preferred playing times, which includes Saturday or Sunday, in Lubbock and Shawnee, Okmulgee, Bartlesville, Ardmore, Ada, Norman and Blackwell, the exhibitor agrees to exhibit four features in all as class A features to be designated by the distributor from those licensed and four more to be known as class B features also designated by the distributor from those licensed. The exhibitor agrees to pay for the license to exhibit these class A features the
335 sum of 35 per cent of the gross receipts, and in addition a recording charge of $5 per photoplay, and to pay for the license to exhibit each class B feature, a sum equal to 30 per cent of the gross receipts, in addition to the recording charge of $5 per photoplay.

The next paragraph provides for the prevue privilege of any class A or class B feature on the night prior to the opening of a regular engagement on the same terms, except that no recording charge is to be made.

F provides that each class A and each class B feature shall be designated by the distributor prior to play date thereof, and one half of the class A and one-half of the class B features shall be designated during each six months of the first yearly period. The exhibitor agrees to exhibit in the following towns, and I believe those are the same towns as these already designated, the remaining 56 feature photoplays to be released by the distributor during the 1934-35 season, and to exhibit all of the feature photoplays released by the distributor during the same period in the other towns embraced within this agreement, and for the license to exhibit the photoplays referred to in this subdivision, 2-A, the exhibitor agrees to pay to the distributor the sum of $88,364. That is in summary. It appears that in these designated eight towns there were eight class A and class B features that were to be
336 exhibited on percentage terms, and that the rest of the features be exhibited in those towns and all of the features exhibited in all of the other towns would be paid for by this $88,364.

The COURT. That $88,000 item does not include the percentage basis?

Mr. WRIGHT. No, sir.

The COURT. That is in excess?

Mr. WRIGHT. That is right. In subparagraph B or section 2, the exhibitor agrees to exhibit in each of the towns embraced within the agreement all of the short subjects and to pay for them the sum of $11,064. Then C covers the news reel for which $14,972 was to be paid in all of the towns covered and sub paragraph D—I am now reading from the page marked G—the sum total of all the license fees referred to is $114,400, and that the exhibitor agrees to pay any weekly installments as follows: Beginning with the week ending August 18, 1934, and four consecutive weeks thereafter for four months, the exhibitor shall pay the distributor the sum of $800 per week. Beginning with the week ending September 15, 1934, and each consecutive week thereafter for weeks consecutively, agrees to pay the sum of $1600 per week. Then for the next four weeks, $3000 a week. For the next eight weeks, $2800 per week. For the 32 weeks, $2200 per week.

337 Section 3 provides that if the distributor shall not release during the yearly period hereinabove re-

ferred to—that is the '34-35 season—the total number of feature photo plays, short subject photo plays and news reel set forth hereinabove the distributor shall refund to the exhibitor on August 15, 1935, any over payment made by the exhibitor computed on the following basis:

A schedule shall be attached and made a part of this agreement, in which schedule shall be set forth a table classifying the feature photo plays as follows: Class "A" 4, Class "B" 4, Class "C" 20, Class "D" 20, Class "E" 16, and under each of these various classifications the amount to be charged per photo play for each town shall be listed.

The lowest classification shall be Class "D" and Class "E". The total of the "D" classification shall not exceed an average of $1400 per picture, and the total of the "E" classification shall not exceed an average of $1000 per picture, and any deductions to be made shall be made equally from these two groups. If the number of photo plays not released shall be an odd number, then such odd photo play shall be deducted from Class "E", that is, should the distributor fail to release three subjects, two would be deducted from Class "E" and one from Class "D", or should
338 the distributor fail to release five subjects, two would be deducted from Class "D" and three from Class "E".

Then it provides that shorts are to be broken down on the same schedule as follows; and as to news reels and individual price for each situation shall be shown, and a rebate to be made on August 15, 1935.

Paragraph 4th covers the remaining two years of the agreement, that is, the '35-36 and '36-37 season, during which the exhibitor agrees to exhibit in each of the towns embraced within this agreement, for the same exhibition periods and subject to all of the conditions hereinbefore specified for the first year hereof, namely, August 1, 1934, to July 31, 1935, all of the feature photo plays, feature pictures released by the distributor not exceeding 64, all of the shorts not exceeding 100, and all of the news reels not exceeding 104. Those, I believe, are issued twice a week, and for the privilege of exhibiting these photo plays released during the 1935-36 season, the exhibitor agrees to pay the same percentage terms as specified for the 1934-35 season, and for all of the other pictures licensed he agrees to pay $125,840.00, payable in 52 equal weekly payments of $2,420.00; then for the 1936-37 season they agreed to pay the same percentage terms as provided for the other two years and for the flat rental pictures a total of $132,132.00 is to

339 be paid, payable in weekly installments of $2,541.00 each.

Fifth, it is understood and agreed that the distributor is not obligated to release in any year hereof the number of feature photo plays, short subject photo plays or news reels set forth hereinabove, but if the distributor should release less than such number of photo plays, rebates are to be accorded to the exhibitor as hereinabove provided.

In the event the distributor's short subject releases shall not consist of the same unit set forth in the attached schedule, the exhibitor agrees to exhibit and to pay for any substituted short subjects, upon the average license fees per reel. The exhibitor shall not be obligated, however, by reason of such substitutions, to accept a greater number of one-reel short subject photo plays than is hereinbefore provided for.

The distributor agrees that no substitutions shall be made for news reels licensed hereunder.

It is agreed further that for the purpose of determining and computing the license fee to be paid by the exhibitor for the license to exhibit the photo plays licensed hereunder and for all other purposes hereunder the distributor shall have the right to classify from time to time the photo plays licensed for exhibition hereunder. That refers to the A, B, C, D, and E designations.

340 Sixth: It is agreed that since the exhibitor is obligated to pay license fees (except for the percentage pictures) on a weekly payment basis, the exhibitor shall not be required to exhibit photoplays in the order of their general release; provided, however, that the exhibitor shall not exhibit photo plays out of the order of general release, if in so doing it shall interfere with or delay the exhibition of photoplays to be exhibited by other exhibitors with whom the distributor may contract or has contracted for the exhibition of the distributor's photoplays.

Seventh: (a) The exhibitor agrees to charge an admission price of not less than twenty-five cents per adult and ten cents per child during evening performances in Class "A" theaters, and not less than fifteen cents per adult in Class "B" theaters.

Then, with respect to photoplays exhibited first run in Oklahoma City for a night adult admission price of forty cents or more for the entire lower floor, the exhibitor agrees to charge at the Rialto and Reno Theaters, Oklahoma City, a minimum adult admission price of twenty-five cents, provided the Victoria, Circle, Ritz, Empress and Folly Theaters also charge a minimum adult admission price of twenty-five cents during the exhibition of such photoplays.

Eighth: It is agreed that the exhibitor shall be released from his obligation to exhibit photoplays in
341 any town covered hereunder where the exhibitor shall permanently close all of his theaters therein. However, the weekly sums payable to the distributor hereunder shall not be diminished by reason of any such permanent closing. In the case of such permanent closing as herein provided during any year of the three yearly periods hereinbefore referred to, the exhibitor shall be entitled to a credit from the distributor on the August 15th next succeeding the particular year when all of the theaters in any such town shall be permanently closed for photoplays not exhibited in such towns, equal to the respective sums payable for such photoplays, in accordance with the sums specified for such towns in the schedule hereto annexed.

Ninth: It is agreed that this agreement shall not include any foreign made feature photoplays. For all purposes of this agreement a foreign made feature photoplay shall be deemed to be a photoplay produced in a foreign country with feature players therein other than those generally recognized as stars or feature players in the United States of America.

Tenth: (a) The clearance to be granted to the exhibitor hereunder shall be mutually agreed upon; such clearance, however, shall be expressly subject to any zoning and clearance schedule which may be adopted in pursuance of the Code of fair competition for the motion picture
342 industry and any clearance herein provided for shall be deemed modified in accordance with any such schedule, amendment or modification thereof.

(b) It is agreed that feature photoplays shall be available for exhibition in the Reno and Rialto Theaters, Oklahoma City, seven days after they have completed the first run downtown exhibition or exhibitions in Oklahoma City and the following subsequent run theaters, namely, the Victoria, Circle, Ritz, Empress, Folly and Liberty Theaters, but in no event more than one hundred and eighty days after such first run exhibition or exhibitions.

Section (c) provides: That newsreels shall be made available to one-third of the exhibitor's towns within seven days after general release thereof, to one-third of exhibitor's towns within fourteen days after general release thereof, and to one-third of the exhibitor's towns within twenty-one days after general release thereof, and that feature photoplays and one-reel shorts shall be made available to one-third of exhibitor's towns within twenty-three days of general release thereof, to one-third of exhibitor's towns

within forty-six days of general release thereof, and to one-third of exhibitor's towns within seventy days of general release thereof. And the availability of feature photoplays to the exhibitor's theaters in Oklahoma City is
343 covered specifically in sub-division (b) of this article.

The next paragraph is one by which it is agreed that any pre-release or any picture opening in key cities ahead of other towns but not generally released for the balance of the exchange territory, shall not be considered available hereunder until such pre-release or key city booking is completed.

Eleventh: The distributor agrees that so long as the Code of Fair Competition for the motion picture industry adopted under the National Recovery Act shall be in effect and exhibitors generally shall be entitled to elimination privileges thereunder, the exhibitor shall likewise be entitled to such elimination privilege hereunder, it being expressly agreed that any such eliminations are to be and shall be from the lowest priced releases, the exhibitor, however, to have the privilege of later reinstating any pictures so eliminated by other pictures of the same classification which the exhibitor might prefer to eliminate.

Twelfth: (a) The distributor agrees that all New Mexico towns may be served from the distributor's Dallas exchange. Some of those were normally served, I think from Denver.

(b) The distributor agrees that whenever requested it will furnish to the exhibitor without additional charge therefor, except in Oklahoma City, a second run for
344 not exceeding each of twenty towns embraced within this agreement.

Thirteenth: It is agreed that if the exhibitor shall during the term of this agreement open additional theaters in any of the towns covered herein, with the exception of Oklahoma City, that any of the flat rental feature photoplays, short subject photoplays or newsreels may be exhibited therein in place of any of the theaters named herein. It is further agreed that in the towns where the exhibitor has agreed to exhibit eight pictures on percentage, should the exhibitor build or acquire a theater which in the distributor's opinion is better than the present Class "A" theater, that such eight percentage pictures shall be exhibited in such new theater.

Fourteenth: It is agreed that all of the terms and conditions of the distributor's standard license agreement, form 3440-J, attached hereto, and all changes or modifications thereof made from time to time during the term of this

agreement, shall apply to this agreement as if such terms and conditions were incorporated herein except where such terms and conditions may be inconsistent with the provisions hereof, in which event the provisions of this agreement shall prevail.

Fifteenth: The exhibitor's obligation hereunder
345 shall be joint and several with the exception of the Griffith Amusement Company which shall be obligated only with respect to photoplays to be exhibited hereunder in theaters owned and/or operated by said Griffith Amusement Company.

Mr. COCHRAN. That completes that document.

Mr. WRIGHT. All right.

Mr. COCHRAN. Would you mind now turning to your standard form of contract which has been produced and let us identify the particular contract which is referred to in paragraph 14, in order that there may be no misunderstanding. Your Honor, the purpose of that is to try to aviod any misunderstanding as to these documents which were identified by certain numbers, and which cannot be readily connected, with these particular contracts, and I just wanted to be sure that we were talking about the same thing.

Mr. WRIGHT. At this time, with this agreement, we will offer all of the forms which have been identified as P–120–1 to P–120–39, inclusive, and the three which I believe apply specifically to this agreement are those numbered P–120–11 for the 1934-35 season, P–120–12 for the 1935-36 season, and P–120–17, for the 1936-37 season. That completes the offer in connection with P–1 A to O inclusive. Do you want to make an objection?

346 Mr. COCHRAN. No.

The COURT. They will be admitted.

Mr. WRIGHT. These are admitted under the same numbers as they now bear?

The COURT. Yes, sir.

Mr. WRIGHT. We offer the schedules here that begins on P, I think it extends through P, Q, R and S, and I will offer these together. The schedule is headed at the top August 1, 1934 to July 1, 1935, and then has these columns headings, town, theater, then 4-A, 4-B, 20-C, 20-D, 16-E. It is headed 64 scores, 70 miscellaneous one-reel, 12 Betty Boops, 12 Pop-Eyes, 6 color class, 104 newsreels. Under those columns respectively appear the names, Yale or Palace, Claremore, Oklahoma, and opposite Yale or Palace, Claremore, under the 4-A column is the figure $22.50, under 4-B $13, under 20-C, $12, under 20-D, $11, under 16-E $10, under 64 scores $2.50, under 70 miscellaneous, $2, under 12 Betty Boops, $2.50, under 12 Pop-Eyes $3, under 6 color

class $4, and under 104 newsreels, $2.50. Then continuing under the town and theater column are listed the names of the various theaters covered by the agreement, in Fairfax, Hobbs, New Mexico, Maud, Tonkawa, Vinita, Wellington, Texas, Wink, Texas, Portales, New Mexico, Oklahoma City, Hugo. Then the statement appears underneath the various other columns "All remaining theaters
347 in this bracket with the exception of the Rialto, Oklahoma City, are the same price as on Claremore, Oklahoma." Those are the prices that are read. Then beginning with the Rialto, a separate list of prices is made for the Rialto Theater in Oklahoma City. That completes page P. On Q of the schedule then are listed Chandler, Elk City——

Mr. COCHRAN. (interrupting): That is just a continuation of a similar schedule for other towns?

Mr. WRIGHT. That is right.

Mr. COCHRAN. In other words, this particular exhibit is the schedule which is referred to in the contract where it shows the towns and the theaters in each town in which the picture to be shown and the price of the picture for each town.

Mr. WRIGHT. And the towns are arranged in various price brackets.

The COURT. I don't think it is necessary to go into detail with all that, gentlemen.

Mr. WRIGHT. We are offering them with the attached schedules.

Mr. COCHRAN. No objection.

The COURT. There being no objection, let it be admitted.

Mr. WRIGHT. Then T is the front of the license agreement for the group S-6, which is similar to the
348 standard forms already offered.

Mr. COCHRAN. The reason for the production of the standard forms of agreement which have already been identified was because in photostating this contract and other contracts the standard form contract which was referred to was not fully photostated and this exhibit P or T is simply one page of the standard form of contract for a certain year which was attached and which duplicates in part the document which has already been offered, and referred to as the standard form of contract for that year, is that right?

Mr. WRIGHT. Yes, sir. Then, we will also offer in evidence pages U, V, W, X, Y, Z and AA, which are the remaining pages of Exhibit P-1, which is called a supple-

mental agreement between Paramount and Griffith Amusement Company, dated September 22, 1936.

Mr. Cochran. We want to make an objection, but probably we had better wait until you state it. There is no objection to P-1 U to X, inclusive, but as to Y, which is being offered——

Mr. Wasson (interrupting): I beg pardon, I thought it was one agreement. I meant to offer first U to X, inclusive. This agreement modifies a prior agreement referred to as a franchise covering film service in Oklahoma, Texas
349 and New Mexico, in the theaters specified there and recites whereas, paragraph twelfth, subdivision (b) of said agreement, that is the franchise, provides that the distributor agrees that whenever requested it will furnish to the exhibitor without additional charge therefor, except in Oklahoma City, a second run for not exceeding each of twenty towns embraced within this agreement, and,

Whereas, the parties have never operated under said provision of the agreement in the manner and forms therein stated but in certain instances second run product has been furnished by the distributor to the exhibitor and other persons or corporations for whose benefits said agreement was made, in specified theaters, under the provisions of said franchise agreement, and,

Whereas, it is the desire of the parties to modify said franchise agreement, executed as of September 15, 1934, in certain particulars,

Now, therefore, in consideration of the sum of One dollar and other valuable considerations in hand paid, paragraph twelve is modified to provide that the exhibitor shall be furnished 40 feature length pictures and 80 one reel shorts for second runs in the following towns: Lubbock, Borger, Pampa, Ardmore, Shawnee, Seminole, Bartlesville, Okmulgee and Ada, Oklahoma, and in addition, subsequent runs in the Rialto and Reno Theatres in Oklahoma City, Oklahoma, and that no other theatres or
350 locations shall be embraced within the terms of said franchise agreement for second run exhibition.

2. That all of said feature and short subject product for the towns herein specified that shall not be selected for exhibition by the exhibitor within sixty (60) days after the national release date of each feature or short subject shall, at the end of said sixty-day period, be automatically released.

Then Y, Z and AA are a supplemental memorandum between Paramount and Griffith Amusement Company, dated September 22, 1936.

Mr. Cochran. We are objecting to that document for the reason that it is not in the class of documents described in paragraph 4 but it is simply described as a document found in the files which were produced pursuant to the subpoena. It appears to be a copy of the exhibit which was just introduced, but it is not signed, it has some typewritten signatures to it and it is immaterial and a duplication.

Mr. Wright. Then there is no need to offer it and I will withdraw the offer, in that event. Then, I take it that Exhibits P-1 A through X is received in evidence? I had, if the Court please, intended to offer all of these agreements between the defendants and the exhibitors before we put on any testimony, but we have some wit-
351 nesses here who have been waiting and I think I will go ahead and present oral testimony so they can be released.

The Court. Let all the witnesses who expect to testify stand and be sworn.

(Witnesses sworn.)

Testimony on behalf of the plaintiff

Dennis Scaling, called as a witness by and on behalf of the plaintiff and having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct examination, by Mr. Wright:

Q. Will you state your name?
A. Dennis Scaling.
Q. Where do you live?
A. Hale Center, Texas.
Q. What is your occupation?
A. Stock farming.
Q. Were you formerly in the theater business?
A. Yes.
Q. Where?
A. Plainview.
352 Q. Operating what theater?
A. The Fair Theater.
Q. Were you in the theater business before that?
A. Yes, sir.
Q. Whereabouts?
A. In Hale Center.
Q. That was during what period?
A. Starting with 1921.
Q. Until when?
A. About 1929.
Q. You operated a theater there?

A. Yes, sir.

Q. And then were you in the theater business after that?

A. Yes, sir, I was associated with Paramount Publix Theater Corporation.

Q. Whereabouts?

A. In Forth Worth, Texas, and Enid, Oklahoma.

Q. That was during what period?

A. That was from '29 up to 1931.

Q. In what capacity were you associated with them?

A. I was assistant manager in Forth Worth and city manager in Enid, Oklahoma.

Q. And then you left the Paramount Theater Company in 1931?

A. Yes, sir.

353 Q. Did you return to Plainview then?

A. Yes, sir.

Q. Did you go into the theater business there?

A. Yes, sir.

Q. When was that?

A. Along in '32.

Q. Who were you associated with in that operation?

A. Mr. C. C. Lindsey of Lubbock, Texas.

Q. Did you and Mr. Lindsey lease a theater there then?

A. Yes, sir.

Q. What theater was that?

A. It was the old Plainview Theater.

Q. What other theaters were operating there then?

A. The Grenada and the Olympic. The Grenada was the only one that was operating.

Q. Who operated the Grenada?

A. Mr. Oscar Korn from Dallas.

Q. During what period did you and Mr. Lindsey operate there?

A. From 1932 up until approximately the middle of '33.

Q. And then that was the Plainview Theater?

A. That was the Ritz Theater, in the old Plainview Theater building.

Q. You renamed the theater the Ritz when you and Mr. Lindsey opened it?

354 A. Yes, sir.

Q. You operated the Ritz until when with Mr. Lindsey?

A. From 1932 until along in the spring or early summer of '33.

355 Mr. Wright. At this time I will offer in evidence Plaintiff's Exhibit 4 for identification, the operating

agreement between Foster McSwain and R. E. Griffith Theaters, Incorporated, and C. C. Lindsey, dated June 25, 1935, relating to the operation of the Ritz Theater at Plainview, and referring to the purchase of the Granada and Palace Theaters at Plainview from the O. K. Theaters Corporation through Oscar Korn.

Mr. Rice. No objection.

Mr. Cochran. As to the defendants Griffith Amusement Company, Griffith Consolidated Theaters, L. C. and H. J. Griffith, we object to the introduction of the document insofar as it may be considered evidence against them, for the reason that they are not parties to the agreement.

The Court. It will not be considered as to them unless it is connected up.

Mr. Wright. Of course, it is offered against all defendants on the theory that they are all engaged in a combination.

The Court. Of course, it would not be competent as to the objecting defendants unless it is connected.

Mr. Wright. Yes.

By Mr. Wright:

Q. Now, Mr. Scaling, while you and Mr. Lindsey operated the theater at Plainview, what sort of policy did
356 you operate it under?

A. We just operated as a partnership.

Q. I mean with reference to major film product.

A. I did all the booking and buying.

Q. What did you have there, what product?

A. I had Paramount, the last two contracts were not played, first run. I had some United Artists outbacks. I had a few independent pictures and what second run on Paramount that I wanted to play.

Q. When the operation of yourself and Mr. Lindsey terminated, do you recall about what date that was?

A. I recall along about April, 1933; along at that time.

Q. I show you this exhibit marked for identification as Exhibit No. 104, and ask you if you recognize the signatures at the bottom of the second page.

Mr. Cochran. May I inquire what that exhibit is, the one that has been admitted in evidence?

Mr. Wright. That was No. 4.

Mr. Cochran. This one is 104.

Mr. Wright. Yes.

By the Witness:

A. Yes, I identified that.

By Mr. Wright:

Q. Those are your signatures and those of Massey, Silverthorne, Mr. McSwain, Mr. R. E. Griffith and Mr. Lindsey?

A. Yes, sir.

357 Q. Is that the assignment of the lease that was made from you and Mr. Lindsey at the time the operation was taken over by Mr. McSwain, Mr. Griffith and Mr. Lindsey?

A. Yes, sir.

Mr. Wright. I offer that in evidence, Plaintiff's Exhibit 104.

Mr. Rice. You are offering the attachment also?

Mr. Wright. Yes, sir. The document I refer to is on the second page and is the agreement dated July 1, 1933, under which the lease was assigned from Mr. Scaling and Mr. Lindsey to Mr. McSwain, Mr. Griffith and Mr. Lindsey.

Mr. Rice. Of course, we don't see either the relevancy or materiality of it at this time and reserve that objection. It is a lease of real property in Plainview, Texas, made to Mr. Scaling and his associates by the owner of the property in 1932.

The Court. What is the purpose of it?

Mr. Wright. I think they want to fix the date of the transfer of the theater from Mr. Lindsey and Mr. Scaling's hands to Mr. Griffith, Mr. Lindsey and Mr. McSwain. That is all the agreement does.

The Court. That only involves the R. E. Griffith Theaters, Incorporated, and that is the only defendant that applies to.

Mr. Wright. Yes.

358 The Court. Unless you connect it.

Mr. Wright. It is offered against all.

The Court. It will be admitted subject to the same ruling as Plaintiff's Exhibit No. 4.

By Mr. Wright:

Q. Is this Exhibit 104 which bears the date on the second page of July 1, 1933, is that the date on which the operation was taken over by Griffith, Lindsey and McSwain?

A. Yes, sir.

Q. Did you continue with the theater in any capacity then?

A. I continued with the theaters as manager.

Q. For how long?

A. Until the latter part of June, 1935.

Q. During that period that you managed the theater what major film product did it play?

A. I continued to play the Paramount product that I had, first run, and what I wanted off the second run. I secured the cutbacks of United Artists and second runs off of United Artists and second runs of M-G-M, RKO, and Columbia besides a few independents.

Mr. Cochran. We object to that testimony and move it be stricken for the reason that the contracts themselves will be the best evidence as to the product which he had. I have found that in these cases it is very indefinite
359 and uncertain for these witnesses to say that they had a certain product when the product which they did have is covered by a written license agreement and definitely shows what product they had. The Government has had access to the files of each of these corporations and has obtained such documents as it wanted and those documents would be the best evidence, and a statement by this witness does not constitute the best evidence as to the product which was licensed to him at that time.

The Court. Overruled. Exception allowed. He has testified to what he did; not to the substance of the contract. I don't think it is material one way or the other. I think I just as well tell you now you are assembling quite an aggregation of material here that I don't think affects the issues in the case.

Mr. Cochran. One reason why I am anxious that your Honor get the purpose of the offering of this testimony as it goes along and follow it, is because that which now to your Honor seems to have no bearing on the theory on which the Government is trying its case may later prove to have a bearing if competent——

The Court. The objection will be overruled at this time and exception allowed.

Mr. Cochran. Let me finish this statement just a moment. Here he is having this witness testify that
360 during this period of time he operated a theater in Plainview that he had certain second run product from four or five different distributors which I say is not competent evidence of that fact. The Government will expect to follow that up by having this witness testify and attempting to prove otherwise that he sold this theater and that later he came back into that situation and they will contend that when he came back that he was not able to obtain from these various distributors product, second run——

The Court. I am sustaining the objection, Judge Cochran. He was a partner of R. E. Griffith and the third owner of this particular theater.

Mr. Wright. No, he wasn't the owner, he was the manager.

The Court. He was the manager for the different owners. This defendant was an owner. That is why I asked that. Overruled. Exception allowed. I will permit you to raise the same question if it becomes material later.

By Mr. Wright:

Q. Do you recall when it was you were replaced as manager of the theater there in Plainview?

A. Sure, the 25th of June, 1935.

Q. That was after the operators had purchased the other theaters in the town of Korn?

A. Yes, sir.

Q. And then did you again go into the theater
361 business at Plainview?

A. Yes, sir.

Q. That was in connection with what theater?

A. That was in connection with the Fair Theater.

Q. When did that theater open?

A. It opened along in January, 1936.

Q. With whom were you associated in operating that theater?

A. I was a third partner of Mr. R. Q. Silverthorne, J. H. Massey in Tower Theaters, Incorporated.

Q. That was the name of the corporation that operated the Fair?

A. Yes, sir, the Fair Theater.

Q. How long did you operate the Fair Theater there?

A. We operated the Fair Theater for about 42 weeks.

Q. Can you describe for us the general theater situation in that town at the time you opened the Fair, with reference to the size and general character of theater and the other theaters there and their mode of operation?

A. Yes, sir. Mr. Griffith operated the Grenada Theater, a theater of about 1100 seats. We operated the Fair Theater with approximately 650 and Mr. Griffith operated the Texas Theater with approximately 400 or 450 seats.

Q. The Texas Theater, was that one you had formerly managed, and where was the Texas Theater located?

362 A. The Texas Theater was located in the same building with the Fair Theater. Just changed the names. The Texas Theater had moved out of the Fair Theater building down the street.

Q. And your Fair Theater was opened in the same building that the Texas Theater had occupied when it was operated by Griffith?

A. Correct.

Q. And did you describe the new Texas Theater, or the Texas Theater which Griffith was operating at the time you opened the Fair Theater?

A. The Texas Theater that he was operating was approximately 650 seats, in the Fair Theater building.

Q. I am talking about the Texas Theater that was being operated at the time you opened the Fair Theater in January, 1936.

A. It had approximately 400 seats; maybe more; just a class B house or C, whatever you class it.

Q. What would class the Granada?

A. Class A.

Q. The Granada was the A house?

A. Yes, sir, it was the best theater.

Q. Then what was the next best theater?

A. The Fair Theater.

Q. And after that?

363 A. The Texas.

Q. Those were the only three that were then operating?

A. Yes.

Q. Just before you opened the Fair, can you tell us what policy Griffith was operating the Granada and Texas under with reference to programs?

A. He was operating on a period of six changes a week; three at each house.

Q. You mean the changes of features?

A. Yes, sir.

Q. That is, each theater would use six first run pictures a week?

A. Six in the two houses, yes, sir; three to each house.

Q. Three at each house?

A. Yes, sir.

Q. Did you state the date when you opened the Fair theater?

A. I opened the Fair Theater on January 11, 1936.

Q. What major product, if any, did you have when you opened it?

Mr. COCHRAN. We object to that as not the best evidence. That goes right back to the same proposition.

The COURT. What do you mean by that? I am not fully acquainted, you understand, with the technical terms in this art and we will have to approach it gradually.

364 Mr. WRIGHT. That is a phrase used, an expression they use for features and pictures and product interchangeably, but I will withdraw the question and we can eliminate that objection because I have the contracts here.

By Mr. Wright:

Q. I show you the contract that has been marked for identification as Plaintiff's Exhibit 102, and I will ask you if you recognize that contract?

A. Yes, sir.

Q. That is a contract for Universal pictures to be exhibited at the Fair Theater?

A. Yes, sir.

Mr. Wright. Your Honor, that covers the Universal features, first run, in Plainview for the 1935-36 season, and I believe attached to it is a schedule of serials and shorts.

The Court. That is the contract between the witness and Universal.

Mr. Wright. Yes. I offer that in evidence.

The Court. It will be admitted.

By Mr. Wright:

Q. Now in addition to the feature pictures available to you under that contract that has just been admitted as Exhibit 102, what major product, if any, did you play in the Fair Theater during that period you operated it, from January 1936 on?

Mr. Rice. He has already introduced one contract
365 with Universal that he played——

The Court. What was the question?

(Question read.)

The Court. You mean the pictures included in this particular contract?

Mr. Wright. In addition to this I asked him what features were released by major companies and played during that period.

The Court. You may answer.

By the Witness:

A. I played United Artists, first run, cutbacks from the 1934—35 contracts, and I played second run off the United Artists and I played some independent product and whatever I could get, and I played back off of my Universal contract a few of their pictures.

By Mr. Wright:

Q. Second run?

A. Second run, yes, sir.

Q. Can you tell the Court what you mean by a cutback? A. A cutback is a picture that has been rejected by the exhibitor under the terms of his contract. For instance, if a picture is not of a box office value or is not any good, a lot of times the exhibitor has the right to cut that picture back

and not play it, if he figures the box office value is not there. After it is cut back it is offered to other exhibitors.

Q. After it is cut back it is offered to other exhibitors?

366 A. Yes, if they want to buy it.

Q. Did you make any effort during that period to license any other second run product?

A. Yes, sir.

Q. From whom?

A. Well, I contacted RKO. I was in their office along in, I believe in March of that year, 1936.

Q. Their office where?

A. Dallas, Texas.

Q. You went to Dallas to buy films?

A. Yes, sir.

Q. That was in March of that year, 1936?

A. Yes, sir.

Q. Whom did you see at the RKO exchange?

A. I asked Mr. Sacks, the manager whom I talked to, Mr. Wheeler, the assistant manager, and booker, and Mr. Cummings, the head booker.

Q. What was said there?

Mr. Cochran. We object to that for the reason it is hearsay evidence so far as the defendants are concerned, each and every one of them.

The Court. Sustained. Exception allowed.

Mr. Wright. If the Court please, the only way we can show what the course of business was between these witnesses and the distributors in attempting to license films, of course, is to put in hearsay evidence; evidence

367 that is admittedly hearsay as to the transactions between them.

The Court. You are alleging a conspiracy and the rules of evidence are very definite that a conspiracy can only be proven by the word or act of a conspirator. You are offering evidence here of a conversation between the witness and someone not a party to this action in any way. Objection sustained.

Mr. Wright. If the Court pleases, conversations similar to this have been admitted without exception in the other cases that we tried by the district courts of New York and Tennessee, and in which exactly the same issues were involved.

The Court. This will be an exception.

Mr. Wright. May I tell Your Honor the theory on which I believe the evidence is admissible?

The Court. Yes, sir. I will hear you on that point.

Mr. WRIGHT. Certain statements have been made here, and you can see from counsel's opening statement, to the effect that these contracts that the defendants made with the exhibitors, their method of dealing with them, did not prevent independents from getting certain pictures in opposition to them. Now, we propose to show that the effect of those contracts and dealings between the exhibi-
368 tors and the distributors, that is, one effect of that conspiracy was to prevent the independent from operating in opposition and obtaining pictures, and that is the only way I know of in which those effects may be shown, and in which we have every intention to show them, as by showing exactly what the dealings were between the independent and those exhibitors who——

The COURT. If you ask this witness if he got certain pictures from a certain company I will permit him to answer, but you are asking him for a conversation with a representative of another company not a party to the suit. The Court's ruling is positive on that.

Mr. WRIGHT. I am not sure that Your Honor is aware of this fact, that each of these distributors, while not a party is also named in the pleadings as a co-conspirator. I don't think the rule of admissibility is any different as to co-conspirators who are defendants and those who are not defendants. At least, that is the rule that has been followed in the trial of these other cases where we have had exactly the same situation, and I submit that certainly the evidence is admissible under the conspiracy rule at this time, subject to connection, of course.

The COURT. I don't know of any such rule. We have tried a great many conspiracy cases in this court. I think I have read every opinion on a conspiracy case that
369 is available. I know of no way of connecting a man with a conspiracy except by a statement of an alleged conspirator or by an act of his. That cannot be proven by what somebody else said.

Mr. WRIGHT. May I ask if Your Honor has read the decision of the Supreme Court on the question in the Crescent case?

The COURT. No, I haven't.

Mr. WRIGHT. I think it clearly appears from that decision, from those findings and from the decision of the Supreme Court that the evidence on which the Government relied to sustain its case, and the evidence which the Supreme Court in the Crescent case found had been properly admitted, was evidence which consisted of testimony by the complaining witnesses as to what there dealings had been with the distributors who contracted with the defendants.

The COURT. You need not argue that question any more. The Court is positive in his position. If I am not right the Supreme Court will have to say so, but I do not know of any such rule.

Mr. WRIGHT. I think the Supreme Court has already stated as clearly as it can in the Crescent case that this testimony is admissible.

The COURT. The objection is sustained and exception allowed. That is as far as we will go on that point. I
370 think I know what the law of conspiracy is. Are you going to say here that hearsay testimony is admissible in a conspiracy case? I do not know of any reason why a different rule should be applied to one class of cases than to another.

Mr. WRIGHT. If the Court pleases, I do not propose to attempt to discuss the reasoning any further except to say that in the Crescent case decided by the Supreme Court in December of last year, that it was plainly held that evidence of this character is material and properly admissible. That is all I can say.

The COURT. The Court has ruled. The Supreme Court may have said that. I don't know what it will do next week, but this Court has spoken.

Mr. WRIGHT. I don't know what it will do next week either, but I suppose until they change it, this ruling stands.

The COURT. The Supreme Court has laid down some very definite rules on conspiracy, and in one case a very eminent chief justice said that of all the cases filed a conspiracy case is the most difficult to defend. Therefore, the rules of evidence certainly should not be departed from in a conspiracy case any more than any other. I don't think it is competent evidence.

Mr. WRIGHT. No one is attempting to depart from the rules of evidence. I am merely pointing out the rule
371 as announced by the Supreme Court which holds that this type of evidence is admissible.

The COURT. It is not in this court. They may do it in some others but there are certain rules of evidence that are fundamental and one of them is that hearsay evidence is not competent.

Mr. WRIGHT. I want to make an offer of proof to the record, Your Honor.

The COURT. Very well, you can make your offer.

Mr. WRIGHT. We would propose to show by the testimony of this witness, not only with respect to this particular distributor—I will cover this particular conversation—first. I think it would be better, if Your Honor wants to do it, to simply get the testimony in the record so we could make the record for the purposes of an appeal, and

then Your Honor I assume will strike it out of the record in rendering his decision. I believe at this time we should be allowed to at least record the testimony and make the record.

The COURT. You can state what you intend to prove.

Mr. WRIGHT. What I am thinking of is this, Your Honor. Insofar as we are concerned, if all we are doing here is going through this trial and then having the privilege of appealing and simply securing a reversal which will send the case back for another trial, in view of the ex-
372 traordinary length of time that has already elapsed before trial, but that would mean a complete and ultimate victory for the defendants. I think in the interest of all parties that we should at least make a record here on which the case can ultimately be disposed of, and the only way I think we can do that is to actually receive the testimony, and then let it be so disregarded by Your Honor in reaching a decision.

The COURT. You can make your tender of the testimony and state what you are offering to prove by this witness. I don't know of any reason why the general rules of procedure should be changed to meet a particular case. You can state what you propose to prove by this witness. That protects your record.

Mr. WRIGHT. That only protects it to this extent. It establishes ground for reversal and retrial but it does not afford an opportunity for final disposition on an appeal, and I think we clear our title too in a case of this character. I think further that when other evidence is offered and you see the picture as a whole you might have quite a different idea as to the admissibility of this evidence than you now entertain. I don't see why you, yourself, should be foreclosed at this time from at least having a record of what this testimony is.

The COURT. I will permit you to do this: I am not receding from the ruling at all. I will permit you,
373 in order to make your record, to examine the witness so these statements can go into the record.

Mr. WRIGHT. That is all I would like to do.

The COURT. I do not want to foreclose you from making a complete record.

Mr. COCHRAN. In other words, he is just simply permitted to ask the witness the questions and obtain his answers in lieu of making an offer in the customary way?

The COURT. Yes, sir.

(Hereupon court adjourned until 2:00 o'clock p. m. this day.)

374 AFTERNOON SESSION

May 8, 1945, 2:00 o'clock p. m.

PROCEEDINGS

The COURT. In order that the record may be clear, the Court has sustained an objection to the question that has been asked. The plaintiff's attorneys asked permission, in order that the record may show what the testimony of this witness would be, were it competent, to examine the witness and the Court is permitting them to do with that limitation.

Mr. WRIGHT. If the Court please, I would like to say I think I was probably at fault this morning in presenting the issue of the admissibility of the conversation so boldly. There is no question about your Honor being absolutely right that any conversation of that kind, taken by itself, is certainly inadmissible hearsay, and I would not want to suggest now that it were anything else. I perhaps also failed, however, to give you the general picture of how we tried these cases and how the evidence like that was admissible in these other cases, such as the Crescent case.

375 The COURT. As to the Crescent case, I have examined that case since we adjourned and the Supreme Court in that case does not go as far as is suggested by counsel. Now, after offering these letters the Court says the United States asserts these letters or reports were declarations of one conspirator in furtherance of a common objective, therefore admissible as evidence against all under the rule. It was argued that it makes no difference that these distributors were dismissed out of the case, since they were charged with being open conspirators and since the findings are with certain exceptions adequate to support the charge. We don't come to that question. The other evidence established the position of the distributors and their relationship to the theaters involved, what the distributors in fact did in combination with the defendants, the character and extent of their buying power and how it was, in fact, used. This other evidence was sufficient to establish the restraint of trade and monopolistic practices. The purpose, character and extent of the combination are inferably made; thus, if any error be assumed in the introduction of letters and records, the right of showing prejudice has not been sustained.

Mr. WRIGHT. That is quite right, your Honor, but the other evidence that was referred to there as to what

376 the distributors did, of course, constituted very largely the evidence as to what the distributors did in their dealings with the independent competitors who were in

opposition to Crescent, and such evidence of that kind. You will find in the record the Judge's findings were based upon evidence as to what efforts these independent exhibitors had made to get pictures from the distributors who dealt with the defendants. Now, of course, in all these cases, what we were proposing to show here briefly is simply that he had the second run product there while he was operating in opposition to Korn, and the theater was one in which Griffith was interested, but that when he operated in opposition to Mr. Griffith he could not get second run. Of course, in all these cases we would expect to connect up his dealings, or the dealings of any witnesses offered, with the distributors by showing dealings between the same distributor and the defendants, and it may be that on this question of showing reasonable efforts to get product, we have wasted a lot of judicial time, I don't know. We have fallen into a sort of rigid pattern of showing these negotiations, and your Honor may be more right than these other judges were in excluding that sort of testimony. As I understand it, you said that you would permit us to show how the product was actually distributed and it may be sufficient for our purposes to show how the pictures were distributed,
377 provided, of course, there is no claim when we get through that while the reason that these people did not have the pictures, they didn't get the pictures, was because they didn't make any efforts to get them. All we do really, when we offer this sort of evidence to the negotiations with exchanges in turn to get pictures, I suppose is to anticipate that sort of claim.

The Court. Here is the theory now on which the Court makes its ruling. A conspiracy is a very difficult defense to make because you can never tell what to anticipate. Now, one of the fundamentals in a conspiracy case, so far as evidence is concerned, is that one cannot be connected, you cannot show a man's connection with a conspiracy except by some statement, or some act of his, some statement that he may have made. You have to connect him with it before you have a conspiracy. Now, in this case the evidence that you sought to introduce is merely a conversation between him and one not even a party to this action.

Mr. Wright. Right.

The Court. Now, the general rule of conspiracy, under that rule, I cannot see its competency. There are different reasons for that. If this man that he was talking to made a statement that would involve one of these defendants the Government has the opportunity of bringing that man into court and letting him testify. That might not be his testimony.

Mr. WRIGHT. I suppose by that, your honor is referring to the distributor's representatives?

The COURT. I don't know who it was. The RKO man.

Mr. WRIGHT. Yes. This conversation I think he started to testify to was with Wheeler. I would suppose, as far as the hearsay rule is concerned, whatever Wheeler said to this witness would be hearsay, insofar as the defendants are concerned, whether Wheeler gets on the stand and testifies or whether Mr. Scaling testifies to the conversation.

The COURT. No, if Wheeler were to testify that Mr. Griffith, or one of the Griffiths said to him they would not take their product if they sold to somebody else then you would have evidence connecting one of the defendants with it, but just to ask his men what Wheeler said would be pure hearsay.

Mr. WRIGHT. Yes, but assuming that we asked Wheeler, not what Griffith said to him, but if we asked him what he said to this man, I suppose such testimony is hearsay as to Mr. Griffith, just the same as this witness' testimony would be as to what Wheeler said to him. It is hearsay in either case. When it comes to connecting it up, of course, the problem is simply this: In all these cases, of course, we have a problem of order of proof. In this matter I had hoped to present first of all these agreements they
379 claim the Griffiths and various distributors had which in my view establish a prima facie case of conspiracy in themselves, and if this were a question of order of proof I suppose we might withdraw the witness and complete the introduction of that documentary evidence, but I do not think that the courts have insisted that the connecting up be done prior to the reception of the witness' testimony in evidence. I did not understand that your ruling was based upon the order in which this was offered. I had understood you had regarded it as hearsay, no matter when we offered it.

The COURT. It is pure hearsay. I cannot conceive of how that would be competent at any stage of the case.

Mr. WRIGHT. And that you would not admit conversations between a complaining witness and a representative of a distributor under any circumstances after any foundation was laid. Is that correct?

Mr. COCHRAN. That is not the question that was before the Court at the present time. Here we have a plain hearsay statement and counsel has admitted it is not competent at this time; as to what the problem will be when they reach some other stage is another matter, that is not fair to the Court.

The COURT. I don't know what the other questions will be. I can't tell.

Mr. COCHRAN. In view of counsel's statement which
380 is made now, I think it is clearly not necessary that we go into this preliminary examination because the rules of civil procedure say that when testimony is offered and objection is sustained that the Court may permit the examination to proceed, as is contemplated here, unless the evidence is clearly inadmissible, and under the statements that have been made here at the present time, this is clearly inadmissible. I think we should proceed with something else.

Mr. WRIGHT. I don't want to be understood as conceding it is inadmissible. I insist it is admissible and I was trying to clarify the procedure in this case at this time by trying to determine, as far as we could, the extent to which this ruling must be a precedent for other rulings.

The COURT. The Court does not hesitate at all to state to you that in its judgment any testimony between a complaining witness and any conversation between a complaining witness and a representative of anyone other than the defendants would not be admissible. Now, of course, there might be exceptions to that. There might be conditions which would suggest a modification of the rule but it is not apparent at this time.

Mr. WRIGHT. I think, of course, the exception we rely on is the general exception to the hearsay rule that such conversations are admissible when they occur with
381 one who is charged as a co-conspirator and are connected up by a showing of conspiracy between, in this case, the distributors and the defendants, to deprive the witness of product. On the order of proof question, the courts have always held, I think, that we are not limited to any rigid order; that there is a matter of convenience to be considered in receiving the testimony when it is available and that is why it was offered at this time.

The COURT. The court does not care to modify his ruling at this time.

By Mr. WRIGHT:

Q. Mr. Scaling, when you went to the exchanges in Dallas in March on this occasion you have referred to, did you also call on Mr. R. E. Griffith?

A. Yes, sir.

Q. Where was that?

A. In his office in Dallas.

Q. Who else was present?

A. Mr. Lockhart, the booker.

Q. What was said there?

Mr. Rice. Just a moment, Your Honor. Mr. R. E. Griffith is not a party to the suit, Your Honor. R. E. Griffith is dead. Neither is Lockhart a party to the suit. This witness is now attempting to testify to a conversation with R. E. Griffith. No predicate is laid to make it admissible. This also is nothing more than hearsay.

382 The Court. Was it with the deceased?

Mr. Cochran. From the standpoint of the Griffith Amusement Company, Griffith Consolidated Theaters, L. C. Griffith and H. J. Griffith, the objection is made that the testimony is incompetent, irrelevant and immaterial and hearsay as to them.

The Court. What do you say as to its competency, being with a deceased person?

Mr. Cochran. I think that would not come under our statutory prohibition against the declarations of a deceased person, due to the fact that the proof is not against an administrator of his or his estate. That rule does not preclude the admission of a declaration of a deceased person against a corporation of which he was an officer or agent, is my understanding of the rule.

The Court. If there is no objection to it, then, it will be understood as being binding only upon R. E. Griffith or the corporation of which he was an officer, and not as to the other defendants at this time.

(Previous question read as follows: "What was said there?")

A. I asked Mr. Griffith if he had any cutback pictures that he was not going to use. He asked Mr. Lockhart if he had made a list of the pictures they were going to cut back for the year. He said no, he hadn't. He said, "Well,

383 I wish you would make up a list and notify the exchanges to release them for my use." Mr. Lockhart left the room and then I asked Mr. Griffith if he would let me have some second run pictures and Mr. Griffith looked at me and said "No." He said, "The town is too small for second run pictures," so then I asked him, "Well, what about your changes since 1936, since I opened the Fair. You have jumped from three changes a week in each theater to four changes, consuming two extra first run pictures." He said, "Well, I had to do that to consume the product that I had under contract." So I got up to leave and he walked to the door with me. He said, "Tell your partners, Mr. Silverthorne and this fellow Massey", who was another partner, "when they get ready to close the Fair Theater, rent the building out for a store building, we will try to buy the equipment." I said, "Mr. Griffith, I don't think that will ever happen", and that was the end of our conversation.

By Mr. WRIGHT:

Q. During this period of operation of yours from January, 1936, through—what month was it that you ceased, October?

A. Yes, sir.

Q. As I understood your former testimony you played Universal product first run and second run and United Artists first and second run?

384 A. Yes, sir.

Q. Was that still true with respect to United Artists in the summer of 1936?

A. No, sir; they refused to sell me.

Mr. COCHRAN. We object to that and move to strike it for the reason that is hearsay. The same problem we had awhile ago, only he is giving his conclusion now instead of his statement.

The COURT. It will be sustained but you can state whether or not you bought product. I will let you state the facts without the conclusion.

A. Judge, Your Honor, you mean Universal?

Mr. WRIGHT. This is United Artists you are being asked about.

A. Did I buy the product?

The COURT. No, I did not.

By the COURT:

Q. Did you offer to buy it?

A. Yes, sir.

Mr. WRIGHT. I will ask to have these letters marked separately with the next exhibit number. Mark the letter of August 12 on United Artists stationery from Roy Sachs to Mr. Scaling attached to which is a copy of a letter from Mr. Scaling to Mr. Roberts dated August 13, 1936, as Government's Exhibit No. 105 for identification, and then mark the letter on the United Artists stationery from
385 Roberts to Scaling dated August 14, 1936, as Exhibit 106 for identification.

By Mr. WRIGHT:

Q. I hand you Exhibit 105 for identification and ask you if you received that letter from United Artists on or about the date it bears?

A. Yes, sir.

Mr. COCHRAN. What is that date?

Mr. WRIGHT. August 12, 1936.

By Mr. WRIGHT:

Q. And is the attached letter dated August 15, the copy of your reply?

A. Yes, sir.

Q. Is Exhibit No. 106, for identification, the reply you received from the United Artists?

A. Yes, sir.

Mr. WRIGHT. I offer those two exhibits in evidence.

The COURT. What is the date of that last letter?

Mr. WRIGHT. August 14, 1936. They are dated respectively August 12, 13, and 14.

Mr. COCHRAN. We object to the introduction of each of those exhibits for the reason that each exhibit is incompetent, irrelevant and immaterial, and hearsay, and further the authority of the person signing has not been established and these defendants, the parties to this case, these are merely statements in writing, merely purporting to be statements in writing of a purported representative
386 of these producers. The same proposition we have been dealing with.

Mr. WRIGHT. There is one preliminary question.

By Mr. WRIGHT:

Q. This pencil writing at the bottom of this Exhibit 106 for identification, was that on there when you received the letter?

A. No, sir.

Q. That was a notation you made in your handwriting later?

A. Yes, sir.

Mr. COCHRAN. Your reply to this letter does not bear an exhibit number.

Mr. WRIGHT. No, they were just together.

The COURT. The objection will be sustained and exception allowed.

By Mr. WRIGHT:

Q. Were you able to make a contract with Universal for the first run of the 1936-37 season pictures?

A. No, sir.

Q. I will ask to have this letter of September 1, 1936, from Universal pictures branch at Dallas, signed by Smith, the branch manager, to Mr. Scaling, marked as Plaintiff's Exhibit 107 for identification. I will ask you if that is the letter you received from Universal on or about that date?

387 A. Yes, sir.

Q. The attached copy there is a letter from you to Universal dated the 18th?

A. Yes, sir.

Mr. WRIGHT. I offer Plaintiff's Exhibit 107 for identification, in evidence. I am not offering the letter attached on the back. I just didn't remove it.

Mr. Cochran. Objection is made to the offer in evidence of Plaintiff's Exhibit 107 for the reason the same is incompetent, irrelevant, immaterial and hearsay, and for the other reason stated in the objection to the preceding exhibit.

Mr. Rice. For the record only, it is, of course, clear that the four defendants, corporate defendants, and the individuals are charged with being a part of a combination. Judge Cochran appears for part of them and I for another. Some objections as to Mr. R. E. Griffith might apply in their behalf and not in mine but unless that arises, when an objection is made can it be considered made on behalf of all defendants?

The Court. The objections will be considered made on behalf of all defendants. Objection will be sustained. It is hearsay.

388 Q. I show you a letter from Metro-Goldwyn-Mayer Pictures, Dallas, dated June 20, 1936, to you, marked for identification as Plaintiff's Exhibit 108 and I will ask you if you received that on or about the date it bears?

A. Yes, sir.

Q. After you received that letter was any first or second run Metro product offered to you?

A. No, sir.

Mr. Wright. We will offer in evidence Plaintiff's Exhibit 108 for identification.

Mr. Cochran. We object for the same reasons as previously stated to the preceding exhibit.

The Court. The objection will be sustained and exception allowed.

By Mr. Wright:

Q. I will ask you if you received this letter dated June 10, 1936, from RKO Distributing Corporation of Dallas on or about the date it bears, marked for identification as Plaintiff's Exhibit No. 9?

A. Yes, sir.

Mr. Cochran. What is the date of that instrument?

Mr. Wright. That is June 10, 1936. We offer that in evidence.

Mr. Rice. The same objection, your Honor.

The Court. Objection sustained.

389 Mr. Wright. One thing I wanted to ask your Honor, in so far as the objection being based on who these people were who wrote the letters, now that will be covered, of course, in later testimony. I understand your Honor's ruling, however, to be based upon the hearsay feature.

The Court. The hearsay testimony.

Mr. WRIGHT. And not because of any question of authority or anything of that sort, is that correct?

The COURT. That is right.

Mr. COCHRAN. We are not waiving the objection on the ground of lack of authority of the person who signed it or the lack of proof that the person purporting to sign it was the person who in fact did sign it, or any of the objections that were made, we are not waiving any of those objections.

By Mr. WRIGHT:

Q. Now, calling your attention to this Exhibit 108 for identification, do you recognize that signature there?

A. Yes, sir.

Q. That was whose signature?

A. Bickel.

Q. Do you know who he was at that time?

A. Branch manager.

Q. He was the man, was he, that you dealt with in licensing films in Plainview before?

A. Yes, sir.

390 Q. Do you recognize his signature on Plaintiff's Exhibit 109 for identification?

A. Yes, sir, Mr. Sachs.

Q. Who was he?

A. He was the branch manager of RKO.

Q. Was he the person that you had dealt with before in licensing films for Plainview?

A. Yes, sir.

Q. Do you recognize the signature on Exhibit 107 for identification?

A. Yes, Mr. Oldsmith.

Q. Who was he?

A. The branch manager of Universal at Dallas, Texas.

Q. And he was the man that you had been dealing with in licensing Universal films, was he?

A. Yes, sir.

Q. Do you recognize the signature on this Exhibit 105 for identification?

A. Yes, sir.

Q. Who was that?

A. Mr. Roy Sachs, United Artists.

Q. Who was Mr. Sachs who signed this Exhibit 105 for identification?

A. He was the office manager.

Q. Where?

391 A. For United Artists.

Q. For United Artists?

A. Yes, sir.

Q. Had you dealt with him before in licensing films?

A. Yes, sir.

Q. Do you recognize the signature on the letter from United Artists, marked Plaintiff's Exhibit 106 for identification?

A. Yes, sir, it is Doak——

Q. Who was that?

A. Mr. Doak Roberts.

Q. Who was he?

A. He was the manager.

Q. Where?

A. Of United Artists.

Q. In Dallas?

A. Dallas, Texas.

Q. And he was the man that you was then dealing with in licensing films?

A. Yes, sir.

Q. At the time you got this last letter dated September 1, 1936, Plaintiff's Exhibit 107 for identification, what film product did you then have for the Fair Theater?

Mr. COCHRAN. We object to that, if your Honor please, as calling for a conclusion of the witness and not
392 the best evidence. It gets back to the same objection we made this morning, that is, that the contract is the best evidence, and counsel, after the objection had been made, counsel abandoned that trend and asked him what he played and that was permitted, but now he is asking what contract, what product he had under contract, and I am making that objection.

The COURT. Read the question.

(Last question read by the reporter.)

The COURT. Was that a written contract?

The WITNESS. I beg pardon.

The COURT. Did you have a written contract for films you were playing?

The WITNESS. Yes, sir.

The COURT. The objection will be sustained as not the best evidence.

By Mr. WRIGHT:

Q. At that time did you have any contracts for product to be released after September 1, 1936?

A. No, sir.

Q. What films were you then playing?

A. I was playing Universal, United Artists, a few cutbacks from Columbia, a few cutbacks from Paramount, and some independent, and Gaumont.

Q. After you got that letter, marked for identification as

Plaintiff's Exhibit 107, did Universal offer you a
393 feature contract for the first run of the 1936-1937 season?

A. Yes, sir.

Q. Was that contract for a full first run deal such as this Exhibit 102?

A. No, sir; there was no contract issued on any of the dealings. It was an agreement that they would split the contract, but the contract was never offered for my signature.

Q. What was offered to you?

A. Nothing except 50%, and whenever taken up it was never offered to me.

Q. I don't quite understand you. As I understood it, you say 50% of the 1936-37 pictures were orally offered to you?

A. Yes, sir.

Q. By whom?

A. By Mr. Oldsmith, in Dallas.

Q. But no contract application was written up or anything of that sort?

A. No, sir.

Q. Why not?

The Court. If you know.

Mr. Cochran. We object unless it is shown that this witness knows.

The Court. Do you know why the contract was not written up?

394 The Witness. Yes, sir; I know what he told me.

Mr. Cochran. If it involves the statement of a conclusion or the statement that Mr. Oldsmith made, that is really hearsay.

The Court. He said it wasn't written up and it wasn't offered to him.

Mr. Cochran. The important thing, he says he didn't make out any application, and these contracts are always preceded by written applications, made by the person who wants the product.

Mr. Wright. If there is going to be any claim made that he could have had the pictures, but just didn't sign an application, I think we should be entitled to go into what, into just what the substance of this offer was.

Mr. Cochran. He can state what he did.

The Court. Did you file an application?

The Witness. A written application?

The Court. Yes.

The Witness. No, sir, I had no chance.

By Mr. Wammit:

Q. Was any opportunity given to you to file a written application?

A. No, sir.

Q. Was it a fact that after you opened the Fair Theater the Griffith houses went from three to four changes?

A. Yes, sir.

395 Q. And used eight pictures a week instead of six?

A. Yes, sir.

Q. Did they continue during the entire time you operated?

A. Yes, sir.

Q. And by the first of October 1936, did you then have enough pictures to operate the theater?

A. No, sir.

Mr. Cochran. We object to that as calling for a conclusion of the witness, if the Court please.

The Court. Overruled.

Mr. Cochran. Exception.

By Mr. Wright:

Q. Now, I will show you this document, dated October 15, 1936, marked for identification as Plaintiff's Exhibit No. 3, and ask you if that is a document that you and Mr. Silverthorne signed on or about that date?

A. Yes, sir.

Q. Mr. Silverthorne was your partner?

A. Yes, sir.

Mr. Wright. I will offer in evidence Plaintiff's Exhibit 3 for identification.

The Court. What is the date of it?

Mr. Wright. That is October 15, 1936.

Mr. Rice. May I ask if the purpose of the offer is to show the passage of title of the subject matter therein?

396 Mr. Wright. It shows that at that time they took over and also to show the agreement contained therein, which Mr. Silverthorne and Mr. Scaling made, not to compete in the future in Plainview.

Mr. Rice. We think that in so far as any purpose contained in the offer to establish something within the scope of this lawsuit, to control all competition or the like, that this contract is clearly inadmissible because, first, it is local in effect and in area, confined to the State of Texas and to Plainview in the State of Texas and does not directly or indirectly affect interstate commerce. It is an ordinary covenant not to compete in the area in which the business existed at the time of the transaction. Your Honor, there is another objection, that in order that any such covenant or like matter be used under the allegations of this petition, it should be shown that the instru-

ment is designed and does tend to exclude, not Dennis Scaling or R. Q. Silverthorne individually, nor the corporation, in this instance, but to exclude all the world from such competition; that such exclusive or restrictive covenants can form no basis of proof of any charges in this case, if they are confined to an individual.

Mr. COCHRAN. If the Court please, I want to make a statement.

The COURT. Well, the objection has been sustained
397 and it is in the record.

Mr. COCHRAN. All right.

The COURT. And exception allowed. I don't see, I don't know of any reason why a contract like that cannot be made by two people.

Mr. WRIGHT. It obviously can be and was made, but in every anti-trust suit we have ever tried covenants of this kind have always been admitted to show an intent to exclude competitors, even though taken by themselves they might be legal.

The COURT. Here is a man in a small town that has two drugstores there, one of them is very successful and the other is having a pretty hard time of it, maybe for different reasons, he may be financially embarrassed, he may not have credit sufficient. They make a contract and one store purchases the other and he purchases the good will, and the good will carries with it his agreement, the agreement of the seller, not to engage in like business in that community for a definite period. Now, that is treated as a legal contract. I don't think you can establish a conspiracy by mere inferences or possibilities of existing facts; I think there must be something there that will show intent.

Mr. COCHRAN. If the Court please, for the purpose
398 of the record, may I make a brief statement?

The COURT. Very well.

Mr. COCHRAN. It is our position, so far as Griffith Amusement Company and Griffith Consolidated, L. C. Griffith and H. J. Griffith, that the purpose for which this document has been offered in evidence as stated by counsel for the plaintiff is not within the issues made by the pleadings. There is nothing in the pleadings in this case that charges an overt act in the acquisition of theaters, or restrictive agreements in connection with the acquisition of theaters or anything else. This complaint very definitely charges the things which the Government contends in themselves constitute the restraint of trade and attempts to monopolize, and this thing that is being referred to now is not referred to in any way whatever in the pleadings and it is not within the issues.

Mr. WRIGHT. If the Court please, with reference to this document and what we have charged, we have charged these people with monopolizing theater operations in these towns with the intention of excluding competitors. We have charged them with acquiring these competing businesses for the purpose of excluding them in this case closing and converting a competitive town into a closed town. Now, under a charge of that kind in determining the defendants' intent the very best evidence obtainable is
399 what the defendants did in connection with those acquisitions, the agreements they themselves made with competitors at the time the theaters was acquired, even if they were legal agreements within themselves, which I don't think it is because there is absolutely no time limitation in it whatsoever, and it would be admissible together with many similar agreements made in Texas, New Mexico, and Oklahoma, which we will offer before the case is through, for the purpose of showing an intention to monopolize theater operations in the area in question. I don't think there is any evidence which could possibly be offered on the intent issue more persuasive than agreements like this, whereby the sellers must stay out of Plainview forever.

The COURT. Of course, in a conspiracy case there are two elements. One must be the agreement, there must be some connection, combination, and that is really the essence of the offense. However, before there is a completed offense there must be some overt act, but the courts have all held that a conspiracy cannot be shown by the overt acts. There must first be an agreement, a combination, of some character. A mere overt act might be absolutely lawful and at the same time if it were made pursuant to an agreement to do certain things then it would constitute a part of the offense.

Mr. WRIGHT. Right.

The COURT. But you have made your record of
400 offering it.

Mr. WRIGHT. Of course, we have charged this monopolization is pursuant to an agreement between these four corporate defendants.

The COURT. An agreement is ordinarily proven before the overt act.

Mr. WRIGHT. Do I understand your Honor to say, again, that there is not a matter of the order of proof involved, that your ruling would be the same if we offered this after we had introduced the documents which we say makes our prima facie case?

The COURT. If you show there was an agreement between the parties which involved the elimination of all competition in a certain town and then you show this act which was a part of it, it might be competent. As it is now, it is not competent in my judgment.

Mr. WRIGHT. We think Exhibit P–1, which is already in evidence is precisely that, an agreement showing all of these defendants combined.

The COURT. You say that, but does the contract show it?

Mr. WRIGHT. I think it does, about as clearly as any contract can.

The COURT. I haven't read the contract, I haven't
401 had an opportunity to examine the contracts, but from the statements that were made by counsel in the presence of the Court, I see no evidence of an agreement which would constitute a conspiracy. I don't know of anything that is in that contract that you have read so far that is not absolutely legitimate between people engaged in that line of business.

Mr. WRIGHT. If the Court please, I don't think people engaged in any line of business can make an agreement of that character without a limitation of both the time and the place, and regard it as a lawful agreement. There is no limitation as to time whatsoever.

Mr. COCHRAN. The Court is referring to your Exhibit P–1.

The COURT. I am talking about Exhibit P–1. I don't know what the Texas law says about the selling of good will, it may be that it must be limited to a certain time. I think in Oklahoma there is a limitation, but I am not sure as to the Texas statute.

Mr. WRIGHT. In any event, we offer it.

The COURT. Exception allowed.

By Mr. WRIGHT:

Q. Did you continue in possession of the theater after this agreement marked Plaintiff's Exhibit No. 3 for identification was made?

A. No, sir.

402 Q. Did the purchasers take possession and operate as of the 15th?

A. No, sir, they took possession the first, following, 15 days later.

Q. What was done with reference to playing pictures during the period from the 15th to the 1st?

A. Mr. McSwain was present when that contract was signed, and I mentioned the fact to him that we didn't have enough product to finish out, and he says, "I will take care of that, I will call the Griffith office and have them book in

some product for you." I believe he talked to Mr. Lockhart.

Q. Who was Mr. Lockhart?

A. He was the head booker at the Griffith office.

Q. Was that done?

A. Yes, sir.

Q. And possession was surrendered on November 1st?

A. Yes, sir.

Q. Now, during this period of operation from January, when you opened, to October 15th, can you tell us what the relative admission prices were of the three theaters there?

A. As I recall, the admission price was 10 and 25 at the Grenada, 10 and 25 three days of the week at the Fair, and 10 and 15 in the last four days, and 10 and 15 at the Texas the latter part of the week, and 10 and 20 the
403 first part of the week.

Q. When you say 10 and 15 or 10 and 20, you refer to children and adult prices respectively?

A. Yes, sir.

By the COURT:

Q. What was your charge?

A. Sir?

Q. What was your charge in your theater?

A. 10 and 15 the latter part of the week and 10 and 25 the first part of the week.

By Mr. WRIGHT:

Q. Those prices that you have named for all three theaters were evening and matinee prices?

A. Yes, sir.

Q. There was no change?

A. No change.

Q. Do you know what major product was being played at the Grenada and the Texas?

Mr. RICH. Your Honor please, I think that has gone pretty far, when he is talking about what pictures played at the two other theaters. Obviously, he could not have been there and at his own theater also.

The COURT. If he knows, he may answer.

Mr. WRIGHT. I asked him if he knew.

By Mr. WRIGHT:

Q. Do you know?

A. Yes, sir. At the Grenada Theater they played the Class A product of the major companies; at the
404 Texas Theater they played their Class B or C product.

Q. What do you mean by the major companies?

A. I mean Paramount, RKO, Columbia—I mean Paramount, RKO, Warner, Fox, MGM and Columbia.

Q. Then as to the Class B pictures?

A. Of the same companies.

Q. Were played first run at the Texas?

A. Yes, sir.

Q. Did they play any major second runs at those theaters?

A. Not at the time I operated.

Q. I am referring to this period from January 11th, was it, when you opened?

A. Yes, sir.

Q. Until October 15th when you made that agreement.

A. Yes, sir. No second run, no, sir.

Mr. WRIGHT. I want to re-offer those exhibits which were rejected. Those were Exhibits 106, 107, 105, 109, and 108, for identification.

Mr. COCHRAN. The same objection is made as previously, your Honor.

The COURT. Objection sustained and exception allowed.

Mr. WRIGHT. You may cross-examine.

405 Cross-examination by Mr. RICH:

Q. Mr. Scaling, before I begin questioning, before I finish the question I started, may I ask you what you have in your hand that you have been referring to?

A. Just some notes.

Q. Did you make those notes?

A. Yes, sir.

Q. When did you make them?

A. I made them the last three or four days.

Q. In conference with the attorneys for the Government?

A. Well, no, these notes were made by myself.

Q. Alone?

A. Yes, sir.

Q. No one helped you?

A. No, sir.

Q. Mr. Scaling, where is Plainview located?

A. Plainview is located in the Panhandle of West Texas, south of Amarillo, in Dale County.

Q. How far from Dallas is it?

A. Well, it is approximately 370 some odd miles, depending on which way you go.

Q. How do you reach there by train from Dallas?

A. You can reach there by the Fort Worth and Denver from Dallas by way of Wichita Falls, or you can go
406 over the Sante Fe to Sweetwater, and go north from Lubbock, or you can go over the Fort Worth and Denver to Amarillo and down over the Sante Fe south.

Q. It is a full overnight journey, is it not?

A. Yes, sir.

Q. What sort of country is there around Plainview, is it agricultural, or a cattle raising country?

A. It is agricultural and some stock feeding.

Q. They raise cotton and wheat and small grain and feed stuff up there, don't they?

A. Correct.

Q. It is a region in which they practice dry farming, is it not?

A. Not necessarily, no, sir.

Q. Have you had any rain there since last December?

A. We have had showers, but we have irrigation wells.

Q. You have pretty uncertain crop seasons in Plainview, don't you, and all over the Panhandle, isn't that true?

A. If you take in the dry farming, it is; if you take in the irrigation, it isn't.

Mr. WRIGHT. If the Court please, this is interesting but I don't see the relevancy it has to the direct examination.

The COURT. I don't see how it is material.

Mr. RICH. All right.

407 Q. Where is Hale Center?

A. Hale Center is eleven miles south and a little west of Plainview.

Q. As I understand, that is your home?

A. Yes, sir.

Q. Mr. Scaling, when you went into Plainview at whose invitation did you go, in 1932?

A. In 1932?

Q. Yes.

Mr. WRIGHT. If the Court please, I don't see how that is relevant either.

The COURT. I don't either.

Mr. RICH. All right, your Honor, I will withdraw the question. I was just trying to lay the background.

Q. You did form a partnership with C. C. Lindsey of Lubbock to operate the Ritz Theater in Plainview?

A. Yes, sir.

Q. Describe that house, please, with reference to size, decorations, and the front particularly.

A. At what time, the time we took it over?

Q. In 1932.

A. In 1932? It is a house of approximately 650 seats, with two small balconies on each side; it has a complete stage.

408 Q. I am not talking about what it has, I am talking about what it had in 1932.

A. That is what it had in 1932. It had a complete stage, large enough to take care of a stage show, it has a long

lobby, it had a long lobby, with a barber shop on one side and a confectionery on the other side; it had the box office in the center of the lobby on the north side as you go in, it had front doors that closed at the front of the theater.

Q. Did it have rest rooms in it?

A. Yes, sir; it had rest rooms on the side.

Q. What do you mean by on the side?

A. On each side as you go into the foyer.

Q. Into the foyer?

A. Yes, sir.

Q. How old was that theater?

A. I think the theater approximately was built sometime back in the '20's, I couldn't tell you exactly.

Q. You bought some of the equipment from the landlord, didn't you?

A. No, sir; I didn't.

Q. How about the seats?

A. The seats went with the building.

Q. Didn't you owe the landlord some money on those seats in 1933?

409 A. Not those seats, no, sir.

Q. What seats did you owe him money on?

A. We bought some seats later.

Q. You didn't owe that money to Mr. Massey?

A. We did on the seats we bought, but not on the seats that were in the theater when we took it over.

Q. You bought them later on?

A. Yes, sir.

Q. Mr. Massey was your landlord, wasn't he?

A. Yes, sir.

Q. Who was agent for him at Plainview?

A. R. Q. Silverthorne.

Q. By agent, you mean the man who collected the rent and dealt on the property for the landlord, is that right?

A. Yes, sir.

Q. Do you remember when Mr. Lindsey first told you that he wanted to sell or to rearrange somehow the operation in Plainview because you were not doing any good?

A. I approached Mr. Lindsey along that line.

Q. What did you tell him?

A. The theater wasn't doing any good at that time, and Mr. Lindsey had a few more hundred dollars in the theater than I did.

Q. At that time, Mr. Korn was operating the Grenada Theater, wasn't he?

410 A. Correct.

Q. Did I understand you to say that he had a second house which was not in operation?

A. Correct.

Q. Did he then have what was later known as the Palace Theater?

A. He had the Palace Theater at that time, the Olympic.

Q. You called it the Olympic, and it was also named the Palace, is that right?

A. I think that is correct.

Q. You were broke, weren't you, in May 1933?

Mr. WRIGHT. If the Court please, I don't quite see the relevancy of that.

Mr. RICE. I will withdraw the question.

Q. In May 1933 you and Mr. Lindsey decided to make a change; whom did you approach or did Mr. Lindsey approach about helping you out on making the change you were talking about?

A. He approached Mr. R. E. Griffith.

Q. Or Mr. Foster McSwain?

A. Mr. Foster McSwain didn't come into the deal at that time; he came in later.

Q. Mr. McSwain came to Plainview and made a deal with Mr. Lindsey, is that right?

A. Yes, sir, he made a deal with Mr. Lindsey.

411 Q. By that deal, whatever interest you had in the theater was sold?

A. I sold my interest to Mr. Lindsey.

Q. And you stayed on as manager as of the house until June 1935?

A. Correct.

Q. During those two years the theater was operated by Griffith, Lindsey and McSwain under a lease from Mr. Massey or the Massey estate, is that right?

A. That's right.

Q. And during that time Mr. Silverthorne was agent for the estate, wasn't he?

A. That's right.

Q. Do you have a copy of that lease under which you were operating at the time of the sale?

Mr. WRIGHT. I thought we offered in evidence the lease that was signed. Isn't that in evidence?

Mr. RICE. I will get back to it.

412 Mr. WRIGHT. I offered that in evidence, the lease.

Mr. RICE. I want to know the lease he was operating under.

Mr. WRIGHT. I think it is here somewhere.

By Mr. RICE:

Q. You stayed on until a change in management was made by Mr. Griffith at Plainview. Is that right?

A. Yes, sir.

Q. He brought in Mr. Chester McSwain from Albuquerque and made him manager?
A. Yes, sir.
Q. He offered you another job elsewhere, is that right?
A. He tried to work out a deal on another town.
Q. And that didn't go through?
A. Correct.
Q. And you left the employment?
A. That is correct.
Q. And went to Hale Center to live, is that right?
A. No, sir.
Q. Where did you go?
A. In 1935?
Q. Yes.
A. I stayed in Plainview.
Q. What were you doing there?
A. For a short time I did nothing.
413 Q. When did you and Mr. Silverthorne, the agent for Mr. Massey, negotiate the lease on what later became the Fair Theater? I don't mean when the lease was made but when did you start negotiating?
A. On the Fair Theater?
Q. Yes.
A. It was in November, 1939, that the contract was signed.
Q. I know that. I am asking you when it was negotiated.
A. It was along the latter part of August. I beg your pardon, the latter part of September.
Q. You left the employ of Mr. Griffith in January and in the latter part of August you began to negotiate for a lease on what was then the Texas Theater?
A. No, sir.
Q. What were you negotiating on?
A. I started negotiating a lease on another building which is now the Texas Theater.
Q. When did you begin negotiating with Mr. Massey or Mr. Silverthorne?
A. I didn't negotiate with them. They asked me.
Q. When did they begin negotiating with you?
A. It was in November.
Q. That was the first time?
A. It was along about the first of November or the last of August.
414 Q. Or the last of August?
A. Yes, sir, I can't give you the exact date.
Q. And you and Mr. Silverthorne together——
Mr. WRIGHT. You mean the first of November?

Mr. Rice. Don't tell him what he means.

Mr. Wright. I think it is quite obvious here. He misquotes the testimony.

The Court. He said the first of December or last of August. Is that what you mean to say?

A. I said we negotiated on the Fair Theater in November.

The Court. Your last answer, as to when you commenced to negotiate, you said it was the first of December or the last of August.

A. Would you repeat that question?

Q. (Testimony read as follows:) "When did they begin negotiating with you?

"A. It was in November.

"Q. That was the first time?

"A. It was along about the first of November or the last of August.

"Q. Or the last of August?

"A. Yes, sir, I can't give the exact date."

A. It was in October.

By Mr. Rice:

Q. You began to negotiate for what was then the Texas Theater in October. Is that right?

415 A. Yes, sir.

Q. Mr. Griffith's company was operating the Texas Theater at the old location of the Ritz which you had sold in 1933 to Mr. Griffith, Mr. Lindsey and Mr. McSwain. That is correct, isn't it?

A. Yes, sir.

Q. The motion picture season in that year began about July 1, or up to August 31. Is that right, sometime between July 1 and August 31?

A. I believe that is correct.

Q. That is when the buying of film in your experience took place for such a theater as that theater, is that true?

A. That is true.

Q. You say Mr. Griffith had bought product for the Texas Theater at the location of the old Ritz Theater, had he?

A. I don't know.

Q. You said a moment ago you knew what was going on in Plainview?

A. Yes, sir, but he had nothing to do with it while I was running it.

Q. I don't believe you understood me. I will pass it, however. At any rate, let me ask you if you know Mr. Silverthorne, agent for Mr. Massey, notified Griffith, McSwain and Lindsey when they acquired possession of what

was then the Texas Theater. Do you know when that was done?

416 A. Yes, sir.

Mr. WRIGHT. Mr. Silverthorne will be on the stand.

Mr. RICE. I expect to ask Mr. Silverthorne that question.

By Mr. RICE:

Q. You expected to get a lease in November of the theater occupied by Griffith. Is that right?

A. No, sir, I did not get any lease.

Q. What did you get?

A. I said we negotiated with the corporation in November, 1935.

Q. You mean you didn't get the lease but the corporation did?

Mr. WRIGHT. The lease is in evidence. I am quite sure I put it in on his direct examination.

By the COURT:

Q. What is the name of the corporation?

By the WITNESS:

A. Tower Theaters, Inc.

Q. You were a part of that corporation?

A. Yes, sir.

By Mr. RICE:

Q. You owned one-third of the stock, I believe you said?

A. Yes, sir.

Q. Did you say you tried to negotiate the lease on the property now known as the Texas Theater?

A. Yes, sir.

417 Q. From whom, the Great Southern Life Insurance Company?

A. I believe that was the insurance company. Mr. Harder and Dicer, their agents.

Q. In November and December, 1935, you know, do you not, that Mr. Griffith, Mr. McSwain and Mr. Lindsey—and when I say Mr. Griffith, I mean R. E. Griffith Theaters, Inc. —got a lease on that location, what is now the Texas Theater, is that right?

A. I don't know the exact date when they got it.

Q. Do you know when the Texas Theater opened up at that location?

A. Yes, sir.

Q. When did it open?

A. Right at the first day of January, 1936.

Q. It opened about the first of January, 1936, after they had received notice that you were going to take possession of the theater on January 1, of the old Texas Theater, January 1, isn't that right?

A. Well, they opened up on January 1.

By the COURT:

Q. Let me understand. Did you get a lease on the building that was being occupied by the Griffith interests?

A. No, sir; I didn't get any lease at all.

Q. Well, your corporation.

A. The corporation was organized, the exact date
418 I just couldn't tell you.

Q. What I am getting at, is this lease you got on the old Texas Theater, is that the Texas Theater at that time occupied by Griffith?

A. Yes. It was occupied by Griffith at that particular time.

Q. That is the building you got the lease on, your corporation?

A. Yes, sir.

By Mr. RICE:

Q. Isn't it a fact when the new Texas Theater opened on about January 1, 1936, that the product that had been used in the old Texas location was switched to the new location by Mr. Griffith?

A. It probably was. I wasn't working for him. Yes, the pictures were shown down there. I don't know about the product.

Q. Will you look at that exhibit, which is Plaintiff's Exhibit 102, that is the contract made with Universal Film Exchanges by Silverthorne and Scaling for the new theater at Plainview before the theater had been obtained by you, and it is dated October 3, 1935. Is that correct? Does that refresh your memory?

A. It must be the correct date, yes, sir.

The COURT. Has that exhibit been offered in evidence?

419 Mr. RICE. It is in evidence, this contract with Universal Film Exchanges, Exhibit 102, dated October 3, 1935, prior to taking possession by the witness.

By Mr. RICE:

Q. Now, Mr. Scaling, you then opened up on January 11 in what you named the Fair Theater?

A. Yes, sir.

Q. And Griffith, in the meanwhile, since you had sold him or them the old Ritz Theater, had acquired the Grenada which was operated, I think, by Mr. Korn, and the Palace and Olympic.

Mr. WRIGHT. Objected to as stating facts that are not so. There isn't any testimony that he sold Mr. Griffith the Ritz Theater.

The COURT. I don't know. This is cross examination.

Mr. RICE. He didn't sell him. You just misunderstood. The original Ritz was sold by Mr. Scaling to Mr. Lindsey.

Mr. WRIGHT. I understood he sold it to Mr. Lindsey and Mr. Lindsey then made the deal.

Mr. RICE. Maybe I misunderstood it.

By Mr. RICE:

Q. At any rate, after you sold your interest in the Ritz, and while you were working for Griffith, he acquired the Grenada Theater and the Palace Theater. Isn't that right, from Mr. Korn?

420 A. The transfer was made, I think, the next week after I was removed as manager.

Q. So when you opened up on January 7 in this theater in which Griffith had formerly occupied, the Grenada Theater was operating and the new Texas Theater was operating. Was the Palace Theater operating?

A. No, sir; I don't think so.

Q. You don't remember?

A. No, sir.

Q. You remember each product everybody was showing but you don't remember whether that theater was open?

A. Not on these particular dates, no, sir.

Q. You testified about a conversation with Mr. Lockhart and Mr. Griffith, who is deceased, in Mr. Griffith's office in Dallas. See if I recall your testimony correctly. You testified that Mr. Griffith offered to compute the number of pictures which he had a right to eliminate from his contract; sent Mr. Lockhart out to make a list of them. Is that right?

A. That is correct.

Q. And the other conversation, not the one I have just finished talking about, the other conversation occurred with nobody else in the room but you and Mr. R. E. Griffith?

A. Correct.

Q. Do you remember what Mr. Griffith or Mr.

421 McSwain did about the Ritz Theater after they took possession by way of remodeling or redecorating or reequipping or anything of that sort?

A. You mean in a financial way?

Q. No, I mean in July, 1933, did they do any work on the building?

A. Yes, sir, he came down and had us change the box office and move it out in front.

Q. Build a new marquee?

A. Yes, sir. We remodeled the old marquee. We didn't rebuild it.

Q. And put in some rest rooms?

A. Yes, sir.

Q. And put in some new signs calling it the Texas Theater?

A. Yes, sir.

Q. You redecorated it and repainted it?

A. Yes, sir, but Mr. McSwain didn't do that. The Theater did that but he was there to supervise it.

Q. I didn't mean that Mr. McSwain used the brush. I mean he supervised it.

A. Correct.

Q. When you took over January 1, 1936, or thereabouts, the improvements which your employees while you were manager had put on there were still in place, weren't they?

422 A. Well, as far as the physical building was concerned, yes.

Q. And you and your partners used those improvements?

A. We moved in.

Q. That is all.

By Mr. COCHRAN:

Q. I would like to get a better idea of the theater situation in the town of Plainview at the time you were operating the Ritz Theater, when you first became interested in the Ritz Theater, and to that end I will ask you first to state again when you first came to live in Plainview.

A. In 1932.

Q. And was that the first time you had lived in Plainview?

A. Yes, sir.

Q. Were you acquainted with the theater situation in Plainview before you came to live there in 1932?

A. Well, my home has always been in Plainview but that was the only time I visited there. I had lived previously at Hale Center in 1921.

Q. How far is Hale Center from Plainview?

A. Eleven miles.

Q. Were you acquainted with the theater situation in Plainview before you became interested in theaters in that city?

423 A. Oh, yes.

Q. Just immediately prior to 1932 when you entered into the theater business at Plainview, what theaters were being operated in that town?

A. Just the Grenada.

Q. The Grenada was being operated by the OK Theater Company, was it not?

A. Yes, sir.

Q. That was commonly referred to as the Oscar Korn circuit of theaters, was it not?

A. That is right.

Q. That theater had a seating capacity of 1400 at that time, didn't it?

A. I couldn't say exactly. I don't know.

Q. Would you say approximately that?

A. I would say approximately 1100. I don't know the exact number of seats.

Q. You were just assuming about 1100?

A. Yes, sir.

Q. It was a large, fine theater?

A. Yes, sir.

Q. Had there been a theater operating in that town known as the Plainview?

A. There had been, yes, sir.

Q. Do you remember where that theater was located?

424 A. Yes, sir. It was located on Broadway, the main street.

Q. That theater had a seating capacity of 800, did it not?

A. I don't know what it had under the Plainview, about 650, I judge.

Q. Were you ever in it?

A. Yes, sir.

Q. By whom was it operated?

A. At what time?

Q. When did you first know of that theater being operated?

A. Well, that theater, to the best of my recollection was operated or opened away back in the twenties sometime. I don't know the exact date.

Q. And in 1931 was it being operated?

A. In 1931, no, sir.

Q. When did it cease to be operated?

A. I couldn't tell you. I wasn't in Plainview at that time.

Q. How do you know then it was not operated in 1931?

A. Because the last part of 1931 was when I left Enid, Oklahoma, and went back to Hale Center.

Q. Were you familiar with this situation in Plainview at that time and know that the Plainview Theater

425 was not being operated in 1931.

A. Well, I couldn't tell you the exact date on it, no, sir.

Q. What had become of it?

A. It was closed up when I first saw it. Had been closed up for some time.

Q. Was it ever thereafter operated as a theater?

A. After 1931?

Q. Yes.

A. It was opened by Mr. Lindsey and I in 1932.

Q. So the Plainview, then, is the theater which was opened by you as the Ritz?

A. Certainly.

Q. That is what I was trying to get at. It took us a long way around. The old Plainview then became the Ritz in 1932 when you acquired an interest in it?

A. That is correct.

Q. Now, then, relative to the number of seats, you have heretofore told us the Ritz Theater had a seating capacity of about 650. Is that correct?

A. Yes, sir.

Q. Do you know that is accurate or are you simply estimating that?

A. That is correct.

Q. Did you and Lindsey equip that theater?

426 A. Yes, sir, all but the seats. The seats were in the theater when we leased it.

Q. Just prior to 1932 was there a theater in that town which had been known as the Olympic?

A. Yes, sir.

Q. When did you first become acquainted with that theater?

A. That theater was in Plainview when I moved there around 1914.

Q. Was it being operated when you went there in 1932?

A. No, sir.

Q. What became of it?

A. It was just closed up.

Q. Had it been abandoned as a theater?

A. I couldn't tell you. I haven't been in the theater; never was in the theater after 1932.

Q. Do you know whether it was open subsequent to 1932?

A. The doors were closed, that is all I know. I don't know whether there was any equipment in it or not.

Q. Did that later become the Palace Theater?

A. Yes, sir.

Q. Do you know of your own knowledge whether at any time between 1932 and 1937 that theater was operated by anyone?

A. Yes, sir, it was operated a short time.

427 Q. During what period of time and by whom?

A. I can't tell you the exact date but it is sometime between 1933 and 1935, and it was opened up I think for a couple of weeks.

Q. By whom?

A. I believe a fellow by the name of Mitchell.

Q. Roy E. Mitchell?

A. I believe that is the man, yes, sir.

Q. And after he had operated it for a few weeks, who operated it?

A. Well, to the best of my recollection it was closed.

Q. Isn't it a fact that the OK Theaters operated that theater for a period of several years after that time?

A. I don't know.

Q. How is that?

A. What year?

Q. Well, what year did Mitchell operate it?

A. I believe sometime between 1933 and '35.

Q. Can you be any more definite than that?

A. No, sir.

Q. All right, immediately after Mitchell ceased to operate it?

A. It was closed up.

Q. Isn't it a fact that the OK Theaters operated it?

A. I don't know whether it was the OK or not.
428 There was a boy by the name of, I believe it was Aylsworth who operated the theater there for a few weeks.

Q. What do you say about whether the OK Theater, that is, the Oscar Korn circuit theaters operated that theater shortly after Roy Mitchell ceased to operate it?

A. Not that I know of.

Q. You say he did not?

A. I said he did not, as far as advertising is concerned.

Mr. WRIGHT. It seems to me we are away outside the scope of the issues in the case and direct examination. I don't know what significance this examination by Mr. Korn can have.

The COURT. You are taking the position here by your evidence that this man was eliminated from business in Plainview because of a conspiracy?

Mr. WRIGHT. Yes, sir.

The COURT. Now, they have a right to show, and that is what they are attempting to show, that he was eliminated for other reasons than a conspiracy.

Mr. COCHRAN. We are offering it for this additional reason: This witness has attempted, after trying to reconstruct some notes which he has testified from, to testify

specifically to certain things which he alleged transpired many years ago and now we are showing just how much memory he has in regard to the operations that took
429 place. Also, the matter of the product that was licensed in those situations. He has stated that at the time he operated them and during the period involved there was only one other theater operating in that town.

Mr. WRIGHT. That is not his testimony. The period he operated was after this period that counsel is now going into. At the time he operated he said there were two other theaters operated by Griffith at the time. Counsel is not asking him at all about the period of competition between him and Griffith. This is prior to that date.

The COURT. Proceed.

By the COURT:

Q. When was it opened as the Palace?

A. I believe it was opened sometime the last part of 1935, I believe the name was changed. The exact date I just don't know.

By Mr. COCHRAN:

Q. It is not a fact that Mr. Korn prior to the time he sold out the OK Theater sold out to R. E. Griffith and his associates, had not changed the name of the Olympic to the Palace and licensed pictures for it under the name of the Palace?

A. Well, it was running under the name of the Palace Theater, yes, sir.

Q. When Griffith acquired it?

A. Yes, sir.

430 Q. And Griffith acquired the Grenada when?

A. In 1935.

Q. What part?

A. It was along the first of July.

Q. How long before Griffith acquired the Grenada that the Olympic was changed to the Palace?

A. I just don't know; don't recall.

Q. At that time wasn't Korn operating that theater?

A. Well, if Korn was operating it he had a man by the name of Aylesworth who was running the theater, and as far as his advertising or buying was concerned, I couldn't swear to that. All I know, the theater was operating and if Mr. Korn had anything to do with it—he may have, but Mr. Aylesworth was running it.

Q. Have you tried to make up your notes in regard to your testimony from advertisements being made at that time? Is that how you get the data from which you are testifying?

A. No, sir.

Q. You are referring to advertisement, and this theater not having advertisements. Just what significance does the advertisement have in connection with your testimony?

A. Well, my statement on that, Mr. Korn might have been operating, I don't know. I am just telling you the man that ran the theater, with whom I was acquainted. That was Mr. Aylesworth who was operating it.

431 Q. So the Palace Theater was being operated in 1935 at the time the Griffiths acquired the Grenada?

A. I don't believe it was operating at that particular time. It might have been prior to that time.

Q. When did Aylesworth quit operating?

A. I couldn't tell you.

Q. When did he start to operate?

A. Sometime in 1935.

By the COURT:

Q. Was the Palace owned by the same party who owned the Grenada?

A. It was prior to the time. At the time Mr. Korn was operating it I don't know, but Mr. Aylesworth was operating the theater, supposedly an independent.

By Mr. COCHRAN:

Q. Do you know of any operation of the Palace Theater after Griffith acquired the Grenada?

A. No, sir. I left after that.

432 Q. Is it not a fact that while you were operating the theaters for the Griffith interests, Amusement interests, in Plainview, you managed and operated the Palace Theater, the very one we are talking about, and operated it and exhibited pictures there?

A. That I operated the Palace Theater?

Q. Yes, sir, for Griffith and McSwain?

A. No, sir.

Q. That is not true?

A. That is not true.

Q. Did Griffith and McSwain own that theater during the period you were managing it for them?

A. No, sir, Mr. Korn owned it.

Q. Did you work for Griffith at any time after Griffith acquired the theaters from Korn?

A. No, sir.

Q. What time did you cease to manage theaters for Griffith?

A. On the 25th of June, 1935.

Q. You say they acquired the Grenada in July?

A. Yes, sir.

Q. But you at no time managed the Palace?

A. No, sir.

Q. Was there another theater in that town known as the Fair?

433 A. Yes, sir.

Q. Was there any Fair Theater in Plainview prior to the time you went into the town in 1936?

A. No, sir.

Q. The theater which you acquired in the name of the Palace Theaters, Inc., in 1936, was the former Plainview and Ritz and the Fair. Is that correct?

A. The former Texas?

Q. Texas. In other words, that had been the Plainview, and a different owner owned and operated it previously. It had been the Ritz and when Griffith took it over and when Lindsey took it over it became the Texas. And you acquired the lease on it shortly after you ceased to work for Griffith and started to operating it as the Fair. Is that correct?

A. Yes.

Q. What was your testimony in regard to the product of United Artists which you played in 1935-36 in the Fair Theater?

A. I played some first run that had not been played in Plainview and some second run.

Q. I thought your testimony was that at that time you only played cutbacks, the first run, and that you played some second run?

A. I did.

434 Q. Don't you know, as a matter of fact that so far as the United Artists is concerned that there were no cutbacks; that its pictures are licensed individually, and there were no eliminations or cutbacks of United Artists' product?

A. Well, in the way you term it there, they are all made on a separate contract. That is true, but as far as the term "cutback" as I use it, were pictures that were rejected by your competition. They didn't want it. That is the term cutback.

Q. You are attempting to say that in your opinion they were pictures they didn't want?

A. Certainly.

Q. Do you know they didn't want them?

A. They didn't buy them.

Q. So all you mean to say is that the pictures of United Artists which you didn't license are pictures which had been licensed to somebody else?

A. The pictures, I believe they are off the 1934-35 contract which Mr. Korn did not play.

Q. But you say you did not play in the Fair Theater first run pictures of United Artists and carrying fine stars which have not been licensed to anyone in the town, of the 1935-36 product?

Mr. WRIGHT. He said B. Of course, he did play
435 United Artists first run, on direct examination and cross-examination.

The COURT. Answer it again.

Mr. COCHRAN. I want to get that straight. He said he played 1934-35 product, which had not been played by Korn. That was your answer, wasn't it?

A. Yes.

Q. That is correct?

A. Yes.

Q. Did you play any 1935-36 United Artists releases?

A. Yes, sir, I played some 1935-36.

Q. And those were pictures which had not been licensed to anyone else?

A. Some of them were, yes, sir.

Q. When was it you ceased to operate the Fair Theater?

A. I ceased to operate the Fair Theater, it was the latter part of 1936.

436 Q. I believe your testimony was that your contract was to give possession on October 15th, but as a matter of fact you didn't give it until November 1st, is that correct?

A. Correct.

Q. So then you were operating on behalf of yourself and your associates the Fair Theater in August and September of 1936?

A. That's right.

Q. Isn't it a fact that on August 15th, 16th, and 17th, 1936, that you played in the Fair Theater a first run picture, "Modern Times", starring Charlie Chaplin and Paulette Goddard?

A. Judge, your Honor, to answer that question correctly on that date I would have to refer to my files.

Q. You wouldn't forget—so far as the date is concerned just forget that for the present—do you remember that was a 1935-36 release and one of the outstanding releases of United Artists for that year?

A. I played the picture, yes, sir, it was one.

Q. You remember that was one of the outstanding releases?

A. Yes, sir.

Q. And you played it first run?

A. Yes, sir.

437 Q. On July 11th and 12th and 13th, 1936, did you play the picture "These Three", starring Miriam Hopkins and Merle Oberon?

A. Yes, sir.

Q. First run?

A. I don't recall whether that was first run or second run. I would have to look at my record.

Q. Did you have any record that you can tell?

A. Yes, sir.

Q. Please look at it.

Mr. WRIGHT. If the Court please, there wasn't any suggestion on his direct examination that he didn't play United Artists' pictures first run. I don't know what the purpose of this cross-examination is.

Mr. Cochran: I will state the purpose to be this.

Mr. WRIGHT. Did he say he couldn't buy them second run?

Mr. COCHRAN. The record shows he has already testified that he was merely playing cutbacks. The record will show he played more first run United Artists' Pictures for that season, and product that was not licensed by the other parties and better pictures than the other pictures.

Mr. WRIGHT. Maybe we can shorten it by putting in what pictures he played.

438 The WITNESS: What was the name of the picture?

By Mr. COCHRAN:

Q. "These Three."

A. "These Three"; yes, sir.

Q. And you played it first run?

A. Second run, $17.50 film rent.

Q. Did you also play it first run?

A. No, sir, I didn't.

Q. Will you say that picture played at all in the opposition theater?

A. Yes, sir, it played at the Grenada Theater.

Q. When, do you know?

A. No, sir I couldn't give you the exact date.

Q. How do you know it played?

A. Well, I bought it second run for the town.

Q. I beg pardon?

(Answer read by the reporter.)

Q. Just exactly what I am trying to get at is if it didn't play the other places and you played it first run or not, it would be the first run of the town, wouldn't it?

A. It played the Grenada Theater, I made that statement.

Q. I asked you how you knew it played the Grenada, other than that you say you had it licensed second run?

A. Mr. Korn played the picture.

439 Q. On what date?

A. I couldn't tell you the date.

Q. Didn't you play the picture "Dark Angel" for the 1935-36 release, first run?

A. No, sir.

Q. Beg pardon? What are you referring to to try to ascertain whether or not you played it?

A. My contracts.

Q. Will your contracts show whether you played a picture or not?

A. My booking sheets will.

Q. Do you have your booking sheets?

A. Yes, sir.

Q. Let's refer to those. The booking sheets won't show whether it played or not, will it, it merely shows whether you booked it, isn't that true?

A. I have my box office.

Q. All right, do you have your box office on that particular picture?

A. That is what I am looking for. "These Three" was played on the 12th and 13th.

Q. First or second run?

A. It was played first run.

Q. (By the COURT) The 12th and 13th of what?

A. July, your Honor.

440 By Mr. COCHRAN:

Q. 1936?

A. Yes, sir.

Q. Now look at "Dark Angel"—no, not "Dark Angel"—"Things Come" and tell me if that was played first run at the Fair Theater?

A. Yes, sir.

Q. On what date? Also referred to as "Ghost Goes," and the real title to it is "Shape of Things to Come," produced by Corda, starring Raymond Massey and Ralph Richardson?

A. Yes, sir.

Q. That was played first run, wasn't it?

A. Yes, sir; it was a foreign made picture.

Q. But you played it?

A. Yes, sir.

Q. It was one of the United Artists releases?

A. It was one of United Artists releases.

Q. The picture "Condemned" was played first run on July 25th, 26th and 27th, 1936, was it not, first run?

A. On what dates did you say?
Q. July 25th, 26th and 27th.
A. Yes, "I Stand Condemned."
Q. Played first run?
A. Second run.
Q. Did you play it first run also?
441 A. No, sir.
Q. The picture "Melody" was played in the Fair Theater, first run, on July 19th and 20th, 1936, was it not?
A. "Melody Lingers On"?
Q. Yes.
A. 19th and 20th of July, it was played, yes, sir.
Q. And the picture "One Rainy Afternoon" was played on August 9th and 10th, first run?
A. It was played August 9th and 10th.
Q. The picture "Amateur Gentleman" was played first run in the Fair Theater on May 23rd, 24th, and 25th, 1936, was it not?
A. 24th and 25th, yes, sir.
Q. Will you say that those pictures were cutback pictures?
A. I will say outside of, outside of about three of them, they were not very good box office attractions.
Q. Well, which ones did you say were not good box office attractions?
A. Well, you take this "Things to Come," it was a nationally known flop, I believe you will agree with me.
Q. There were stars in it of recognized merit, were there not?
A. It was a foreign made picture.
Q. I asked you if they were stars of recognized merit?
442 A. If I remember the stars correctly, it was Raymond Massey.
Q. Yes.
A. At that particular time I don't think he was much of a box office attraction.
Q. What do you say about "One Rainy Afternoon," that was a picture produced by the Pickford-Laskey Producers, was it not?
A. Yes, sir.
Q. That was the star Ida Lupino, wasn't it?
A. Well, I would say it was just a fair picture, a fair program picture; there wasn't nothing outstanding about it.
Q. Can you tell us any of the pictures released by United Artists which you didn't play that were superior to "One Rainy Afternoon," "Amateur Gentleman," "Modern Times," and "These Three"?

A. Well, there was "Strike Me Pink," and "Barbary Coast" that were a lot superior to them.

Q. Was that better than "Modern Times"?

A. Yes, sir, it sure was.

Q. Will you let me have and see these contracts which you had with United Artists for the '35–36 product?

Mr. WRIGHT. I have the approved contracts here.

443 The COURT. Gentlemen, the time has come that you have designated that the Court should recess.

Mr. WRIGHT. We can probably shorten this up by arranging to put into the record whatever he wants to show.

Mr. COCHRAN. I can examine these after we adjourn.

The COURT. We will recess until ten o'clock tomorrow morning.

(Whereupon at four o'clock p. m., court took a recess until May 9, 1945, at ten o'clock a. m.)

444 PROCEEDINGS

May 9, 1945, 10 o'clock a. m.

DENNIS SCALING, recalled, further testified as follows:

Cross-examination by Mr. COCHRAN:

Q. Do you have in your possession all of the contracts which were made with the corporation in which you were interested, and which was operating the Fair Theater subsequent to the time you commenced to operate that theater in January of 1936 until you ceased to operate it in October of 1936?

A. You mean film contracts?

Q. Yes, sir.

A. I don't believe I have all of them in my possession at the present time.

Q. From the contracts of United Artists which you do have in your possession it appears that you were able to license first run product of United Artists for the 1935-36 season and of the '34-35 season by the contracts dated in February, or rather on February 4, 1936, February 24, 1936, and May 12, 1936. Is that correct?

A. Yes, sir.

Q. That was during the period in which R. E. Griffith and Mr. McSwain were your opposition in the town?

445 A. Correct.

Q. Do you have a copy of the contract with United Artists dated November 29, 1935?

A. I couldn't say without checking them over first, that exact date.

Mr. WRIGHT. Is that one that was checked last night?

Mr. COCHRAN. It wasn't in those he handed to me.

A. It is for the picture "I Stand Condemned." I don't think it was found yesterday when we were looking for it if it was pertaining to that particular picture.

By Mr. COCHRAN:

Q. Will you say on December 29, 1935, you did not make a contract with United Artists for four pictures of the 1935-36 season?

A. If I did I did not play them.

Q. I asked you if you made a contract.

A. I made a contract——

Q. Just give me that date, whether you made a contract on that date. If not, we will pass it. If you don't know, say so.

Mr. WRIGHT. There isn't any dispute here at all but what he played United Artists first run for 1935-36. That has been testified to at least four or five times.

The COURT. He can answer the questions. I don't know the reason.

446 Mr. COCHRAN. I will state the purpose. Counsel for the Government has stated that their contention in this case against R. E. Griffith or the companies that he represented, if he did represent any companies there, is based on the fact that when the Korn circuit was operating in opposition to this man that he was able to obtain product, both first and second run, and when Griffith came in there he wasn't able to get any product. Griffith came back in there in January, 1936. Griffith was then operating theaters in opposition to him. I am simply showing that after Griffith came in he did get the product.

Mr. WRIGHT. There isn't any contention at all he couldn't get United Artists first run for the 1935-36 season. We have never made that claim.

Mr. COCHRAN. With that statement, instead of going into detail, I will ask some general questions.

447 By Mr. COCHRAN:

Q. I had intended, by reason of the fact that you produced certain contracts here under the dates that I have mentioned, which were with United Artists for first run and some second run product, I had intended to show that in addition to those contracts you licensed United Artists' product for the 1935-36 season on 12 additional contracts during the period from February 1936 to and including September 16, 1936, but with the statement of counsel for the Government, I will shorten that examination by asking if you will admit that the contracts with United Artists, which were made by you after you came into Plainview in opposition to R. E. Griffith were the only

contracts which you had with United Artists during that period or made with United Artists?

A. Yes, sir; the contracts that you have here.

Q. You say they are the only ones you made and you didn't make additional contracts as I have indicated with United Artists?

A. I don't know how many pictures you have reference to, but the contracts I made covered some 32 or 34 pictures.

Q. For two different seasons, both first and second run?

A. That is first and second run, yes, sir.

Q. I am asking you if you will state it to be a fact that you made no other contracts with United Artists
448 during the period from January 1936 to October 15, 1936, other than those which you have exhibited to me?

A. I played some of their short subjects.

Q. I am talking about feature subjects.

A. The feature subjects are what I have listed here, the only contracts I signed with United Artists.

Q. There are no other contracts with United Artists for the period, for that period, you are certain of that?

A. Yes, sir.

Q. So you didn't make any contracts with United Artists on November 29, 1935, February 14, 1936, June 22, 1936, July 6, 1936, July 29, 1936, August 3, 1936, and September 16, 1936?

A. These contracts are dated in 1936, but in regard to your question, the way I understand it, was on the 1935-36 pictures. I made a number of these contracts in 1936.

Q. What I am asking you is that in addition to the contracts which you have produced here dated February 4, 1936, February 24, 1936, and May 12, 1936, you didn't make any contracts with United Artists during the period you were operating the Fair Theater on your last venture in that city on a number of other occasions?

A. Your Honor, I would have to check my records before I could give the exact dates on those. It has been such a long time that it would be impossible for a man to
449 remember the exact dates.

Q. What I am trying to get at is will you say there were no other contracts during that period with the United Artists other than those you have presented here?

A. I couldn't say there wasn't.

Mr. WRIGHT. I might say, your Honor, we have made every effort to get all of the United Artists' contracts for that seasons here. We subpoenaed them from United Artists. However, the contracts they produced are considerably less complete than those produced by the witness.

If there is any question about trying to show exactly what United Artists' pictures he played during that year and when they were contracted, we will be very glad to see that whatever records there are that anybody has be put in to show what those contracts were. I don't see any point in harrowing the witness about it.

Mr. COCHRAN. I don't want to harrow the witness.

Q. At the time you disposed of your Fair Theater in October 1936, did you have any United Artists' feature contracts on feature pictures, under contract which you had not, or which had not been played?

A. I don't recall at this time.

Q. At page 173 of the transcript you stated "I played United Artists first run cutbacks for the 1934–35 contracts." Now, the feature pictures which you li-
450 censed first run of the 1934–35 season were pictures which had not been licensed to anyone else in the town, were they not?

A. The first run pictures were, yes, sir.

Q. As I recall, your testimony is that the first time you were in the theater exhibition business in Plainview you operated the theater known as the Fair from a period in 1932 to a period in 1933, is that correct?

A. Incorrect.

Q. What is correct?

A. It was the Ritz from '32 to '33.

Q. It was the same building——

A. Yes, sir.

Q. Which you used in operating your Fair when you came back the second time?

A. Yes, sir.

Q. But the material fact that I want to get correct during which you were operating the theater in Plainview on your first venture in that city as a theater operator. It is correct that it was for the period from 1932 to 1933, is that right?

A. That is correct.

Q. And after you ceased to operate the Ritz Theater you continued to manage a theater operated in the same building for R. E. Griffith and McSwain?

A. Correct.

451 Q. For a period from the time you discontinued operating it as the owner until June of 1935, is that correct?

A. Yes, sir, I believe on the 25th of June, approximately; it was right in the latter part of June.

Q. Of 1935?

A. Yes, sir.

Q. And the period in 1933 when you commenced to operate as manager was what date?

A. I beg pardon?

Q. Of the period in 1933 when you ceased to operate the Ritz as owner and commenced the Texas in the same building as manager, was what date?

A. In July.

Q. July, 1933?

A. Yes, sir.

The COURT. Pardon me just a minute. Was the Texas an entirely different theater?

Mr. COCHRAN. Your Honor, the testimony shows that the theater which Mr. Scaling operated as a part owner had formerly been known as the Plainview, and when he acquired it he operated it under the name of the Ritz.

The COURT. That was from '32 to '33?

Mr. COCHRAN. That was from '32 until July 1933. R. E. Griffith and McSwain acquired from Mr. Scaling and his associates the theater which was being operated under the name of the Ritz by Mr. Scaling, in July 1933 and changed its name to the Texas. Correct?

452

Mr. WRIGHT. Right.

The COURT. That was from 1933 until June, 1935?

The WITNESS. Yes, sir.

Mr. COCHRAN. June 1935. And R. E. Griffith and associates operated the Texas Theater in that building with Mr. Scaling as manager until about January of 1936.

Mr. WRIGHT. No, that is incorrect.

Mr. RICE. Mr. Scaling was manager up to about July 1st.

Mr. COCHRAN. Up to July 1, 1935?

Mr. WRIGHT. Right.

Mr. COCHRAN. And thereafter Mr. Scaling and associates acquired a lease on the building which had been occupied by the Texas, the same building which he had previously used for operating the Ritz Theater, and opened a theater in January of 1936 under the name of the Fair. Am I correct?

Mr. WRIGHT. The Fair Theater was the same theater that had been operated by Griffith as the Texas.

The COURT. Just in that connection, did the Griffiths' lease expire on the Texas in 1935?

MR. WRIGHT. If the Court please, we will have Mr. Silverthorne on the stand who handled the leasing arrangement. I think it will appear.

453

The COURT. Do you know?

The WITNESS. Yes, sir.

The COURT. Do you know whether or not the lease expired?

The WITNESS. Mr. Silverthorne has the details of the lease.

The COURT. You don't know the facts about that?

The WITNESS. No, sir.

454 Mr. WRIGHT. I think I can tell it to you now. The lease expired, as I recall, at the end of 1934, and then there was an attempt to reduce the rental by the Griffiths. The landlord did not agree and they continued in opposition without any written lease because of that dispute, and then were finally ousted by the landlord and took the equipment out of this theater, moved it into another building; kept the name Texas, and the theater they formerly operated as the Texas theater became this witness' Fair Theater.

By Mr. COCHRAN:

Q. Do you have any of the records pertaining to the operation of the Ritz Theater during the period from 1932 until July, 1933?

A. No, sir. They were all left in the theater.

Q. Do you have any of the contracts which were made by you for your feature product with any of the distributors during that period?

A. No, sir.

Q. Do you have any record of any kind pertaining to the product which was licensed or used by you as manager, or by persons for whom you were acting as manager in the operation of the Texas Theater from July, 1933, until June 25, 1935?

A. No, sir.

455 Q. Is it not a fact that during the period of your operation of the Ritz as part owner and your operation of the Texas as manager, and up until you ceased to operate it as manager in June of 1935, that there was no RKO feature picture licensed for use in either the Ritz or Texas, second run?

A. I don't recall about the license proposition, whether there was a contract license or not. I couldn't say. They had at that time a spot booking arrangement.

Q. Were there any RKO pictures spot booked in either of those theaters during that time, second run?

A. I think so but I could not verify it because I have no record to check, it has been so long ago.

Q. During the same period, is it not a fact that there was not a picture of Universal played in either the Ritz or Texas, first or second run?

Mr. WRIGHT. I don't recall that he testified there was during that period. I don't know the purpose of the examination.

Mr. COCHRAN. I am asking him now.

The COURT. Answer the question.

A. Well, I don't believe there were any Universal pictures played. I cannot recall it.

By Mr. COCHRAN.

Q. During the same period, is it not a fact that there was no Paramount picture played second run, in either the Ritz or the Texas?

456 A. Yes, sir, Paramount was played second run in 1932-33, spot booked.

Q. Was that during the period that you were operating the Ritz as owner?

A. Yes, sir, in 1932 and '33.

Q. Did you have any contract with Paramount for second run pictures for that period?

A. I don't recall having any specified second run contracts. I spot booked some pictures back and played them.

Q. A few Paramounts were spot booked by you during that period for second run?

A. Yes, sir.

Q. But you had no established second run account with Paramount?

A. I just couldn't say.

By the COURT:

Q. What do you mean by spot booked?

A. Your Honor, you have a picture you played, first run, or you want to play second run, and there used to be the policy in the exchanges, back nine or ten years ago, in place of making your contract on that picture they just sent you an invoice on it, and they just put it in without a contract.

Q. They just bought one picture for a special time?

A. Yes, sir.

By Mr. COCHRAN:

Q. Isn't the difference, that in places where

457 there is no second run house and no established second run account that occasionally where there is an outstanding picture that the exhibitor desires to have returned, the exhibitor may be able to make a deal to license that individual picture for exhibition on a second or repeat run?

A. Yes, sir, called spot booking.

Q. That is spot booking. It is not a fact that during that period neither the Ritz nor the Texas had any Fox feature picture license for either first or second run?

A. Well, I can't recall.

Q. Will you say they did?

A. I said I can't remember of any specified picture.

Q. Is it not a fact during that same period neither the

A. We played some Metro-Goldwyn-Mayer pictures sec-licensed for either first or second run?

A. We played some Metro-Foldwyn-Mayer pictures second run.

Q. Was that on spot booking also?

A. Yes, sir.

Q. You had no established Metro-Goldwyn Mayer account?

A. I don't recall whether we did or not. We might have had.

Q. Isn't it a fact during that same period of time neither the Ritz nor the Texas had any first or second

458 run feature pictures from Columbia?

A. I believe we played some Columbia pictures between 1933 and '35, second run.

Q. Spot booking?

A. A few cutbacks. I wouldn't say they were spot booked. We might have had a contract.

Q. You would not say you played any, would you, during that period?

A. We played "It Happened One Night" second run.

Q. What year's release was that?

A. I can't recall the exact release date of Columbia.

Q. Can you approximate that?

A. No, sir.

Q. Do you think you played it in the Ritz or Texas?

A. I played it in one of the two theaters. I can't recall the exact date on it.

Q. That was an outstanding picture starring Clark Gable, was it not?

A. Yes, sir.

Q. At the time you ceased to operate the Ritz Theater 1936, you had some Columbia product which you had licensed for the 1935-36 season, either the 1934-35 or the 1935-36 season, still unplayed, did you not?

A. I don't recall without checking up.

Q. Is it not a fact you were due Columbia an un-

459 paid amount for the product that you licensed under the contract of March 25, 1936, and which had not been paid when you disposed of the theater, and which you never paid?

A. Well, now, I didn't owe them a penny, as far as money was concerned, because pictures are not played on credit. You either pay for them before you play them or you don't get them.

Q. If you license a picture and agree to play it and then dont't play it, they charge you for it, do they not?

A. When I sold out in 1930, Mr. Griffith and Mr. McSwain agreed to take over all unplayed contracts or any pictures thereof.

Q. Is that in your contract of sale?

A. I cannot state at this time.

Q. They acquired your theater in October. I am asking you prior to that time, if you didn't have unplayed feature product of Columbia which had been licensed to you in March of 1936, for which you had not paid and which you had not played?

A. I might have. I don't recall at this time, if it was for the Class B or C product.

Q. Did you also have a considerable amount of independent pictures, or pictures produced by so-called independent producers which had not been played prior to October 15, 1936?

A. I believe that is true but the quality of the
460 pictures just couldn't stand up at the box office.

Mr. COCHRAN. We move to strike out the part of the answer which is not responsive to the question. That is, the quality of the pictures would not stand up at the box office.

The COURT. Overruled. He can explain why he didn't run them.

By Mr. COCHRAN:

Q. Mr. Scaling, you ceased to be manager for R. E. Griffith and his associates in June of 1935, according to your previous statement. Is it not a fact that for sometime thereafter R. E. Griffith continued to carry you on the pay roll of that theater?

A. Yes, sir, that is true.

Q. For how long?

A. Approximately, I can't say for how long; maybe six or eight weeks, and I have a letter stating that he could not place me, and that we were figuring on a deal at a little town, Memphis, Texas, and that deal fell through and then he wrote me in August——

Q. Never mind. The letters are the best evidence if they are admissible at all. I am not calling for that. When was it that you commenced negotiating, what is this man's name, Silverthorne, the man who was the agent for the estate which owned the building in which the Texas Theater was being operated—what was his name?

461 A. Silverthorne. Massey owned the building.

Q. But Mr. Silverthorne was the agent, was he not?

A. That is right.

Q. For the owner of the building?

A. That is right.

Q. When did you commence to negotiate with him for the opening of a theater in the building?

A. He talked to me along in the latter part of August about it?

Q. Of what year?

A. Of 1935.

Q. And you commenced to plan on putting a theater in that building?

A. I planned on putting a theater in another building up the street where Griffith moved the Texas Theater. Silverthorne had nothing to do with that.

Q. After speaking with him you and he decided you were going in together and put in a theater in that building?

A. No, sir. After talking to him, he later asked me and approached me to come in on that proposition.

Q. When was that?

A. That was along the last of August or the first of September, sometime in there.

Q. When did you agree with him you would go in with him?

A. We agreed along in, I believe it was in November.

462 Q. So in November, after you had severed your relations as Manager with R. E. Griffith, and a short time after you had ceased on the pay roll of R. E. Griffith, you entered into an agreement with Silverthorne to take possession of the building which your former employer was using to operate his theater?

A. It was in November, 1935.

Q. That is what you did. That is right, isn't it?

A. I went in as a partner with him, yes, sir.

Q. In the building?

A. In the building, yes, sir.

Q. And that your former employer was using to operate a theater?

A. That is correct.

Q. I assume that the relationship between you and R. E. Griffith and McSwain was very cordial after that, was it not?

A. Well, I know of no fights that we had.

Q. I didn't ask you that. Was the feeling good or bad between you?

A. Well, I would say it was very good, it was not bad.

Q. There were no hard feelings because of your actions in leasing this building and causing the moving of the theater?

Mr. WRIGHT. Are you asking about hard feelings on his part or on the part of Mr. Griffith or Mr. McSwain?

Mr. COCHRAN. On either side that he knows about.

463 A. Well, as far as speaking to each other is concerned, we always spoke and visited with each other. There was no knock down and drag out fight; any more than from a business standpoint.

Q. You continued on friendly terms?

A. Well, I didn't see very much of either one of them after that time.

Q. And had very little business transactions with either one of them?

A. I had some business transactions with Mr. R. E. Griffith in his office.

Q. Just leading up to that, had you had any other transactions with him prior to March, 1936? What was your answer to that?

A. Yes.

Q. You had had other transactions with him?

A. Yes.

464 Q. When?

A. I had had a transaction with him when I sold out to C. C. Lindsey in 1933.

Q. I am talking about after you were let off of the pay roll and during the time that you were operating the Fair Theater?

A. Well, I saw him in Dallas on two occasions, and I saw him at Plainview on two occasions.

Q. Did you have any transactions with him other than one in March, 1936?

A. No business transaction, no, sir.

Q. Did you have any conversation with him other than that one time?

A. I recall speaking to him in Plainview a couple of times after that.

Q. Any conversations with him prior to March, 1936?

A. All I recall of any conversation with Mr. Griffith in Plainview is merely speaking to him, that's all. He called at my theater one time.

Q. When was that?

A. Along in 1936.

Q. Well, that was after March, wasn't it?

A. I don't recall whether it was before March or after March.

Q. We are coming to this conversation in March.

465 Your statement is that you went to see R. E. Griffith, is that correct?

A. That's correct.

Q. To discuss with him the matter of releasing from contracts which he had for pictures to be played in his theaters some product so that you might have it?

A. That is right.

Q. And Mr. Lockhart, who was at that time a booker for R. E. Griffith, you say was present when you went in?

A. No, he wasn't present when I went in. Mr. Griffith called him in.

Q. And you state there was no one present at the time that you had your conversation with R. E. Griffith in which he made the statement in regard to the second run, and in which he made the statement in regard to the closing of the theater and the change of policy in regard to pictures.

A. In the conversation between Griffith and I after Lockhart left the room.

Q. Along in 1936 you made a complaint to the Department of Justice, didn't you?

A. Yes, sir.

Q. Do you have a copy of your letter which you wrote to the Department of Justice?

A. Yes, sir; I think I have the files on that.

466 Q. Will you let me see it, please?

A. Under what date did you say it was?

Q. Any and all letters which you wrote to the Department of Justice in 1936.

A. Any and all of them?

Q. Yes, sir.

Mr. WRIGHT. We could have saved a lot of time on this, it seems to me, if counsel had said he wanted to read this correspondence when we were going over the United Artists' contracts.

Mr. COCHRAN. I will admit that I am very negligent in not doing it.

The COURT. Couldn't you arrange for him to get those letters during the noon hour?

Mr. COCHRAN. I just imagine there was one, and that he has only a small file.

The WITNESS. You asked for all the correspondence.

Mr. COCHRAN. I don't want all of the correspondence; I want your letters to the Department of Justice, just your letters to the Department of Justice.

The WITNESS. Under what date?

Mr. COCHRAN. During 1936.

The WITNESS. You want all of them?

Mr. COCHRAN. Yes.

The WITNESS. O. K.

467 By Mr. COCHRAN:

Q. May I look at these now?

A. This one doesn't go.

Mr. WRIGHT. I suggest that we have these identified as they are produced here so we will know what we are talking about. I think they should be identified. Let's mark those.

Mr. COCHRAN. I am not offering to identify anything.

Mr. WRIGHT. I think they should be identified if you want to inspect them.

The COURT. Well, he is asking him the questions.

Mr. WRIGHT. I think we ought to know what he is handling and what he is talking about.

Mr. COCHRAN. If I ask a question in regard to a document, I will.

Mr. WRIGHT. I think regardless of whether you ask a question or not, we should have in the record a statement of what he is examining, with an identification mark.

The COURT. I think that is entirely up to the man who is offering it.

Mr. WRIGHT. The witness, I submit, is not bound to just turn over his documents to these gentlemen without any identification at all in the record of what he is turning over and what he is looking at.

The COURT. Nothing is going into the record.

468 Mr. WRIGHT. I certainly object to this strongly, I object to the examination of them in this manner without any identification.

The COURT. Overruled. I think he has a right to examine them. He asked him for the letter, if he had it, and he says yes, and he is now asking him to show it to him.

Mr. WRIGHT. I say it should be given an identifying mark and described so that we will know what he is examining.

The COURT. There is no necessity of that unless he attempts to put it into the record.

Mr. COCHRAN. I think we can proceed now.

By Mr. COCHRAN:

Q. Did you in any of those letters which you wrote to the Department of Justice mention in any way this conversation which you claimed to have had with R. E. Griffith on March 26, 1936?

A. I mentioned it, yes, sir.

Q. Find that letter, please.

A. I mentioned it in an affidavit.

Q. I am not asking about an affidavit; I want the letter.

A. I have no letter, I don't believe, of that. Just a minute, though. Your Honor, I will have to read quite a few of these letters to find the statement in it.

469 Mr. COCHRAN. It will be satisfactory with me to wait until the recess.

The COURT. You can look it up at the noon hour. Just tell him what you would like to have, Judge Cochran.

By Mr. COCHRAN:

Q. You understand, Mr. Scaling, what I want, don't you? I want any letter which you wrote to the Department of Justice during 1936 in which you mentioned this conversation which you have detailed from the witness stand on your direct examination, with R. E. Griffith. During the time you were operating the Fair Theater, what was your operating policy?

A. In operating the Fair Theater, we operated on a policy of four changes a week.

Q. Beg pardon?

A. We operated a first and second run policy.

Q. I mean how many changes a week?

A. Four.

Q. Did you play any double bills?

A. No, sir.

Q. And you maintained a policy, that policy up until the time you ceased to operate the theater?

A. Yes, sir.

Q. Did you commence to operate on a policy of four changes per week immediately upon opening your Fair Theater?

A. Yes, sir.

470 Q. And you stayed with it during the entire time you were operating it?

A. Yes, sir.

Q. You mentioned the fact that R. E. Griffith and McSwain didn't take over the operation of the theater on October 15th, but waited until the first of November, is that correct?

A. That's correct.

Q. Well, was it during that period from October 15th to November 1st, that you had the conversation with Mr. McSwain about booking in pictures?

A. Yes, sir.

Q. The booking of pictures into the theater, which you referred to, was the matter of furnishing to the distributors play dates for those pictures in the particular theater, was it not?

A. Yes, sir.

Q. And the pictures which he arranged to have booked in during that period, that 15-day period, were pictures which you had at that time under contract?

A. No, sir; the pictures that he booked in, "My Man Godfrey" was a picture that he booked in.

Q. What did you say that was, "My Man Godfrey"?
A. Yes, sir.
Q. And the distributor?
471 A. Universal.
Q. What else did he book in; just give us the pictures that were played during that 15-day period?
A. Just give you some pictures that were played?
Q. No, give us all the pictures that were played during that 15-day period.
The COURT. Gentlemen, is it necessary to go into all of those details?
Mr. COCHRAN. I think not, your Honor.
The COURT. I think we are taking a lot of time.
Mr. COCHRAN. I will abide by the Court's suggestion. That's all for this witness until he produces the information which I requested, and which he is to get during the recess.

Re-direct examination by Mr. WRIGHT:

Q. I want to call your attention to the testimony on page 249 of the transcript—no, I beg your pardon, page 248 of the transcript here, in which you gave this testimony. Mr. Cochran asked you, "The picture 'Condemned' was played first run on July 25th, 26th and 27th, 1936, was it not, first run", and your answer was, "On what dates did you say?" and he repeated, "July 25th, 26th and 27th", and
472 your answer, "Yes, 'I Stand Condemned'." "Question: Played first run", and your answer was, "Second run", "Question: Did you play it first run also", and your answer, "No, sir". Now, since checking over your United Artists' records there do you want to correct that statement about it being played second run?
A. It was first run.
Q. Now, these other pictures that were played under contracts of various dates, as I recall the contracts that were checked over with Mr. Cochran, there was only one which was dated after July 3, 1936, was there not? Would you look there and see? According to my record of those and as I understand it, the second run contract for "These Three" is the only one where the application is dated after July 3, 1936. Can you check that?
A. I believe that is correct.
Q. Have you got the two "These Three" contracts there, as to the first and second run?
Mr. WRIGHT. Maybe we can save time by asking Mr. Cochran, does that check with your listing of those contracts that he had? The only one with the application after July 3.
Mr. COCHRAN. Of those he exhibited to me, I don't have anything after May 1936. You understand my interroga-

tion went to the proposition that there were other contracts with United Artists which he didn't have in
473 his possession. I was interrogating him on that.

Mr. WRIGHT. Yes, that's right. We are perfectly willing to have in the record all of these United Artists' contracts which have been produced, but unless there is some desire on the part of counsel or the Court to have them in the record I wasn't going to offer all of these contracts. However, I thought I would put in those which would cover this picture.

The COURT. Is there any necessity for having this in the record?

Mr. COCHRAN. We are not asking it.

Mr. WRIGHT. I merely wanted to establish that fact, that the first run contract, I believe he previously testified that he played "These Three" first and second run, and his first run contract application is dated July 6, 1936, and the second run is dated October 6, 1936.

Mr. COCHRAN. It will be satisfactory with us, instead of making those exhibits, those two contracts that you are reading from, if you will just state the dates as you have done under pictures which were covered by those two contracts or applications.

Mr. WRIGHT. I think it is in the record. Read it back.

Mr. COCHRAN. It doesn't state the pictures.

Mr. WRIGHT. Read it back.

474 (Statement read by the reporter.)

Mr. COCHRAN. I see I am in error.

Mr. WRIGHT. It is understood that other than this application for first and second run of "These Three" that I just referred to, there were no United Artists' contracts under which these pictures that we have been referring to played, made later than July 6th?

Mr. COCHRAN. We do not concede that, but say that the contracts which Mr. Scaling says he has in his possession do not cover any date and are not for pictures licensed subsequent to that date.

Mr. WRIGHT. Well, in that case, I think it would be necessary to cover those pictures which you have covered on your direct examination by particular license—I mean on the cross-examination by particular license agreements.

Mr. COCHRAN. I have not attempted to cover all of the pictures and only inquired in regard to certain pictures. This morning I inquired about contracts of certain dates, one being as late as September of 1936. Mr. Scaling has produced no such contract and says he has no contracts in his possession other than those he has produced.

Mr. WRIGHT. As I understand, there is no claim made that there was any contract made with United Artists
475 dated September 3, 1936.

Mr. COCHRAN. On September 16th, 1936, I contend there is.

Mr. WRIGHT. September 16, 1936?

Mr. COCHRAN. Yes, but Mr. Scaling has produced no such contract.

By Mr. WRIGHT:

Q. You were subpoenaed, were you not, to produce all of your contracts while you were operating the theater there?

A. Yes, sir.

Q. Are these contracts which you have produced all of those which you could find?

A. This is absolutely the complete file that I could gather together.

Mr. WRIGHT. Perhaps I can cover this by a statement for the record. The contracts between the Fair Theater of Plainview and United Artists, made for the 1935-36 and 1937-38 seasons, were, I believe, subpoenaed from United Artists Corporation and a folder has been produced in response to that subpoena by Mr. McKenzie which contains in it only contracts for "Call of the Wild", "Dark Angel", "Red Salute", all dated February 14, 1936, "Ghost Goes West", dated February 24, 1936, "Things to Come", "Amateur Gentleman", dated May 12, 1936.

Mr. COCHRAN. May it be stated into the record
476 that those contracts produced do not cover all of the contracts with United Artists made by Mr. Scaling during that period which he has produced?

Mr. WRIGHT. That's quite right. This is all that United Artists was able to produce. I take it there is no dispute about that.

By Mr. WRIGHT:

Q. Just give us your best recollection as to whether or not subsequent to July of 1936 you made any contract with United Artist Corporation for pictures to be played at the Fair Theater there, either first or second run, other than this one that is identified here for second run, of "These Three"?

A. Yes, sir, I played, I played quite a few after that; I played approximately——

Q. (Interrupting.) I don't think you understood the question. Will you read the question? I didn't ask you what you played; I asked you about making contracts.

A. May I hear the question repeated?

Mr. WRIGHT. Read it.

(Last question read by the reporter.)

A. After that time I made no contracts.

Q. Can you state that you have a record of the pictures you played after that?

A. Yes, sir.

Q. Can you read that into the record, the United
477 Artists' pictures?

A. "Les Miserables", October 28th and 29th, "These Three" October 21st and 22nd, second run, "Escape Me Never" was played September 16th and 17th, "Things to Come" played September 30th and 31st, "Scarlet Pimpernel," played September 1st and 2nd, "Thunder in the East", played August 25th and 26th, "Clive of India", played the 27th, "Modern Times", August 16th and 17th, "Bulldog Drummond", August 19th and 20th, "One Rainy Afternoon", August 9th and 10th, "Follies Bergere", August 11th and 12th, "Sanders of the River", August 2nd and 3rd, "Dark Angel" August 5th and 6th, "I Stand Condemned" July 26th and 27th, "Transatlantic Merry go-Round", July 29th and 30th, "The Bowery" July 31st and August 1st, "Melody Lingers On", July 19th and 20th, "These Three" July 12th and 13th, first run, "Let 'em Have It" July 7th and 8th, "Mighty Barnum" July 10th and 11th, "Kids Millions" June 1st and 2nd.

Q. Can you tell us, and perhaps you had better do this during the recess, which of those pictures you have listed as having played you got contracts for, and then read the date of the contract that covers the picture into the record, or you can do that now, if you prefer.

The Court. Do you want the contract under which these pictures were furnished?

Mr. Wright. Yes, sir, I thought I would have him read the date of the contract into the record, that's all,
478 so far as he has contracts for them.

The Court. He can prepare that at the recess.

By Mr. Wright:

Q. As I recall, on your cross examination, you were asked by Mr. Rice about films being bought in July or August and you said that was generally when the contracts were made?

A. Yes, sir, usually started the latter part of July or the first of August for the new season.

Q. It is a fact you dealt with the exchanges throughout the years for whatever product was available. Is that right?

A. That is right.

Q. I notice the Universal contract you made for the 1935-36 season was made in October?

A. Yes, sir.

Q. And then insofar as buying second run pictures was concerned, when, with reference to the beginning of the season, are those generally made?

A. In some cases on contracts they are made most any time of the year.

Q. That is when you were buying second run of the old season. Those would be made at any time. Is that right?

A. Yes, sir.

Q. How about when you are getting second run of the current product?

A. That would be made when you bought the current product, first run.

Q. I mean if you didn't buy it first run. If they
479 had product where somebody else had the first run.

A. Well, you could buy it at any time.

Q. It might be made any time after the first run deal was made?

A. Any time.

Q. Will you be able to state—I don't know whether you can do it now—I think you had better be prepared to answer, which of these United Artists pictures you mentioned there as having been played in July, August and September, were foreign made pictures?

A. I can check it right here.

Q. If you will do that.

A. Did you want me to do that now?

Q. I think that is all the direct examination now until that is completed.

Re-cross-examination by Mr. COCHRAN:

Q. Right about the time that you were making a licensing agreement for pictures, the dates which have been mentioned here, July, August and September, is it not a fact that very few licensing contracts for the current product were made as early as August?

A. Well, I can't answer that. The season is considered in the industry as starting along about July, August and September.

Q. The season doesn't begin until the first of September, does it?

480 Mr. WRIGHT. I think you might ask him with respect to which company. I think there are some variations.

By Mr. COCHRAN:

Q. During the time involved here is it not a fact that each and all of the major distributors you have been refering to, their season commences the first of September?

A. Well, all I know about their seasons, some of them negotiated in August and some of them waited until September.

Q. Did you, during the period you operated in Plainview, have a contract with any distributor for the product of the coming season which was negotiated as early as August?

A. That was negotiated as early as August, no, of 1936.

Q. No, I mean preceding the season when the releases would commence. In other words, for the season say of 1936-37, or the season of '32-33 or '33-34, for those seasons' products did you make any contract with any distributor which was dated or the application dated as early as August preceding the commencement of that season?

A. I will have to check that.

Q. All right. You have bought a lot of pictures, haven't you?

A. Yes, sir.

Q. What I am trying to get at is this: You don't mean to say it was usual and customary that all contracts for pictures would be executed prior to September 1 of any year?

481 A. Certainly not. We started in July and August; different companies at different dates.

Q. I mean where you are making a written contract.

A. There would be no specified time.

Q. And negotiations might last over a considerable period of time?

A. That is true.

Q. And contracts might be dated much later than September 1st?

A. Yes, they can be dated later than September 1st.

Q. And frequently are?

A. Yes, sir.

Q. That is all.

The COURT. This witness can be excused until after recess.

(Witness excused.)

R. Q. SILVERTHORNE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your name.

A. R. Q. Silverthorne.

Q. Where do you live?

A. Plainview, Texas.

482 Q. What is your occupation?

A. Insurance, loans and property management.

Q. How long have you been so engaged?
A. About 20 years.
Q. At Plainview?
A. Yes, sir.
Q. Were you acting as agent for Mr. Massey there in 1934?
A. Yes, sir.
Q. And handled the leasing of the property that was then being operated by Mr. Griffith, Mr. McSwain and Mr. Lindsey, as the Texas Theater?
A. Yes, sir.
Q. Do you recognize this document, Government's Exhibit 104 for identification as the lease the Texas was then being operated under in 1934?
A. Yes, sir.
Mr. WRIGHT. I offer that in evidence. I guess it is already in.
Mr. COCHRAN. What is the date of that lease?
Mr. WRIGHT. This is dated, the original, April 19, 1932, the lease between Dennis Scaling and C. C. Lindsey as lessees and Massey as Lessor. Then there is an assignment made July 1, 1933, which is an assignment from those tenants to Foster McSwain, R. E. Griffith and C. C. Lindsey.

483 By Mr. WRIGHT:

Q. When this lease, Exhibit 104, expired December 31, 1934, was a new lease made?
A. No, sir.
Q. Why not?
A. I started negotiating with Mr. McSwain in the fall of 1934——
Q. Which Mr. McSwain?
A. Foster McSwain, and we were unable to agree on the terms. He wanted to reduce the rental and we could not agree on it.
Q. What is the rental called for there?
A. $250 a month. We were unable to agree on an extended contract so we gave him an additional year at $250 a month and asked for the contract, which was never executed. They remained on the property on the basis of $250 a month during 1935.
Q. They paid you the monthly rental without any written lease?
A. That is right.
Q. Then you formed a partnership with Mr. Massey and Mr. Scaling, and organized the Tower Theater Company?
A. Yes, sir.

Q. And later in the same year took it over?

A. Yes, sir.

Q. Why was it that you organized that?

484 A. We had never been contacted about a renewal of the lease. It came to my attention in the early part of the fall that they had purchased some other property down the street.

Q. Who had?

A. Mr. Foster McSwain, the Griffith interest. Naturally, we thought they were going to move out of this property which was built exclusively for theater operation, so we immediately advised them, on September 6, 1936, to vacate the property.

Q. Then they stayed in there, however, until——

A. They sent me a registered letter on September 27 for the October rent and remained in the property until the end of the year.

Q. And vacated it then at the end of December?

A. At the end of the 1935 season, yes, sir.

Q. You said in the meantime they bought a theater?

A. They bought a building down the street and started remodeling it for a theater.

Q. Then when they vacated they took the equipment out of your building and moved it over to this other building they bought?

A. Yes, sir.

Q. And took the name along with it, of the Texas Theater?

A. Yes, sir.

485 Q. Then you and Mr. Scaling and Mr. Massey re-equipped and remodelled the theater before you opened it as the Fair in January of 1936?

A. Yes, sir.

Q. Calling your attention to September, 1936, did you have any conversation with Mr. Foster McSwain about the theater?

A. None that I recall. I wrote him a letter demanding possession of the property.

Q. I am referring now to the month of September, 1936.

A. 1936. I met Mr. Foster McSwain in Wichita Falls in September, 1936.

Q. Where did you meet him there?

A. I met him at the coffee shop at the Kemp Hotel.

Q. You went over there to see him?

A. Yes, sir. I went over there to talk to Mr. McSwain and see if I could get some pictures released so we could remain in business.

Q. Will you tell us what was said in that conversation?

Mr. RICE. We submit the answer should be stricken as it is not responsive.

The COURT. Just state the conversation.

A. I met Mr. McSwain in the coffee shop of the Kemp Hotel and we discussed pictures. At least, that was my mission to Wichita Falls, and my appointment with
486 Mr. McSwain. He made it clear to me that Mr. Griffith had bought the product, and as far as getting any released, it would be impossible. He said, "We might be interested in buying that property" and I submitted him an offer of $15,000, and he told me he would let me know.

Q. Was that the conversation?

A. That was all the conversation.

Q. When was the next time that you saw him or had any conversation with him?

A. The next I heard from Mr. Foster McSwain was on September 22.

Q. Where was that?

A. I was in Plainview.

Q. Did you see him on that date?

A. No, sir; just a telegram.

Q. He sent you a telegram?

A. That is right.

Q. Making another appointment?

A. Making an offer of $12,000. He said he was unable to get the deal over and made an offer of $12,000 with a lease of two years at $200 and another two years at $250.

Q. Then did you do anything about that offer at that time?

A. No, sir.

Q. Then when was the next time you wanted to talk
487 to him about the deal?

A. October 15, 1936.

Q. Where was that?

A. In my office.

Q. At Plainview?

A. Yes, sir.

Q. And he came over to see you then?

A. Yes, sir.

Q. Was anybody else present then?

A. No, sir.

Q. What was that he said at that time?

A. After several hours of conversation we sold out.

Q. And what was the price that you received?

A. $12,000.

By the COURT:

Q. You sold the real estate and all?

A. No, sir. We sold the equipment and the theater. We didn't sell the physical property at all, not at $12,000.

By Mr. WRIGHT:

Q. That was when you signed this bill of sale here marked Exhibit 3?

A. Yes, sir, that is the bill of sale.

Q. Then you made a lease on the theater with the Griffith interests?

A. A 10-year lease.

Q. Do you have a copy of that with you?

A. It is in the record. The lease is in the record.

488 Q. That was identified, I think, as our Exhibit No. 4. I don't seem to be able to locate it.

Mr. COCHRAN. In connection with the statement the witness made that he made a lease with the Griffith interests, we are objecting to the statement for the reason that the defendants represented by me were not parties to that deal and had no connection with it.

The COURT. That would only apply to R. E. Griffith and his associates in that particular deal.

By the COURT:

Q. You went over to see Mr. McSwain about pictures. McSwain was not a distributor was he?

A. I would think he would be a distributor. They had the product. They were exhibitors, not distributors. They had the product bought and were exhibiting it in Plainview.

Q. Why did you ask him to release certain pictures?

A. Mr. Scaling had contacted Mr. Griffith and had not been able to get any, and I didn't know Mr. Griffith.

Mr. COCHRAN. We move to strike the statement as to what Mr. Scaling did.

The COURT. He is not making any statement as to what he said. Go ahead.

A. Mr. Scaling was unable to get any product through Mr. Griffith and I felt like I might be close enough to Foster McSwain to get him to go to Griffith and get Griffith to release the product.

489 By the COURT:

Q. Griffith and McSwain were exhibitors just like you were?

A. They were exhibitors and partners in Plainview.

Q. And they had purchased certain pictures?

A. That is right.

Q. You thought you could get them to release some of their pictures?

A. Cutbacks or second run pictures, yes, sir.

Q. Did you contact various distributors?

A. Mr. Scaling handled that part of it.

Q. Did you, though?

A. I made a trip with Mr. Scaling through film row, I think they call it in Dallas, just as a listener. That is all. Personally, I made no direct contact other than the time when we got ready to start in business, which was in the fall of 1935 before we took Mr. Scaling in. That was by correspondence only.

Q. Well, ordinarily you got your pictures from the distributors?

A. I didn't handle that end of it. That was up to Mr. Scaling to work that out.

Q. You don't know how that was handled?

A. Nothing more than the trip I told you about, with one exception. I want to say on these letters I refer to, in September, 1935, prior to the time we got our cor-
490 poration in operation, I signed a Universal contract with Mr. Scaling. They required that.

Mr. WRIGHT. That contract, I believe, is the one in evidence. I have located this Plaintiff's Exhibit 4 for identification, and I will ask you if you recognize that as the lease that was then made with Foster McSwain, C. C. Lindsey, and the Westex Theaters, Inc., by R. E. Griffith for the sale of equipment to them?

A. Yes, sir.

The COURT. Is that the contract?

Mr. WRIGHT. Yes. That is Exhibit 1 instead of Exhibit 4. I was mistaken in saying Exhibit 4.

By Mr. WRIGHT:

Q. This exhibit I just referred to is Plaintiff's Exhibit 1 for identification. This is the current lease on the theater, is it not?

A. Yes, sir.

Q. It is a 10 year lease, isn't it?

A. It expires November 1, 1946.

Q. And began on November 1, 1936.

A. Yes, sir.

Mr. WRIGHT. I offer in evidence Plaintiff's Exhibit 1.

By the COURT:

Q. Is this theater now being operated?

A. It is under lease to McSwain and the Westex Theaters.

Q. Operated as what theater?

491 A. The Fair Theater.

By Mr. WRIGHT:

Q. What was done with reference to the operation of the three theaters there, the Fair, the Texas and the Grenada after this lease was made?

A. You mean as to whether they all remained open or not?

Q. Yes.

A. The Texas Theater after a certain period, I don't remember the exact dates, was closed down to a week end house.

Q. You say "operated." Are you talking about weeks or months?

A. A matter of weeks.

Q. It was closed to what?

A. What we would call a week end house. That is what I would call it. They would operate perhaps Friday, Saturday and Sunday; something like that.

Q. Then they continued to operate the Fair and Grenada?

A. Yes, sir.

Q. Since that time has the Texas been operated continuously as a week end house?

Q. Not lately, no. Part of the season it doesn't operate at all.

Q. Part of the season it has been closed each year?

492 A. That is right.

Q. Do you remember what, if anything, occurred there with respect to admission prices at the Grenada after that lease was made?

A. I don't recall the exact price set up on that well enough to give you the exact figures.

Q. In any of the theaters?

A. In any of the theaters.

Q. Now has there been any theater opposition in the town since that lease was made?

A. It is a closed town.

Q. What do you mean by "closed town?"

A. What I mean by that is there are no other picture shows there. They operate all of them.

Q. And have since November 1, 1936?

A. That is right.

Q. That is all.

Cross-examination by Mr. RICE:

Q. Mr. Silverthorne, I understood you to say you went to Dallas in September, 1935?

A. No, I did not say that.

Q. When did you go down there?

A. I said Wichita Falls.

Q. I am not talking about 1936. In 1935 didn't you say you went to Dallas?

493 A. I said I wrote some letters to Dallas. September 12 was the exact date.

Q. Which you wrote to the film companies about product?

A. Yes, sir.

Q. I understood you to say your interest in it was due to the fact that Griffith had bought a lot down the street, McSwain or Griffith.

A. No, I didn't say that. I said some property.

Q. Where was that property?

A. The second block. The first block below that theater. The second block below the Grenada.

Q. That was the property that was occupied by your Texas Theater later on?

A. That is right.

Q. They bought that before you started getting interested in operating the Fair Theater?

A. I was apprised by Harder & Dicer, agents for the Great Southern Life Insurance Company they were negotiating a deal and closing a contract for that property.

Q. Did I understand you to say they bought it?

A. That is what I said.

Q. Would you be surprised to know they didn't buy it until 1941?

A. No.

Q. Would you be surprised to know they didn't

494 lease it until 1935?

A. They might not have executed a contract before that time.

Q. Anyway, they went over after you gave them notice and began work on the property, getting it ready to open about January 1?

A. I suppose that is right.

Q. Do you remember the date when you first gave them notice?

A. September 6, 1935. I think that is right.

Q. To whom did you give such notice?

A. Foster McSwain.

Q. Was it in writing?

A. Yes, sir.

Q. And you got a copy of it?

A. Yes, sir.

Q. Let me have it, please.

A. I am mistaken. It is to the R. E. Griffith Theater.

Q. On September 6. Is that the date?

A. September 5, 1935.

Q. Did you notify Griffith you were requiring possession when?

A. October 1.

Q. Did I understand you to say they had an arrangement to stay in there a year?

495 A. That is right.

Q. How could you get possession on October 1?

A. We couldn't.

Q. You mean to say you, as a man experienced in the real estate business in Texas tried to get a man out several months before his lease ran out?

A. I did what my attorney told me to do.

Q. At any rate you started to try to get possession?

A. That is right.

Q. In October?

A. That is right.

Q. And you finally gave notice on October 5, didn't you, or thereabouts?

A. I have the return receipt here—just a minute— November 23 we gave them final notice and requested return receipts at that time.

Q. You accepted the October rental first?

A. They sent that out a little early, after I notified them by Registered mail.

Q. They paid you up right now?

A. They took care of it.

Q. When you gave them notice they really paid you quick?

A. They got high.

Q. At any rate, yon went in there with Mr. Scaling and somebody else, organized a corporation and took over

496 the Fair Theater on January 1?

A. That is right.

Q. The Fair Theater had been improved some by Mr. McSwain and Mr. Griffith along in 1933, hadn't it?

A. You might call it improvements.

Q. You didn't?

A. That is right.

Q. Then it was the same while it was operated by Griffith as it was when you took it over on January 1, without the equipment, of course?

A. What was that?

Q. I say, whatever kind of building it was, obviously you took it over on January 1 as the Fair Theater?

A. That is right.

Q. You didn't get possession until January, did you?

A. That is right.

Q. And opened it on January 11?

A. That is right.

Q. In the meanwhile, do you know when Griffith remodeled the house that later became known as the New Texas or Texas Theater?

A. I didn't pay any attention to it.

Q. But you do know he got that house completed for theater use and the equipment moved in to open on January 2?

A. I think he moved in right on the date, yes, sir.

497 Q. That is all.

Mr. COCHRAN. No questions.

Re-direct examination by Mr. WRIGHT:

Q. Do you know what those improvements were that Mr. Rice was talking about?

A. Mr. McSwain had the ticket booth moved. It was on the north side of the lobby and Mr. McSwain moved it out in front, and the doors on the front, he moved them directly back of the booth. The marquee was half moon shaped and he took some ceiltex and wood and straightened that up.

Q. Were those all the improvements that were made?

A. At that time, yes. I believe he put in new rest rooms down there right back of the seats. The rest rooms were formerly upstairs.

Q. Was there anything other than that?

A. I think that is about all; maybe a little painting; I don't remember.

Q. When they moved the equipment out there was something in the way of unimprovement, wasn't there?

A. Yes, sir. They moved some equipment but we got that back by letter. We wrote Mr. Lindsey about it and they returned that.

Q. That is all.

Mr. RICE. That is all.

(Witness excused.)

(Hereupon court adjourned until 1:45 o'clock p. m. this day.)

498 AFTERNOON SESSION

May 9, 1945, 1:45 o'clock p. m.

PROCEEDINGS

DENNIS SCALING, recalled for further examination and testified as follows:

Re-direct examination by Mr. WRIGHT:

Q. During the recess, Mr. Scaling, have you checked those United Artists' contract dates and whether the features were foreign made, or not?

A. Yes, sir.

Q. Now, will you just read—you have already read the play dates—will you just read the name of the feature and the date of the contract that you have produced under which it was licensed, of those that were played beginning in July and from there through October?

A. Just the ones that were played from July on?

Q. Yes.

A. "Transatlantic Merry-go-Round" was played July 29th and 30th; the contract signed May 12, 1936.

Q. I think you have already given the play dates; if you will, just give the contract date.

499 A. The "Bowery" May 12, 1936.

Mr. COCHRAN. Excuse me; if you are going into the foreign made pictures, why not have him state as he goes along, whether it was a foreign made picture.

By Mr. WRIGHT:

Q. As you go along just say foreign made, if it is a foreign made picture; otherwise nothing.

Mr. COCHRAN. He has already mentioned "Transatlantic Merry-Go-Round."

A. That was the first one. The "Bowery" was the second one.

Mr. COCHRAN. He hasn't said whether it was foreign made.

The WITNESS. No.

Mr. WRIGHT. It is my understanding that if nothing is said it is not foreign made, but if it is foreign made he will add the word "foreign."

A. "Dark Angel" February 14, 1936; "Saunders of the River" February 14, 1936; it is a foreign made picture; "Follies Bergere" February 14, 1936; "One Rainy Afternoon," I haven't any confirmed contract date on that, the picture was played August 9th and 10th; "Bulldog Drummond" contract May 12, 1936; "Modern Times," contract June 21, 1936; "Clive of India" contract August 3, 1936; "Thunder In The East" August 3, 1936.

By Mr. WRIGHT:

Q. Was either "Clive of India" or "Thunder In

500 The East" a foreign picture?

A. It was a Reliance release. I don't know whether it was, on the contract it is shown as Reliance release.

By Mr. COCHRAN:

Q. "Clive of India" was a Twentieth Century-Fox release, wasn't it?

A. The contract just said Reliance release. "Scarlet Pimpernell" was a foreign picture.

By Mr. COCHRAN:

Q. What was the name of that?

A. "Scarlet Pimpernell." Contract February 14, 1936; "Escape Me Never," I could not find the contract confirmation on that, played September 16th and 17th; "These Three" October 6, 1936, second run. "Les Miserables," contract dated October 6, 1936. Those are all the pictures from July up until October 28th that were played.

By Mr. WRIGHT:

Q. Those are United Artists' pictures?

A. Yes, sir.

Q. There were only two of those that you could not locate contracts for. Is that right?

A. Yes, sir.

Q. I meant to ask you on direct examination. What is the size of Plainview; what was it during this period you have covered in your testimony from 1932 through 1936, approximately?

A. Well, it ran approximately between nine and ten thousand.

501 Q. About the same during the whole period?

A. Yes, sir.

By Mr. COCHRAN:

Q. Do you know what the 1930 census was on the Plainview population?

A. I don't recall it at the present time, no, sir.

Mr. WRIGHT. You stipulated that the population figures in the 1930-40, United States Official Census will be judicially noticed in all of the towns that we produce testimony from.

Re-cross-examination by Mr. COCHRAN:

Q. You have examined the letters which you wrote to the Department of Justice in 1936, have you?

A. Yes, sir, I read them over.

Q. I will ask you if in any of those letteks you stated to the representatives of the Department of Justice, that R. E. Griffith, in a conversation which you had with him in March of 1936 stated in answer to your question asking him if he would let you have some second-run pictures in which he said, "The town is too small for second run pictures," and that you then asked him, "Well, what about your changes since 1936, since I opened the Fair. You have jumped from three changes a week in each theater to four changes consuming two extra first run pic-

502 tures," and he said, "Well, I had to do that to consume the product that I had under contract." Is there any letter in which that statement appears?

A. Not that direct statement, no, sir.

Q. Turn to any letter which you wrote the Department of Justice during 1936 in which any part of that statement was made. There is only one letter in which any reference was made to any statement by R. E. Griffith, is there not?

A. June 20th.

Q. June 20, 1936. Is that right?

A. Yes, sir.

Q. Just state to the Court the statement which you made in that letter to the Department as to any statement R. E. Griffith made to you. Just read it.

Mr. WRIGHT. If we are going to have this correspondence go in, I would be glad to have it all go in, but I don't see any occasion for picking parts of it out of the context. I think in order to understand the correspondence it should be seen as a whole.

The COURT. I don't think any of it would be competent, excepting that part.

Mr. COCHRAN. We are introducing this for impeachment purposes, and that alone, in regard to the statements which he claimed R. E. Griffith made to him.

The COURT. Proceed.

503 By Mr. COCHRAN:

Q. Just read that part of it.

Q. Mr. Griffith himself has told me the town wouldn't support a second run show and he didn't think it good business to run second run pictures.

The COURT. What was the last part?

A. Mr. Griffith himself has told me the town wouldn't support a second run show, and he didn't think it good business to run second run pictures.

By Mr. COCHRAN:

Q. Was that the only statement contained in any of those letters to the Department of Justice as to any statement made by R. E. Griffith to you?

A. Yes, sir, that is all I referred to.

Q. During the period from June 20th, 1936, throughout the year 1936, you were carrying on quite a correspondence with the Department of Justice, were you not?

A. Yes, sir.

Q. And you have a voluminous file of correspondence?

A. Yes, sir.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. WRIGHT:

Q. Calling your attention to the month of July 1936, do you recall whether in that month you gave an affidavit,

you supplied to the Department an affidavit, the De-
504 partment at Dallas?

A. Yes, sir.

Q. Do you have a copy of it there?

A. I have a copy some place.

Q. Will you look at that and see on what date you made that?

A. Dated July 4, 1936.

Q. And that was a sworn statement you made at that time?

A. Yes, sir.

Q. It was later turned over to the FBI at Dallas, was it?

A. Yes, sir.

Q. Will you just read what you said in there with reference to this conversation with R. E. Griffith?

Mr. COCHRAN. We object to that as a self-serving declaration. If they will submit it to me I might agree that it go in, but I want to see it, but otherwise I object to it as being a self-serving declaration.

The COURT. Overruled; let him read it.

A. Do you want the paragraph or just the statement?

By Mr. WRIGHT:

Q. Well, read the statement you made as to the conversation you had with R. E. Griffith in March. I think it begins here starting with "After lunch on the same date, March 26th".

A. "After lunch on the same day, March 26th, I
505 decided it would be a good idea to go up and talk with Mr. Griffith and see what I could do. I called his office and he told me to come on up. We talked for some time regarding business in general and then I asked him this question. Mr. Griffith, I need some pictures in Plainview and I was wondering if you had a few cut backs first run that you were not going to use? He looked at me rather funny and made this statement. There are too many picture shows in Plainview and I don't think I have anything I can give you, however, I will see what Mr. Lockhart (the Booker) has to say. Mr. Lockhart came in and Mr. Griffith asked him if he had made out a list of the cut backs he was not going to use in Plainview first run. Mr. Lockhart told him he had not made out the list but that he thought there would be about fifteen or twenty pictures that would be cut back. Mr. Griffith told him to get up a list and notify the film companies to let me have them. Mr. Lockhart left the office. I then asked Mr. Griffith if he could let me have second run pictures and this is the statement he made.

No, I think the town is too small to run second run pictures in and that he did not see why the prestige should be set up at this time. I told him that other towns in Texas about the same size were running second run pictures and he told me it might be true, but that it was not good business. I then asked him what was a man going to do if he could not get pictures and he told me he did not know. I reminded him of this fact, that prior to January first, 1936, he was running only six first run pictures in both houses in Plainview, but after January first, 1936, he set a policy of eight first run pictures in both houses in Plainview, thereby using two extra first run pictures per week. He told me yes, that was true but he had to do this in order to use up the pictures he had under contract. We talked on for awhile and when I got ready to leave his office, he walked to the door with me and made this statement. (Tell your partner, Mr. Silverthorne and this fellow Massie, referring to my other partner) and owner of the theater building, that when they got ready to close the theater and rent the building to some store, that we might buy the equipment at a reasonable figure. I answered his statement in this way, 'Mr. Griffith, I am afraid that will never happen.'"

506

Q. Is that all the conversation there?

A. With Mr. Griffith, yes, sir.

Mr. WRIGHT. That's all.

Re-cross-examination by Mr. COCHRAN:

Q. You spoke of making this affidavit. That affidavit was prepared by some representative of the Department of Justice and submitted to you for your signature, was it not?

507

A. No, sir, it wasn't.

Q. Who prepared it?

A. I prepared that before a notary and submitted it; it was submitted to the Dallas office.

Q. Did you write it yourself?

A. Yes, sir.

Q. You mean you wrote it, you did the typewriting?

A. No, sir, I didn't.

Q. Who assisted you in the preparation?

A. The girl that worked at the theater typed it.

Q. Prior to that time had any representative of the Department of Justice visited you in Plainview?

A. Yes, sir.

Q. Did you furnish them any statement at that time?

A. I will have to refer to my records. What date?

Q. Prior to the date that you prepared and sent in this affidavit?

A. On June 20th, my letter of June 20th.

Q. That is a letter which you wrote to the Department of Justice, but I am talking about a statement you made verbally to agents for the Department of Justice who came to Plainview to interview you. Do you have to look through your letters in order to tell whether you had a conversation with representatives of the Department of Justice?

A. I had several conversations with representatives, yes, sir.

508 Q. Prior to the time you sent in this affidavit?

A. Yes, sir.

Q. Who were those representatives you talked to prior to making this written statement?

A. There was Mr. Plummer who called on me from the Department of Justice from Los Angeles. There was one other representative that called.

Q. Can you tell us who the other representative was?

A. Well, the main investigator was Mr. L. T. Plummer.

Q. Turn again to your letter of June 20, 1936. Was your conversation with Mr. Plummer before or after June 20, 1936?

A. It was before.

Q. So, after you had talked with Mr. Plummer you wrote the letter of January 20, 1936, and thereafter you prepared and sent in this affidavit which has been referred to in your examination, that you mailed to the Department of Justice?

A. It was made after it, yes, sir.

Q. In this letter of June 20, 1936, in addition to the one statement you have stated was made by R. E. Griffith, you referred to statements made by the local manager and various other statements which you contended supported your contention in regard to the violation of the law by R. E. Griffith?

509 A. That is right.

Q. That is all.

Re-direct-examination by Mr. WRIGHT:

Q. The contentions you were making there in your correspondence were with reference, primarily, were they not, to violations by distributors?

A. Yes, sir.

Mr. WRIGHT. That is all of the regular examination. Now, I wanted to make an offer of proof here on these other conversations that preceded the conversation with Mr. Griffith, and if we are going to get the benefit of a record at this time on that at all, I suppose there would have to be full cross examination——

The COURT. I will permit you to offer the testimony with the limitations that I stated yesterday. I don't think the evidence is competent. I think it is hearsay and when you go to make your record I will permit you to examine him.

Mr. COCHRAN: It seems to me in view of the statement counsel made in the record, it is not necessary at all to go into this examination for the reason that he has admitted that his offer is not proper at this time. Therefore, there is no reason why we should burden the record with the testimony. If he thinks it is proper at a later time let him offer it at that time.

510 Mr. WRIGHT. I understood it was proper at this time.

The COURT. Just eliminate the discussion. I will permit you to offer it; merely make your offer and the Court has stated that the evidence is incompetent and will not be permitted in evidence, but you can make your record.

By Mr. WRIGHT:

Q. Can you tell us just how you happened to go over to see Mr. Griffith that day?

A. Yes, sir. I had been told by the distributors that I had called on that Mr. Griffith had the product bought, and if I wanted to make a deal with them on second run of the 1934-35 product, which at that time I was trying to get, they said then, "You will have to go over and talk to Mr. Griffith, and if he wants to release it we will be glad to make a deal with you."

Q. What distributors were those that you are referring to?

A. I talked to RKO and I talked to Columbia; talked to Fox; I talked to the manager of Warner Brothers and I talked to Republic, and went to M-G-M and Paramount.

Q. That is all.

The COURT. Any cross examination?

Mr. COCHRAN. I take it on an offer I am not required to cross examine him. If the testimony were admitted I would cross examine.

511 Mr. WRIGHT. Unless he cross examines him now I suppose then we are still no better off insofar as making a record on which we can have final disposition of the case on an appeal, because I suppose at best whatever he would claim, if the upper court should rule that evidence had been erroneously excluded and the case would be sent back for retrial so that he would have the right to cross examine——

The COURT. He has the right to cross examine now and if he waives it I don't think that condition would exist.

Mr. COCHRAN. My position is this: The rules say if they make an offer and the testimony is not clearly inadmissible, the party offering it shall be permitted to examine the witness in order that he may fully develop what he would answer but there is no requirement anywhere where the other party, if the Court overrules the proffered testimony, which requires that cross examination shall be had. In other words, if it is offered and rejected, then there is nothing to cross examine on until the testimony is cross examined on. Until the testimony is in we have nothing to cross examine on.

Mr. WRIGHT. If the Court pleases, in any view of the Crescent decision it is perfectly obvious that the admissibility of testimony of this type, that when it is
512 admitted it is clearly not reversible error. As the Court knows in that case, there was testimony which, under the conspiracy theory, they didn't feel it was necessary to decide, whether there was a proper exception to the hearsay rule involved there or not, insofar as that conspiracy argument was concerned, and it seems to me in a situation of this kind the clearest way to prevent error is to submit testimony subject to the connection——

The COURT. No, the Court is not going to admit the evidence because the Court thinks it is incompetent, and the Court has not found any case, not even the Supreme Court case which you referred to, that sustains your position. The Court rules it is incompetent but he has permitted you to offer it in order to make your record. So far as cross examination is concerned, it is immaterial. If counsel wants to cross examine, he has that right, and if he does not want to cross examine, he has that right. Is there anything further with this witness?

Mr. WRIGHT. That is all.

(Witness excused.)

513 JAKE JONES, called as a witness by and on behalf of the plaintiff, and being previously duly sworn to testify the truth, the whole truth and nothing but the truth was examined and testified as follows:

Direct examination by Mr. WRIGHT:

Q. Will you state your name, please?

A. Jake Jones.

Q. And where do you live?

A. Shawnee.

Q. How long have you lived there?

A. I went there in 1903.

Q. You are engaged in the theater business there, are you?

A. Yes, sir.

Q. When did you first open a motion picture theater in Shawnee?

A. In 1914.

Q. What was the name of that theater?

A. The Cozy.

Q. And how long did you operate that?

A. I operated it until 1926.

Q. And then what did you do with the theater in 1926?

A. I leased it to Griffith Brothers.

Mr. WRIGHT. I will ask to have this lease
514 dated July 6, 1926, marked for identification as Plaintiff's Exhibit No. 110, for identification.

(Plaintiff's Exhibit No. One Hundred was marked by the reporter for identification.)

Q. Do you recognize the signatures at the bottom of the lease, the last page, as those of yourself and L. C. R. E. and H. J. Griffith?

A. Yes, sir.

Mr. WRIGHT. I will offer the lease in evidence.

Mr. COCHRAN. No objection. Will you state the substance of the part that you think is material?

Mr. WRIGHT. The lease is for a term of five years and that is only a preliminary matter to the next question.

Q. Was that the only theater that you had in Shawnee then?

A. Yes, sir.

Q. When you sold, you were out of the theater business there?

A. For awhile.

Q. How long?

A. I don't exactly know. I went down to Seminole and built a theater.

Q. In 1927 did you and some other associates build a theater there, a new theater?

515 A. Sometime in 1927, the Seminole Amusement Company, that I was interested in, built the Criterion Theater.

Q. The Seminole Amusement Company built the Criterion Theater?

A. Yes, sir.

Q. What was your connection with that company?

A. I was the president of the company.

Q. Who else was interested in it with you?

A. Lawrence Sporcher, and I think Mr. Cline, I don't know what his initials are now, I don't remember his initials, but Mr. Cline.

Q. How do you spell Lawrence Sporcher? A. Spell it for them, Johnnie. I don't remember; I don't remember.

Q. Then the Criterion Theater was operated by the Seminole Amusement Company?

A. Yes, sir.

Q. For about how long?

A. I think it was a year and a half.

Q. Then you leased that?

A. To Griffith Amusement Company.

Q. To the Griffith Amusement Company?

A. Yes, sir.

Mr. WRIGHT. I will ask to have this lease between the Seminole Amusement Company and the Griffith Amusement Company, dated June 14, 1929, marked for
516 identification as Plaintiff's Exhibit No. 111.

Q. Plaintiff's Exhibit No. 111 for identification, signed by you on behalf of the Seminole Amusement Company, and by L. C. Griffith on behalf of Griffith Amusement Company, is that right?

A. Yes, sir.

By the COURT:

Q. What is the date of that?

A. The Criterion.

Mr. WRIGHT. That lease is dated June 14, 1925, and runs for ten years, from May 31, 1929.

Mr. COCHRAN. May I see that just a moment.

Mr. WRIGHT. Yes, sir. (Handing instrument to Mr. Cochran.) I offer that in evidence.

Mr. COCHRAN. No objection.

(Plaintiff's Exhibit No. 111 was thereupon admitted in evidence.)

By Mr. WRIGHT:

Q. By the way, when you leased the Cozy to the Griffith did they change the name of it?

A. To the Ritz.

Q. To the Ritz?

A. Yes, sir.

Q. When the lease on the Ritz expired in 1931, did you take it back?

A. Yes, sir.

Q. And you continued to operate it under the same name?

517 A. The Ritz, yes, sir.

Q. Then when you resumed the operation of the Ritz in 1931, what, if any, major feature films did you play there, from what companies?

A. Fox, Paramount, and Metro-Goldwyn.

Q. And what run?

A. Second run.

Q. Now, during the year 1930, can you tell us what the monthly rental was that you received under this lease on the Criterion, Exhibit 111?

A. What year was it?

Q. This would be during 1930.

A. In 1929 I received $561.61 a month; then they asked for a reduction and I reduced it to $500 a month.

Q. When was that?

A. In 1931.

Q. Then did you reduce it any further?

A. Yes, in—I reduced it again in 1932, down to $400.

Q. Then after those reductions did you have any further conversation with the Griffiths about a further reduction?

A. Yes, sir; there was one time they called me up and made a date with me at the Aldridge Hotel in Shawnee.

Q. When was that that you saw them?

518 A. That was in the early part of '33.

Q. And you met them at the hotel there?

A. Yes, sir.

Mr. COCHRAN. We object to the statement "met them"; let's find out who it was.

By Mr. WRIGHT:

Q. Just tell us who it was that came over to see you then.

A. Well, sir, I think—it was L. J. Griffith, R. E. Griffith and [illegible]uett McKenna.

Q. Who else was present at this conversation besides then.

A. Me and Mr. Sporcher.

Q. Just tell us as near as you can, as best you recall, the substance of what was said then.

Mr. COCHRAN. And by whom.

By Mr. WRIGHT:

Q. And by whom, if you remember.

A. Well, there was—first they were talking to Mr. L. C. Griffith—I mean Lawrence Sporcher, who was the secretary-treasurer of the company.

Q. Of the Seminole Amusement Company?

A. Yes, sir.

By Mr. COCHRAN:

Q. The secretary-treasurer of what company?

A. They first talked about more cut on the Criterion lease and then Mr. R. E. Griffith got up after that and

519 said "we want you to cut the rent to $250, and if you

don't cut it, we are going to build another house and take your second run away from you, all of your second run pictures away from you".

By Mr. WRIGHT:

Q. What did you say?

A. I swore, and picked up my hat, and got out.

Q. After that conversation did they open up another house there?

A. Yes, sir.

Q. What was the name of it?

A. The name was the Victory when they got it, and they changed the name to the Rex.

Q. When was it opened as the Rex, do you remember?

A. I think it was in April or May, sometime in April or May, I am not for sure.

Q. Of what year?

A. In 1933.

Q. You say that was opened under the name of the Rex?

A. The Rex, yes, sir.

Q. And it had been operated formerly under the name of the Victory?

A. When it was operated, but it was closed at that time.

Q. How long had it been closed?

A. Quite awhile; I couldn't say how many months.

Q. Months?

A. Yes.

520 Q. Or years?

A. Two or three months.

Q. Can you give us a comparison of those theaters, your Ritz and their Rex as they exist at this time.

A. My Ritz has always been about 600 seats. From 550 to 600 seats, and always has as many as 500 upholstered seats, and their theater, I think it runs between three and four hundred wooden seats.

Q. How do they compare as to location?

A. I am on Main Street. I am considered one of the best locations in town and they are on a side street, on Broadway.

By the COURT:

Q. This new theater that was built, was that in Shawnee or Seminole?

A. You mean the Criterion?

Q. No, the Rex.

A. That is in Shawnee, the Rex.

By Mr. WRIGHT:

Q. All of these theaters, I understand, that you have testified about are in Shawnee?

A. In Shawnee.

By the COURT:

Q. The Criterion.

A. That was built by the Seminole Amusement Company, yes, sir.

Q. In Shawnee?

A. Yes, sir.

Q. Did Griffith continue to operate the Criterion?

A. Yes, sir.

521 Q. And the Rex?

A. And the Rex and Bison. They had three.

By Mr. WRIGHT:

Q. I will ask to have this Metro, second run contract for the 1931–'32 season pictures marked for identification as Plaintiff's Exhibit 112. I will show you this Exhibit 112 for identification, and ask you if you recognize that as the contract for the exhibition of M-G-M features released during 1931–32 season, second run, in your Ritz Theater at Shawnee?

A. Yes, sir.

Q. The contract was made on or about that date there?

A. Yes, sir.

Q. October 6, 1931. I will ask to have marked for identification as Plaintiff's Exhibit 113 this document. I show you this exhibit, Plaintiff's Exhibit 113 for identification, and ask you if you recognize that as a second run contract for the Ritz at Shawnee, for a picture called "Emma" starring Marie Dressler.

A. Yes, sir.

Q. And that was made in February, 1932?

A. Yes, sir.

The COURT. That was the same company, M-G-M?

Mr. WRIGHT. Yes, same season's features, '31-32.

Mr. COCHRAN. You understand, your Honor, the period he is going into now is not within the time that is

522 covered by the complaint in this case, but I am not objecting to these documents going in just because of the background that it might furnish, but it is not within the period. I just wanted to call your Honor's attention to that.

Mr. WRIGHT. I take it for granted that as to the R. E. Griffith and Westex theaters, there was no specific objection.

Mr. RICE. No, sir, in regard to these transactions and conversations in Oklahoma.

By Mr. WRIGHT:

Q. Now, Mr. Jones, did Metro offer you any season's contract, second run, for the 1932-33 releases?

A. No, sir.

Q. And were you offered any Metro product for the 1933-34 season, second run?

A. No, sir.

Q. And you know what theaters in Shawnee played those Metro pictures second run?

A. Well, it is the Rex that played them second run until they moved the Rex and called it the Vaughn; moved it on Main Street.

Q. When was that?

A. I think they moved that in 1935; I am not positive; I don't know exactly.

Q. But the second-run Metro played in the Griffith
523 Theatres?

A. Yes, sir.

Q. I will ask you if you recognize this exhibit, Plaintiff's Exhibit 114 for identification, as a second run contract for the Ritz at Shawnee for the 1931-32 season features?

A. Of Paramount?

Q. Of Fox.

A. Yes, that is Fox.

Q. That was made on about January 1, 1932?

A. Yes, sir.

Q. Were you offered a Fox contract for second run at the Ritz on the succeeding 1932-33 season features?

A. No, sir.

Q. Had you played Fox films at the Ritz prior to the time Griffith had come into Shawnee?

A. No, sir.

Q. Had you played Metro pictures I am talking about, before 1926?

A. Before 1926, I played Fox, Metro-Goldwyn-Mayer, that is, first run and the company now known as Columbia.

Q. That was when you were operating the Cozy?

A. Yes, sir, when I was operating the Cozy.

Q. I show you these exhibits that have been marked for identification, Plaintiff's Exhibits 115, 116, 117, 118
524 and 119 for identification, and ask you if you recognize those as Paramount contracts for the exhibition of feature pictures at your Ritz Theater in Shawnee?

Mr. COCHRAN. Let's take those up one at a time and not all together.

Mr. WRIGHT. All right.

By Mr. WRIGHT:

Q. Do you recognize the Plaintiff's Exhibit 115 for identification, as a contract for the 1931-32 product, second run?

A. Yes, sir.

Mr. Cochran. Paramount?

Mr. WRIGHT. Paramount.

By Mr. WRIGHT:

Q. Can you recognize Plaintiff's Exhibit 116 for identification as the Paramount Contract for the 1932-33 season, first run?

A. Yes, sir.

Q. At the Ritz, and Plaintiff's Exhibit 119 for identification as the second run contract for the 1932-33 season?

A. 1933-34.

Q. I beg your pardon. This Exhibit 119 has a contract for a second run of the S-4 product, 1932-33 season.

A. Yes, sir.

The COURT. What company is that?

Mr. WRIGHT. This is all Paramount.

525 By Mr. WRIGHT:

Q. And Plaintiff's Exhibit 116, do you recognize that as a contract for the 1932-33 product, first run, for that same season?

A. Yes, sir.

Q. Then do you recognize these several contracts attached here together as Exhibit 117 for the 1933-34 Paramount releases, first run, at Shawnee?

A. Yes, sir.

Q. And this Exhibit, Plaintiff's Exhibit 118, for identification, the contract for the Marx Brothers picture?

A. Yes, sir.

Q. Second run, in Shawnee?

A. Yes, sir.

Q. This is a single contract picture——

Mr. COCHRAN. What is the number of the exhibit?

Mr. WRIGHT. This is 118 and it has two pages. Both of these are dated November 3, 1933, and the first is for the Marx Brothers production and the second page is for three photoplays classified as (A) and the remaining classified as (B), 52, altogether of the 1933-34 season.

Mr. COCHRAN. First run?

Mr. WRIGHT. These are second runs. The first contract contracts for the same season.

Mr. COCHRAN. Just a moment ago you identified Exhibit No. 119 as the 1933-34 season, second run.

526 Mr. WRIGHT. 119.

Mr. COCHRAN. You started off by saying '32-33, and Mr. Jones corrected you and said '33-34.

Mr. WRIGHT. 119 says on its face the features generally released in the year commencing August 1, 1932 and ending July 1, 1933.

Mr. COCHRAN. All right. 117 is second run for the '33-34 season, is that correct?

Mr. WRIGHT. That's correct. No. 117 is first run for the '33-34 season; 118 is second run.

Q. Now, were you offered either first or second run of Paramount for the '34—say the seasons' contracts, first or second run of Paramount, for the 1934-35 season?

A. No, sir.

Mr. WRIGHT. I ask to have this document marked as the next number.

(Plaintiff's Exhibit No. 120 for identification was marked by the reporter.)

Q. I will show you this letter from Paramount Pictures Distributing Corporation, addressed to you, office of Neil F. Agnew, dated October 2, 1934, marked Plaintiff's Exhibit No. 120 for identification, and ask you if you received that shortly after that date?

A. Yes, sir.

Mr. COCHRAN. May I see it?

527 Mr. WRIGHT. Yes, sir. (Handing.) Mark this as the next number.

(Plaintiff's Exhibit No. 121 for identification was marked by the reporter.)

Q. I will show you this document, marked Plaintiff's Exhibit 121 for identification, consisting of three sheets, all dated September 7, 1934, and ask you if you recognize—

A. (Interrupting.) What is that?

Q. Those——

A. (Interrupting.) That is the 1934-35, is it?

Q. The '34-35 season deal with RKO, first run, at the Rex.

A. Yes, sir.

Mr. COCHRAN. In connection with this offer of Plaintiff's Exhibit No. 120, we object to that document on the ground that it is hearsay evidence.

Mr. WRIGHT. I hadn't made any offer as yet.

Mr. COCHRAN. Oh, excuse me.

Mr. WRIGHT. I was identifying them all and then I thought I would offer all of this material together.

Mr. COCHRAN. All right, I will withdraw the objection, if it is not offered. I think it would be much simpler, your Honor, if they would offer them as they go, because this way I have to try to keep in my mind the documents that

I am not going to object to, and those that I
528 am going to object to.

Mr. WRIGHT. I suggest that I ask him one more question and then I will offer all of those.

Q. Mr. Jones, were you offered the season's first run contract of the 1935-36 RKO pictures for first run at the Ritz?

A. '35-36?

Q. Yes.

A. First run? That is the season following the contract here, Exhibit 121.

Mr. COCHRAN. If the Court please, may I be permitted to inquire what the gentleman is referring to? He has some kind of notes in his hand that he is referring to.

Mr. WRIGHT. He wants to know what you are referring to.

A. Well, to the dates.

By Mr. COCHRAN:

Q. Where did you get those dates?

A. I made them.

Q. That is memoranda that you made?

A. Yes, sir.

Q. From what records?

A. Of those things, so I can remember them.

Q. Is that a memo that your son or daughter made for you?

529 A. No, sir.

Mr. WRIGHT. Now, would you read the question?

By Mr. COCHRAN:

Q. Are they in your handwriting?

A. No, sir, I typed them.

Q. They are typewritten?

A. Yes, sir.

Q. Did you typewrite them?

A. Yes, sir.

Mr. WRIGHT. Now read the question.

(The last question by Mr. Wright was read by the reporter.)

A. '35-36?

Q. Yes.

A. No, sir.

Mr. WRIGHT. I will offer in evidence then these exhibits that have been identified. Do you want to take these up individually or by companies?

Mr. COCHRAN. I would like to have them to be offered individually so I may have a chance to object to any that I want to object to.

Mr. WRIGHT. I will take them up in the order in which they were marked. I think the first one was the MGM. We will offer first Exhibits 112 and 113, as to the '31-32 MGM product.

Mr. COCHRAN. No objection.

530 Mr. WRIGHT. We will offer next the Fox '31-32, Plaintiff's Exhibit 114.

Mr. COCHRAN. No objection.

Mr. WRIGHT. Then we will offer in evidence the Paramount contracts numbered 115 to 119 inclusive.

Mr. COCHRAN. No objection.

Mr. WRIGHT. And then the letter from Mr. Agnew, that is Exhibit 120.

Mr. COCHRAN. We object to the introduction of Plaintiff's Exhibit No. 120 for the same reasons that have been advanced in connection with these other statements made by the representatives of the distributor, as hearsay and incompetent.

The COURT. On what theory do you assume that this letter is competent?

Mr. WRIGHT. Well, we have already shown that by the franchise agreement which was put in here as P-1, I believe, made between Paramount and all of these defendants, acting collectively, together with all of their associated and affiliated companies, that they took away the first run product from this little man in Shawnee, and the evidence will show from other independents in other situations who had been regularly playing the product, with no opportunity whatsoever for them to negotiate for a continuance of the run they then had of runs, in this

531 case first and second.

The COURT. Do I understand you that you question the right of the distributor to sell to whom he pleases.

Mr. WRIGHT. Of course, we do, your Honor.

The COURT. Objection sustained.

Mr. WRIGHT. That is what the case is about.

The COURT. You will have to find out some more about it. If it comes to the point in this country where a man cannot make a contract, a simple contract, you will have to produce some law that I don't know anything about.

Mr. WRIGHT. Your Honor, this is more than a simple contract.

The COURT. It isn't a public utility at all, it isn't selling gas or light; it is selling something like clothing. That letter refers to the fact that they regard it as good business on their part to sell these to the Griffiths. There isn't a line in there that Griffiths requested it, or anything they said; there isn't anything there that would be

binding on any of these defendants in any way. How could that be competent against the defendants?

Mr. WRIGHT. If the Court please, I think it shows quite clearly why that procedure was adopted. Let's look at the matter in this way. If the Sherman act means
532 anything in the motion picture field, and I think the Supreme Court has said that it does, it means, that motion pictures must be distributed upon a competitive basis, town by town, if there is going to be any opportunity at all for the independent operator to survive, to compete with the chain or circuit operating.

The COURT. This is a conspiracy, you have alleged a conspiracy here. You are offering a letter here that was written by one of the distributors, and it merely refers to one of the defendants; it doesn't tend to bind the defendants in any way, it just simply refers to a contract it made with the Griffith Amusement Company. Objection sustained and an exception is allowed.

Mr. WRIGHT. In view of the position that has been taken, if the Court please, the foundation that we have laid for the introduction of that letter, I think, is about as clear as any that could be made.

The COURT. Well, that is in the record.

Mr. WRIGHT. If your Honor is not satisfied with the foundation as made now on that letter, I think we had better discontinue offering the independent witnesses and then proceed to put in our documentary evidence, in other words, our entire basic evidence of the combination between the defendants, before we proceed further with the examination of the complaining witnesses. That's all the
533 direct testimony I have at this time of this witness.

Mr. COCHRAN. While you are at it, don't you want to offer 121?

Mr. WRIGHT. Yes, I will offer that also.

Mr. COCHRAN. No objection.

The COURT. Cross-examine.

Mr. COCHRAN. I imagine probably you will expect to put this witness on again, won't you?

Mr. WRIGHT. Why, I don't think so. I think what more we have in Shawnee would be put on through Mr. John Jones, his son.

Mr. COCHRAN. Well, I will examine him on what he has testified to up to this point.

Mr. WRIGHT. I said I am not promising to bring him back. Of course, he will be available if you want him. I intend to call his son to complete the Shawnee picture on his theater.

Mr. COCHRAN. All right.

Cross-examination by Mr. COCHRAN:

Q. Prior to the time you sold the equipment in the Cozy Theater to Griffith Brothers, there were two theaters, there were three theaters in Shawnee operating in opposition to you, were there not?

A. Repeat it, please; what do you say?

534 Mr. COCHRAN. Read it.

(Question read by the reporter.)

A. I don't think there was only two.

Q. A. B. Momand was operating the Savoy and the Odeon, was he not?

A. Yes, sir.

Q. And there was a theater by the name of the Victory being operated by Roy Wellman?

A. I don't remember that, that wasn't at that time. However, later Roy Wellman opened up, but not in '26, I don't believe. I am not for sure about that.

Q. Don't you know that the Victory, being operated by Roy Wellman, was a theater which afterwards became the Rex, operated by Griffith?

A. Well, that was the original one, all right, but I don't think it was in '26. It may be, now, I am not for sure; it may be three theaters, you may be right.

Q. In 1926 you erected a theater in Seminole, didn't you?

A. Yes, sir.

Q. About the same time A. B. Momand erected a theater there?

A. No, I went there first; I was the first man.

Q. And at the same time that you leased the Cozy in Shawnee to Griffith Brothers, you leased the theater which you had constructed in Seminole to Griffith Brothers,

535 didn't you?

A. No, sir, I sold it to them. I sold them the entire building and everything.

Q. In Seminole, instead of leasing the building to them, you sold them the fee title to the property?

A. I sold them everything.

Q. You sold them everything?

A. Yes, sir.

Q. In Shawnee you merely leased the building which you owned?

A. I leased the building and sold them the equipment.

Q. You owned the building in which the Cozy was located, did you?

A. Yes, sir.

Q. You also owned the building in which A. B. Momand was operating the Savoy, did you not?

A. No, sir. I do now. After, I think in '20, during the bank failure, and the bank took it over, that is the government took it over, I bought it from the government.

Q. You acquired a lease contract on it prior to that time, didn't you?

A. No, I was, I bought it from H. T. Douglas in the early days, and he couldn't deliver it, he couldn't deliver it.

Q. You attempted to get possession of that building from A. B. Momand, didn't you?

536

A. I bought it from the owner.

Q. How's that?

A. I bought it from the owner, H. T. Douglas.

Q. When did you buy it?

Mr. WRIGHT. Excuse me, what is the name of this theater?

Mr. COCHRAN. The Savoy Theater.

A. I can't remember the year, but it was in the early days, a long time ago.

By Mr. COCHRAN:

Q. When did you become the owner, approximately when did you become the owner of the building in which the Savoy was located?

A. The owner?

Q. Yes.

A. Oh, I think after the bank closed, I don't know. '30—I don't know what year it was. I didn't get it until about '37 or '38.

Q. Do you recall that in 1931, that A. B. Momand didn't renew his lease on the Savoy Theater, and it was turned over to you?

A. It wasn't turned over to me, no, sir.

Q. Who was it turned over to?

A. A. B. Momand wouldn't give it up.

Q. When did he give it up?

537

A. He gave it up when the banks went broke.

Q. You attempted to obtain possession of it in 1931, didn't you?

A. No, I tried to buy it, I tried to buy it from the man that owned it, that is, owned the building, H. T. Douglas, and he made, I made a deal with him, but he couldn't make delivery on it. I paid him $5,000 down and he couldn't deliver the building. A. B. Momand held it.

Q. Did you ever lease that building to A. B. Momand?

A. No, sir.

Q. Did you ever collect the rent on that building from A. B. Momand?

A. A. B. Momand sued me for $40,000 for trying to buy it. The suit hung for ten years.

Q. When did Mr. Momand discontinue the operation of the Savoy?

A. I do not know.

Q. You have no idea?

A. No.

Q. And you say now that it is not a fact that in 1931 the Savoy Theater was turned over to you and you leased it to other persons who operated it until you later took it over and operated it as the State?

A. No, sir, not the Savoy Theater.

Q. All right.

538 A. I bought it later, in '27—in '37, from the Government.

Q. After having leased the Cozy to Griffith Brothers in July of 1926, you then erected, later erected the Criterion Theater on real estate which you owned, is that right?

A. Yes, sir—not that I owned, the Seminole Amusement Company bought the land and built the building, and I was the president of it.

Q. And you owned most of the stock, didn't you?

A. Yes, I think I owned 51%, that is, in my family.

Q. When was that Criterion opened for operation?

A. Let's see, I think later '27, I operated it around a year and a half, and I leased it to Griffith Amusement Company.

Q. After you leased the Cozy Theater to Griffith Amusement Company, most of the companies that you had been obtaining product from during the time you operated the Cozy licensed that product to the Griffith Amusement Company, did they not?

A. Do you mean when I leased it to them?

Q. After you leased it to them.

A. Do you mean they got the product?

Q. Yes, I suppose.

A. I suppose so, I didn't pay any attention to it. In the contract this says they will take it over.

539 In 1928 and '29, after you had opened the Criterion in 1927, talking pictures were introduced, were they not?

A. Well, I don't know what year it was exactly, but I was operating silent pictures; I didn't have any talking pictures.

Q. Don't you know that in 1928 Griffith Brothers installed the first sound equipment in Shawnee, in the Ritz Theater?

A. Well, I don't know what year they did, but they had sound in there, yes, sir.

Q. Do you know that Griffith Brothers installed the first sound equipment which was installed in Shawnee?

A. Well, I can't say yes or no.

Q. You do know that when you built the Criterion——

A. (Interrupting.) I know—I think—I don't remember.

Q. You do know that when you built the Criterion, when you opened the Criterion Theater, you didn't install sound equipment?

A. No; there wasn't——

Q. And you do—go ahead.

A. Sound didn't come until I think in '28 or '29 or something like that.

Q. It came in '28?

A. '29 or '28, I don't remember.

Q. And you opened it in '27?

540 A. Late '27, yes, sir.

Q. So, while you had the Criterion, you didn't install sound equipment.

A. No.

Q. You continued to try to play silent pictures?

A. I was playing silent pictures, yes, sir.

Q. And you continued to do that until even after sound equipment had been installed in the Bison and the Ritz Theaters of the Griffith Amusement Company, and in the Savoy and Odeon Theaters operated by Mr. Momand, did you not?

A. No, there wasn't that many talkies; I leased it to them before that many talkies came. I think probably the Bison was the only one, I think they got it in about a month before I leased the Criterion to them.

Q. Isn't it a fact that the Ritz was the first theater that had any talking equipment?

A. Maybe so, I don't remember. I believe you are right.

Q. Isn't it a fact that by the time you made your deal on the Criterion with Griffith Amusement Company, that sound equipment had been installed in practically every town in the State of Oklahoma.

A. I think that the only town I ever heard of it being in, outside of the one theater in Shawnee, was in Tulsa.

541 They were selling it for twelve or fifteen thousand dollars a set. There ain't many towns that could afford it.

Q. In other words, at that time it was very expensive to install?

A. About twelve or fifteen thousand dollars, I think, the first ones.

Q. You realized that if you continued the operation of the Criterion, it would be necessary for you to install sound equipment, did you not?

A. Why, I suppose so. I don't know what I would do every day.

Q. You leased the Criterion Theater to the Griffith Amusement Company fully equipped, did you not?

A. Yes, sir.

Q. At the time you leased the Criterion Theater to the Griffith Amusement Company there was then being operated in Shawnee the Bison and the Ritz by the Griffith Amusement Company?

A. Yes, sir.

Q. The Savoy and Odeon by Mr. Momand?

A. Yes, sir.

Q. And the Victory Theater by some person?

A. I think so, I am not for sure, I never paid any attention to the Victory. We called that an opened and closed house, they opened and closed it, it was a shotgun house.

542 Q. In other words, there were at that time being operated in Shawnee six theaters?

A. Yes; there are five theaters operating there now.

Q. But at that time there was six theaters being operated, were there not?

A. I am not for sure, no. That opened and closed, the Rex.

Mr. WRIGHT. What time is referred to by "that time"?

Mr. COCHRAN. At the time he leased the Criterion Theater to the Griffith Amusement Company.

A. I couldn't say the Rex or Ritz, I mean the Victory, whatever you call it, was running, but I know there was five, and there is five there yet.

By Mr. COCHRAN:

Q. The depression commenced in 1929, did it not?

A. I don't know what year. It commenced in '29 or '30, I think; '30, wasn't it?

Q. Isn't it a fact that it commenced in 1929 and by mid 1930, it was being seriously felt in the theater operation in Shawnee?

Mr. WRIGHT. If the Court please, I don't see what relevancy this has. He is asking for broad economic conclusions here, but I don't suppose this witness is qualified to testify about anyway.

The COURT. It may be an economic conclusion or
543 a matter of history. It might be competent to show the conditions. We are covering a lot of territory in this case.

Mr. COCHRAN. Your Honor, I will try to be brief.

A. He was trying to drive at that I was not doing any business, but I have the book, and we made $9,000 in eleven months. I didn't lease it because it wasn't doing any business. R. E. Griffith and that Lowenstein, or whatever his

name was, from Ardmore stayed with me three days to rent it.

Q. It was 1929 that you made your $9,000, wasn't it?

A. No, in eleven months I made $9,000 clear.

Q. I am asking you if in 1939 by mid-year, if business in the picture industry——

A. (Interrupting.) I wasn't in business then.

Q. Don't you know that the oil business in Shawnee had fallen off?

A. I wasn't in the oil business.

Q. Well, do you know that was a fact?

A. There was plenty of oil, big gushers, in Seminole; there never was in Shawnee. I don't know anything about the oil business.

Q. In 1930 don't you recall that Griffith Amusement Company closed down the operation of the Ritz Theater,
544 about August?

A. No, I don't know when they closed, but it was closed when I bought it back.

Q. Don't you know that they closed along in the summer of 1930, and then re-opened as a second run house along about December 1930?

A. No, I don't, I don't know.

Q. And didn't Mr. McKenna during that period see you and tell you that on account of conditions which existed at that time, that it was impossible for them to continue to operate that theater on a first run policy, and requested a reduction in the rental on that Ritz Theater?

A. I don't remember that either.

Q. Then in December of 1930, it was reopened as a second run house and operated for awhile, and then isn't it a fact that Mr. McKenna approached you and told you that they had found that even under the second run policy under existing conditions, they couldn't continue to operate it on the rentals being paid you, and requested a reduction in the rental?

A. I don't remember that. Mr. McKenna never has mentioned about the rents.

Q. Isn't it a fact that—well, did Mr. Clark carry on any negotiations?

A. I was going to tell you, Mr. Clark used to come
545 and see me, but Mr. McKenna wasn't there. Mr. Clark never said anything about any reduction; he was a fine man.

Q. Didn't he carry on negotiations with you for several months trying to reduce the rentals, and as the basis for exercising the option under that contract which you had with him on the Ritz Theater?

A. No, sir; the only thing Mr. Clark ever negotiated with me on was to try to get me to go into partnership in the City of Shawnee. He never mentioned anything about rent that I can remember.

Q. At any rate, when this lease expired, about September 1931, on the Ritz Theater, you took it over?

A. I went over to see Mr. L. C. Griffith, and I bought the equipment back, and he turned around to the telephone and called all three companies and told them—he called Paramount, MGM and Fox—and he says, "Now we are not operating any more second run theaters and Mr. Jones can have it", and I gave him a check.

546 Q. Don't you know that the product or the pictures of Metro-Goldwyn-Mayer, Fox, and Paramount, which you licensed second run, after you opened that theater, that those pictures had been previously licensed to the Griffith Amusement Company for use, second run, in the Ritz Theater?

A. Yes, sir.

Q. And when they did not renew the lease with you and you bought the equipment, then they released that product from their contract?

A. Yes, sir.

Q. And you licensed the product for that season?

A. Yes, sir.

Q. You know, as a matter of fact, that from 1926, the season of 1926, that you sold your Cozy Theater to Griffith Brothers, that Metro-Goldwyn-Mayer had licensed its product to Griffith Brothers for the Griffith Amusement Company, and that was their regular account in the City of Shawnee?

A. No, I will tell you what happened there. In 1926 we lost the M-G-M pictures, Momand had them, and then they finally got them later. I don't know what year they got them but they had them.

Q. You didn't even have Metro pictures in 1926?

A. Yes, we did.

Q. When you sold out to Griffith?

A. I had 25-26 product, but they told me not to

547 buy any product. They made the deal with me in June. They said we do our buying, and so Metro-Goldwyn-Mayer man came up to sell me. I said, "No, you go see Griffith Brothers," and he sold it to Momand.

Q. The material thing I am attempting to develop is that you knew several years before you re-acquired the Ritz Theater, that Metro had not licensed its product to the Griffith Amusement Company.

A. First run. When I took it over they were running Metro-Goldwyn-Mayer, first run.

Q. And also a portion of the product second run?

A. Well, I don't know. Maybe he was getting some second run, yes, sir.

Q. And don't you know that Fox had been licensing its product to the Griffith Amusement Company since the time they came in to the town until the time you re-acquired the Ritz, except for the season 1927-28. I believe after you had obtained the Criterion you licensed the Fox product?

A. Yes, sir.

Q. And when you played that one year and after that time the Fox product was licensed to the Griffith Amusement Company?

A. Yes, sir.

Q. And that condition continued until you re-acquired the Ritz?

548 A. Yes, sir.

Q. Now, the Paramount product was licensed in 1926-27 to Momand, was it not?

A. Yes, sir.

Q. In 1927-28 it was licensed to Griffith?

A. I don't know about that. I didn't pay any attention to it after I got out of business.

Q. You know at the time you re-acquired the Ritz, the Griffith had been the account of Paramount in Shawnee for several years, and until the season 1932-33?

A. They was until I bought the Ritz back, and then they turned over the second run stuff to me.

Q. That is right, but Griffith had their regular account?

A. I suppose so.

Q. In 1932-33 and '33-34, do you know that Paramount was unable to make a deal with the Griffith Amusement Company?

Mr. WRIGHT. As to their inability, that is objected to.

The COURT. He can state if he knows.

Mr. WRIGHT. He knows whether he made the deal or not, but he doesn't know whether they were unable to make the deal.

Mr. COCHRAN. I will withdraw the question.

Mr. WRIGHT. We will agree with him they didn't
549 make a deal, the entire circuit didn't make a deal with Paramount for 1932-1934 seasons.

Mr. COCHRAN. That statement is sufficient.

By Mr. COCHRAN:

Q. At this time you are operating two theaters in Shawnee, are you not?

A. What time?

Q. On the 9th day of May, 1945?

A. I don't operate two theaters. I operate one and my daughter owns one. She bought Momand out.

Q. You manage the theaters for your daughter, do you not?

A. No. She does the managing. I have been sick for three or four years. I don't do any managing.

Q. You bought the Odeon Theater?

A. I didn't do any such thing. She bought it.

Q. You furnished the money, did you not?

A. No, sir.

Q. Your daughter owns it then?

A. Every cent of it.

Q. The theater which was formerly the Odeon Theater?

A. Yes, sir.

Q. The name of it now is the Jake?

A. Yes, sir.

Q. Your name is Jake Jones?

A. Yes, sir. She named it after me.

550 Q. And you still operate the Ritz Theater?

A. Yes, sir.

Q. You have continuously operated the Ritz Theater from 1931 to this good date?

A. Thank God, I have.

Q. And isn't it a fact that you are playing more than 200 pictures a year in the Ritz Theater?

A. I don't know.

Mr. WRIGHT. Just a minute——

Mr. COCHRAN. I will withdraw that. That is not cross-examination.

By Mr. COCHRAN:

Q. In the early part of 1933 you stated that you had a conversation with H. J. Griffith, R. E. Griffith and Bennie McKenna?

A. Yes, sir.

Q. Where was that conversation?

A. In one of the rooms in the Aldridge Hotel in Shawnee, Oklahoma. I think it was the Palace room.

Q. You know H. J. Griffith?

A. Yes.

Q. Is that the gentleman over there?

A. Yes, that is him.

Q. Do you know R. E. Griffith?

A. You bet your life.

Q. You did know him?

551 A. Yes, sir.

Q. He is dead?

A. I am sorry he is dead.

Q. You understand he is dead?

A. Yes, sir.
Q. You say he was present?
A. Yes, sir.
Q. L. C. Griffith was not there?
A. No.
Q. Bennie McKenna was there?
A. Yes, sir.
Q. This gentleman right here is Bennie McKenna?
A. Yes, sir.
Q. You say R. E. Griffith was present and made the statement which you have stated into the record, on that occasion?
A. Yes, sir.
Q. You cannot be mistaken about that?
A. No, I am sure R. E. made the statement. Mr. Bocher was there.
Q. Where does Mr. Bocher live?
A. He lives in Shawnee.
Q. When Mr. R. E. Griffith made that statement, H. J. Griffith and Bennie McKenna were present?
A. Yes, sir.
552 Q. It was made in their presence?
A. They were there, yes, sir.
Q. What time in 1933 was that statement made?
A. The early part. I couldn't say what day it was.
Q. You know, as a matter of fact, that the Griffith Amusement Company had acquired the Victory Theater sometime prior to that, do you not?
A. You mean since or before?
Q. Before.
A. I don't know anything at all about it. I didn't know until the other day the man that owns the building told me they closed and paid them for six or seven months rent at $225 a month.
Q. Don't you know that at the time they gave up the Ritz Theater, which was in 1931, or shortly prior to that time, they acquired the Victory Theater and then changed it to the Rex?
A. You mean they gave it up shortly afterwards?
Q. Shortly before or shortly afterward.
A. I don't know when they got it but I know they opened it up. It used to be the Victory Theater and they changed the name.
Q. Just answer my question. If you don't know, say so.
A. What was it?
553 Q. The question is, if you don't know that before the Cozy was re-acquired by you in 1931, the Griffith Amusement Company had acquired the Victory Theater?

A. No; I didn't know.

Q. You don't know that?

A. No, I didn't until here not long ago I heard it, about a month ago.

Q. You have all the contracts that you made with Metro during the years of 1932-33; 33-34; 34-35 and 38-39?

A. Yes, and I can furnish you up to 1945.

Q. Will you produce the contract which you made in 1934-35 with Metro?

A. 1934-35, I don't know whether I have got any 1934-35. '34-35, I have third run.

Q. In 1932-33, don't you know that some of the Metro product was played at the Momand Theaters, second run?

A. I didn't know anything about it.

Q. You don't know anything about what was played there?

A. Played where?

Q. At the Momand Theaters.

A. I don't know. I don't keep track of anybody else's business.

Q. In 1933-34 season, did you license any Metro product?

A. '33-34?

554 Q. Yes.

A. No, sir.

Q. I am not asking you about second run particularly. I want to know if you licensed any product.

A. I didn't get a picture that year.

Q. Do you know what product was licensed that was licensed to Momand for that season?

A. I don't know a thing about it.

Q. Of the 1934-35 product, how many pictures of Metro did you license, of third run?

A. Third what?

Q. '34-35.

Mr. WRIGHT. There is a contract there which shows it.

Mr. COCHRAN. That is in all of them.

(Question read.)

A. I don't think I have the contracts. I don't know.

By Mr. COCHRAN:

Q. Are these all the contracts you had?

A. I guess, if you have '34-35.

Q. This is a folder that counsel for the plaintiff handed me. I know nothing about it. I just wanted to know if these are all the contracts you made with Metro covering product?

555 A. Do you want to know just about '34-35 or all of them?

Q. '34-35?

A. That is all.

Q. You say that is the only contract you had with Metro, or do you mean to say the only ones you had?

A. That is the only one I know anything about.

Q. Will you say it is not a fact that for that season you licensed from Metro 39 pictures, second and third run?

A. Yes, I could——

Q. I am talking about feature pictures, now, not shorts but feature pictures.

A. Well, I couldn't say how many.

Q. Couldn't say how many?

A. No.

Q. So they did license pictures to you?

A. Yes.

Q. For the 1934-35 season?

A. For the 1934-35 season, yes, sir, third run; I know that.

Q. And some of those pictures were for second run also, weren't they?

A. I don't know. I don't think we got second run that year.

Q. Don't you know as a matter of fact for that season the Griffith Amusement Company played the top
556 pictures, some of the top pictures, second run, and that you licensed the remainder of the pictures second run and other pictures which Griffith played second run you licensed third run?

A. That is when I don't think we got any second run feature with it at all. We have the lower group of second run some year, but that year I think all we got was third run. I am not positive about that. My boy Johnny over here can tell you. He did all the booking.

Q. And for the 1936-37 season, is it not a fact that you licensed 29 feature pictures, second and third run from Metro?

A. From Metro?

Q. Yes.

A. '36-37?

Q. Yes.

A. How many pictures?

Q. 29 feature pictures.

A. The '36-37 product?

Q. Yes, sir.

A. No, sir, I did not. I just got the lower group of second run, about 15 pictures; no third run at all. That is the year I wrote to the President of the United States. I had only four pictures to run in one month, thank God. I would have been out of business if he hadn't come to my——

Q. You know of the '36-37 product you did not
557 license the regular product for second and third run, 30 pictures, of which seven were not released, leaving a net of 23 and you spot booked for second run nine pictures, making a total of 32.

Mr. WRIGHT. He has already testified that his son John took care of the booking. He will be on the stand later.

A. My boy knows more about it than I do. I don't have anything to do with the books.

Mr. COCHRAN. You say he will be on the stand. That is what I wanted to know awhile ago, if we couldn't pass this. This witness has attempted to testify he did not receive any second run product for the 1931-32 season.

Mr. WRIGHT. I think the last one with Metro he covered was '33-34 on his direct examination.

By Mr. COCHRAN:

Q. You know that you have also received during the '35-36 season, and subsequent to that time, you received some second run and such third run product as you needed from Paramount, did you not?

A. What year is that, please?

558 Q. '34-35, '35-36 and subsequent?

Mr. WRIGHT. Let's take it by seasons here so we can understand what he is talking about.

A. '34-35, I had MGM third run.

By Mr. COCHRAN:

Q. I asked you about Paramount.

A. Paramount?

Q. Yes.

A. I didn't have any Paramount.

Q. None whatever?

A. No, not '34-35. No, sir, not at any time.

Q. I will ask you if it isn't a fact that you spot booked thirteen pictures of the 1934-35 Paramount product?

Mr. WRIGHT. If the Court please, he has already testified that his son handled the bookings there and he doesn't know anything about the spot booking.

A. I don't know.

Mr. COCHRAN. He has just been saying he didn't have any.

The COURT. He said he didn't know

The WITNESS. I don't know.

Mr. WRIGHT. If you have some charts for the distribution of the product shown, if you want to submit them for our checking, we can probably stipulate as to who played what or any season you are interested in.

By Mr. COCHRAN:

Q. For the season '35–36, you obtained Paramount product, did you not?

559 Mr. WRIGHT. Your Honor please, this is beyond the scope of the direct examination. He didn't give any testimony with respect to Paramount past the '34–35 season.

The COURT. I don't think it is material; you have opened up the subject, however.

By Mr. COCHRAN:

Q. You did obtain Paramount product, third run and some second run product, after the season of '34–35, did you not?

A. Do you mean we got some second run from who?

Q. Paramount?

A. After when?

Q. '34–35.

A. '34–35? I didn't get a one that I know of; I don't know what we got.

Q. Do you know as to the other years?

A. What?

Q. If you don't know——

A. (Interrupting) I don't know.

Q. Do you know that at the present time the pictures are being licensed for the Jake Theater and the Ritz Theater at the same time?

A. I don't get that.

Mr. COCHRAN. Read it.

(Question read by the reporter.)

A. Do you mean we are buying the same season?

560 Q. Buying the same contract at the same time, negotiate the contracts at the same time?

A. No, because she hasn't owned it long enough to go into the season and buy it. She has only had it four or five months.

Q. You bought pictures for both theaters from Paramount, Metro, and various others, and carried on negotiations at the same time, haven't you?

A. I don't know that.

Q. Who buys the pictures for those two theaters?

A. Those two right there (pointing).

Q. Your son is in the army, isn't he?

A. My son and my daughter.

Q. Your son is in the army, isn't he, and he cannot buy them now?

A. He comes back every week end, and advises on it.

Q. Anyhow, they both buy for both of these theaters, do they?

A. Yes, but the girl does most all of the buying.

Q. Do you know that at the present time you are obtaining Paramount product third run and some second run?

Mr. WRIGHT. If the Court please, this is away beyond the scope of the direct, and beyond the theory that was covered. If we have managed to do anything at all with this suit, we have, of course, improved conditions
561 that are now in effect.

The COURT. I don't know.

Mr. WRIGHT. There is no question about it.

The COURT. This is supposed to cover what period?

Mr. COCHRAN. To April of '39.

The COURT: '34 to '39?

Mr. COCHRAN. April '34 to April '39. Counsel has gone back of that period; however, so far as this witness is concerned, we will not urge that question.

The COURT. Anything else with this witness?

By Mr. COCHRAN:

Q. You were speaking of not obtaining any RKO product, first run, for the season 1935-36. Do you know that Griffith Amusement Company had been the regular first run account for the RKO for the season immediately prior to the season of 1934-35?

A. RKO never sold Griffith for the last ten years two years at a time, I don't think; they sold them one year and they jumped over to me one year.

Q. That wasn't the question; I asked you if they hadn't sold regularly to Griffith for a number of years prior to the season '34-35?

A. I don't know.

Q. Now, your statement is, that beginning in 1934-35 RKO hadn't sold to either you or Griffith regularly for any two years; they switched back and forth?

562 A. For '34-35 product?

Q. Was that your statement a moment ago?

A. I had that first and second run.

Mr. WRIGHT. If the Court please, we will offer the RKO franchise which shows exactly the succeeding three seasons that Griffith bought, and I don't see any point in pursuing the matter with this witness.

The COURT. I don't think it is necessary to go into that.

Mr. COCHRAN. All right, that's all.

(Witness excused.)

Mr. RICE. Let the record show that counsel for R. E. Griffith Theaters, Inc., and Westex Theaters, Inc., in response to the subpoena *duces tecum* returnable May 7, 1945, produce the following documents pursuant to the call of paragraphs 12, 13, 14, and 15, of the R. E. Griffith sub-

poena and paragraphs 4, 5, 6, and 7 of the Westex Theaters subpoena:

Plaintiff's Exhibit No. 122 for identification which is a contract between H. T. Hodge and R. E. Griffith Theaters, Inc., dated June 24, 1936, together with supplement of same date, concerning Grant Theater at Stamford, Texas.

Plaintiff's Exhibit 123 for identification which
563 is contract between R. E. Griffith Theaters, Inc., and George P. Robertson, dated July 28, 1936, concerning the Alamento Theater in Alamogordo, New Mexico.

Plaintiff's Exhibit 124 for identification which is contract between R. E. Griffith Theaters, Inc. and George P. Robertson, dated May 27, 1936, concerning option to purchase certain property in Alamogordo, New Mexico.

Plaintiff's Exhibit 125 for identification, which is contract between Texas Consolidated Theaters, Inc., Albuquerque Theaters, Inc., Bachechi Brothers and R. E. Griffith Theaters, Inc., and Foster McSwain, dated October 1, 1938, concerning the Sunshine, Chief, Mission, Kimo, Mesa, and Rio Theaters in Albuquerque, New Mexico.

Plaintiff's Exhibit 126, which is joint operation agreement dated July 18, 1933, between Bachechi Amusement Company and others and R. E. Griffith Theaters, Inc., and Foster McSwain, covering operation of the Kimo, Pastime and Rio Theaters, Albuquerque, New Mexico.

Plaintiff's Exhibit 127 for identification, which is a partnership contract dated December 22, 1932, between R. E. Griffith Theaters, Inc., and Foster McSwain, covering the operation of the Rio, formerly the Liberty Theater, Albuquerque, New Mexico, with bill of sale attached.

Plaintiff's Exhibit 128 for identification, which is agreement between Texas Consolidated Theaters, Inc.
564 Albuquerque Theaters, Inc. and R. E. Griffith Theaters, Inc. executed January 4, 1938, concerning continuance of contract relative to Kimo, Mesa and Rio Theaters.

Plaintiff's Exhibit 129 for identification which is contract between New Mexico Theaters, Inc. N. S. L. Albuquerque Theaters, Inc. and R. E. Griffith Theaters, Inc. dated April 30, 1935, concerning theaters in Albuquerque, New Mexico.

Plaintiff's Exhibit No. 130 for identification which is contract between R. L. Walker, H. H. Cluck and R. E. Griffith Theaters, Inc., dated 2 day of June, 1935 concerning the Beltonian and Beltex Theaters, Belton, Texas.

Plaintiff's Exhibit 131 for identification, which is agreement between Roy L. Walker, H. H. Cluck and Westex Theaters, Inc., dated April 7, 1938, covering operation of

Beltonian and Beltex Theaters in Belton, Texas, with amendment attached, dated September 26, 1938.

Plaintiff's Exhibit 132 for identification, which is contract between Brady Amusement Company and R. E. Griffith Theaters, Inc., dated June 28, 1935, concerning services to be rendered by R. E. Griffith Theaters, Inc.

Plaintiff's Exhibit 133 for identification, which is contract between A. M. Morgan, Jack Picking & Westex Theaters, Inc., dated November 12, 1936, concerning
565 the Ritz Theater, Brady, Texas.

Plaintiff's Exhibit 134 for identification, which is contract between Hardwick Brothers and R. E. Griffith Theaters, Inc., dated October 26, 1941, concerning theaters in Olney and Spur, Texas.

566 Plaintiff's Exhibit No. 135, which is contract between A. O. Engelbrecht, F. L. Wolf and R. E. Griffith Theaters, Inc., dated June 28, 1935, concerning the State and Colonial Theaters, Clarksville, Texas.

Plaintiff's Exhibit No. 136, which is contract between A. O. Engelbrecht, F. L. Wolf and Westex Theaters, dated May 7, 1938, concerning the Avalon, State and Colonial Theaters, Clarksville, Texas.

Plaintiff's Exhibit No. 137, which is contract between Charles F. Hardwick and R. E. Griffith Theaters, Inc., dated February 7, 1940, concerning the Lyceum, Messa, Plains and unnamed theaters in Clovis, New Mexico.

Plaintiff's Exhibit No. 138, which is contract between Charles F. Hardwick and R. E. Griffith Theaters, Inc., dated March 19, 1934, concerning theaters in Clovis, New Mexico, the same being an amendment to contract of June 7, 1933.

Plaintiff's Exhibit No. 139, which is contract between R. E. Griffith Theaters, Inc. and George A. Dowdle, dated September 4, 1936, concerning Princess Theater, Deming, New Mexico.

Plaintiff's Exhibit No. 140, which is contract between R. E. Griffith Theaters, Inc. and George A. Dowdle, dated October —, 1942, concerning Luns and El Pancho Theaters, Deming, New Mexico.

567 Plaintiff's Exhibit No. 141, which is agreement between R. E. Griffith Theatsrs, Inc. and C. C. Caldwell and M. R. Showalter, dated June 27, 1942, concerning the Rhea and Ritz Theaters, Denver City, Texas.

Plaintiff's Exhibit No. 142, which is letter contract dated January 1, 1945, addressed to R. E. Griffith Theaters, Inc. and signed by seven directors of the Baker Show Company, Inc. of Lockhart, Texas.

Plaintiff's Exhibit No. 143, which is agreement between

Gonzales Amusement Company, Inc., and Westex Theaters, Inc., dated August 27, 1936, concerning the Crystal Theater in Gonzales, Texas.

Plaintiff's Exhibit No. 144, which is contract between Baker Show Company, Inc. and Westex Theaters, Inc., dated August 27, 1936, concerning the Baker Theater in Lockhart, Texas, (preferably copy signed by Westex also).

Plaintiff's Exhibit No. 145, which is agreement between Westex Theaters, Inc. and Griffith Consolidated Theaters, Inc., dated March 31, 1945, covering sale of theaters at El Campo, Wharton, Victoria, Texas City, Bay City and Alvin, Texas.

Plaintiff's Exhibit No. 146, agreement between Westex Theaters, Inc., and Griffith Consolidated Theaters, Inc., dated March 31, 1945, providing for covenant not to engage in business in what is the Long Griffith towns
568 purchased by the interest of Westex Theaters, Inc., having been sold to Griffith Consolidated Theaters, Inc.

Plaintiff's Exhibit No. 147: Agreement dated April 5, 1945, between J. G. Long, Griffith, and Consolidated Theaters, Inc., and Westex Theaters, Inc., and R. E. Griffith Theaters, Inc., cancelling buying and booking agreement covering the Long Griffith Theaters dated February 26, 1938.

Plaintiff's Exhibit No. 148, which is agreement between A. O. Engelbrecht and Andrew O. Engelbrecht and Westex Theaters, Inc., dated May 7, 1938, concerning the Palace and Ritz Theaters in Georgetown, Texas.

Plaintiff's Exhibit No. 149, which is contract between A. O. Engelbrecht and R. E. Griffith Theaters, Inc., dated June 28, 1935, concerning the Palace Theater at Georgetown, Texas.

Plaintiff's Exhibit No. 150, which is contract between Gonzales Amusement Company, Inc., and Westex Theaters, Inc., dated January 12, 1937, concerning the Crystal Theaters in Gonzales, Texas.

Plaintiff's Exhibit No. 151, which is contract between Westex Theaters, Inc., and H. D. Parks and J. R. Bell, dated November 15, 1940, concerning the Texas and Falls Theaters in Grandfalls, Texas.

Plaintiff's Exhibit No. 152, which is contract between R. E. Griffith Theaters, Inc. and Charles F. Hardwick,
569 dated April 24 or 25, concerning a partnership business for operation of a motion picture business in Herefore, Texas, together with a copy of note for $5,000.00 dated April 25, 1935, attached thereto.

Plaintiff's Exhibit 153, which is contract between Consolidated Theaters, Inc., and Josephine B. Falls, Lindsey Theaters, Inc. and R. E. Griffith Theaters, Inc., dated October 1, 1938, concerning the Ritz Theater in Hominy, Oklahoma.

Plaintiff's Exhibit No. 154, which is contract between C. C. Caldwell and R. E. Griffith Theaters, Inc., dated May 18, 1935, concerning the sale of real estate in Jal, New Mexico, and the operation of a theater business on such realty.

Plaintiff's Exhibit No. 155, which is contract between R. L. Walker and S. T. Donnell and R. E. Griffith Theaters, Inc., dated June 28, 1935, concerning the Le Roy Theater at Lampasas, Texas.

Plaintiff's Exhibit No. 156: Agreement between R. L. Walker, S. T. Donnell and Westex Theaters, Inc., dated April 7, 1938, covering the operation of the Le Roy and Le Roy, Jr., Theaters, Lampasas, Texas, with attached agreement dated September 26, 1938.

Plaintiff's Exhibit No. 157, which is option contract between A. D. Baker and Westex Theaters, Inc.,
570 dated August 27, 1936, granting Westex an option to acquire 125 shares of stock in Baker Show Company, Inc.

Plaintiff's Exhibit No. 158, which is contract between Luling Amusement Company, Inc. and Westex Theaters, Inc., dated January 6, 1937, concerning the Princess Theater, Luling, Texas.

Plaintiff's Exhibit No. 159, which is contract between Luling Amusement Company and Westex Theaters, Inc., dated August 27, 1936, concerning the Princess Theater in Luling, Texas.

Plaintiff's Exhibit No. 160, which is option contract between H. G. Stein and Westex Theaters, Inc., dated August 27, 1936, giving Westex an option to acquire 63 shares of stock in the Luling Amusement Company.

Plaintiff's Exhibit No. 161, which is contract and assignment dated May 25, 1936, between R. E. Griffith Theaters, Inc. and Charles F. Hardwick concerning the Palace and Princess Theaters, Olney, Texas.

Plaintiff's Exhibit No. 162, which is contract between O. K. Theaters, Corp. and R. E. Griffith Theaters, Inc., dated June 5, 1935, concerning the Palace and Grenada Theaters in Plainview, Texas.

Plaintiff's Exhibit No. 163, which is contract between Louis F. Long and R. E. Griffith Theaters, Inc., dated

April 27, 1938, concerning a booking agreement for
571 certain Arizona towns.

Plaintiff's Exhibit No. 164, which is contract between Louis F. Long and R. E. Griffith Theaters, Inc., concerning the operation of certain theaters in Arizona as a joint enterprise, dated April 27, 1938.

Plaintiff's Exhibit No. 165, which is contract between W. C. Dofflemyer and R. E. Griffith Theaters, Inc., dated December 23, 1933, concerning the Palace Theater, San Saba, Texas.

Plaintiff's Exhibit No. 166, which is contract between Hardwick Brothers and R. E. Griffith Theaters, Inc., dated May 26, 1936, concerning the Palace and Ritz Theaters, Spur, Texas.

Plaintiff's Exhibit 167: Allocation of 1938-39 product, Twentieth Century Fox, styled "Film work sheet" made per contract on letterhead of Twentieth Century Fox Film Corporation, dated August 24, 1938 (K-6 product).

Plaintiff's Exhibit No. 168: Allocation of rentals on Twentieth Century Fox product, season 1939-40 on a styled "Film work sheet" pursuant to contract on letterhead of Twentieth Century Fox Film Corporation dated August 17, 1939 (K-7 product).

Plaintiff's Exhibit No. 169: Allocation of rentals on 40-41 product of Twentieth Century Fox, bearing notation that it is for 39 towns plus six, second runs on 28 pictures
572 made pursuant to contract on letterhead of Twentieth Century Fox Film Corporation dated August 7, 1940 (K-8 season).

Plaintiff's Exhibit No. 170, allocation of film rentals, '40-41 product, Twentieth Century Fox, Westex Theaters only, being a continuation of allocations begun on Plaintiff's Exhibit No. 169 for identification.

573 Exhibit No. 171: Allocation of film rentals, Columbia product, 1940-41 season, consisting of six sheets allocations being made pursuant to franchise agreement between Columbia Picture Corporation and R. E. Griffith as agent for R. E. Griffith Theaters, dated September 27, 1940. This document is produced pursuant to subpoena with the belief it is Exhibit D called for in paragraph 4-C of the franchise agreement, but it bears no identification and is the only office record of the defendants purporting to cover such allocations. There will be no claim that is not the true allocations.

Exhibit No. 172: Allocation of rentals on Universal product 1941-42 season, pursuant to contract dated January 23, 1942, between Universal Film Exchanges, Inc., and R. E. Griffith Theaters, Inc., et al., styled "Deal sheets" and believed to be the document called for by paragraph

60 of the subpoena, unidentified with reference to the contract expressly but being the only material related to allocations in the company's file. No objection to be made as to its validity or identity, consisting of six sheets.

Plaintiff's Exhibit 173, which is the letter contract dated November 2, 1939 and signed by Oscar A. Morgan for Paramount Pictures, Inc., as called for under paragraph 8 of the R. E. Griffith Theaters, Inc. subpoena.

574 Plaintiff's Exhibit No. 174, which is the letter dated September 16, 1938 and the page attached thereto headed "Situations recently acquired", as called for in paragraph 7 of the R. E. Griffith Theaters, Inc., subpoena.

Plaintiff's Exhibit No. 175, which is the contract of September 28, 1938 for Group S 10, Paramount Pictures with Westex Theaters, as called for by paragraph 1 of the Westex subpoena.

Plaintiff's Exhibit No. 176, which is the contract dated September 28, 1938 for Men With Wings being the contract called for under paragraph 2 of the Westex subpoena.

575 Plaintiff's Exhibit 177 for identification, which is the contract of September 28, 1938, for six Hop Along Cassidys as called for under paragraph 3 of the Westex subpoena.

Plaintiff's Exhibit 178 for identification, which is contract for Group S-10, Paramount Pictures, dated September 28, 1938, as called for under paragraph 9 of the R. E. Griffith Theaters, Inc., subpoena.

Plaintiff's Exhibit 179 for identification, which is contract for Men With Wings dated September 28, 1938, as called for under paragraph 10 of the R. E. Griffith Theaters, Inc., subpoena.

Plaintiff's Exhibit 180 for identification, which is contract for six Hopalong Cassidys, dated September 28, 1938, as called for under paragraph 11 of the R. E. Griffith Theaters, Inc., subpoena.

The Court. Court will take a recess until ten o'clock tomorrow morning.

(Whereupon court recessed until May 10, 1945, at ten o'clock a. m.)

576 PROCEEDINGS

May 10, 1945, 10:00 o'clock a. m.

The Court. You may proceed.

Mr. Cochran. May it please the Court, I notice a few errors in the transcript of the testimony on yesterday, which I would like to state in the record. Some of them I

would like to correct now. There will be others, but while this is fresh on my mind I would like to call attention to them. On Page 326, Mr. Jones, in answer to a question by Mr. Wright, "Just tell us who it was that came over to see you then." The answer was, "Well, sir, I think it was L. J. Griffith, R. E. Griffith and Bennett McKenna." It should read H. J. Griffith, R. E. Griffith and Bennie McKenna.

Mr. WRIGHT. That is right.

The COURT. Is there any objections to making the correction on the transcript?

Mr. WRIGHT. Not at all. That is correct.

Mr. COCHRAN. Further, on the same page, the question by Mr. Wright," And by whom, if you remember?" Answer, "Well, there was—first they were talking to Mr. L. C. Griffith." That should be R. E. Griffith. Is that correct, Mr. Wright?

Mr. WRIGHT: That is all right.

577 Mr. COCHRAN. On page 330, the second answer from the bottom of the page, "Well, it is the Rex that played them second run until they moved the Rex and called it the Vaughn." It should be "the Avon."

Mr. WRIGHT. That is right.

Mr. COCHRAN. I told counsel for the plaintiff this morning I desired to recall Mr. Jake Jones for a few questions on cross examination. He said Mr. Jones had gone home. We would like to have him recalled sometime within the near future.

The COURT. Very well. Will you kindly notify him to return.

Mr. WRIGHT. I said yesterday I thought we would go ahead with more of our documentary evidence.

Mr. COCHRAN. I thought that was the understanding, then counsel corrected me to say he was going to get through with these witnesses he had here, the witnesses from Shawnee. I understood Mr. Johnny Jones and possibly his sister would take the stand this morning.

Mr. WRIGHT. If you want to examine further with respect to Shawnee today I can put Mr. John Jones on the stand.

The COURT. I really feel, in view of your theory of the case, I think it would be better to follow your suggestion on this and lay this foundation before you put on this correspondence.

578 Mr. COCHRAN. I am not objecting to that, but I am telling counsel I want Mr. Jones here.

The COURT. You can notify Mr. Jones to come back in a few days.

Mr. WRIGHT. Very well. Before resuming the offer of these agreements that the defendants made with the distributors, I would like to attempt to answer a question your Honor asked yesterday, as to the distributors' right to sell or not sell anyone, at some more length than I did on that occasion, because that is, of course, fundamental of our theory of what these agreements mean.

The COURT. Let me make myself clear to you. What the Court had in mind is this: That hearsay testimony as an elementary proposition is not competent. Now, the second proposition, assuming that the distributors did something that they should not do, that they made contracts that they should not make, unless there is some agreement between the distributors and certain of the exhibitors, say the Griffiths in this case, that they would do the thing that was done for the purpose of excluding competition, then there would be no conspiracy. An individual act under certain circumstances might be nothing more than an act of the one performing it. At the same time, if that act can be connected with some one else who was seeking to have that done, and it was done pursuant to that agreement, that presents a very different situation. And
579 so, we have gone far enough in this case now that I think I see the theory of the Government. I think there should be, if you have the evidence, you should develop the evidence along this line first to lay the foundation for some kind of connection between the two parties, because if the foundation is laid, certain testimony might be competent, otherwise it would not be.

Mr. WRIGHT. Quite right, your Honor. In that connection, I would like to call attention to the doctrine that was announced in the Interstate Circuit case, with reference to the activity in that case, which I think is quite parallel to that involved in this case, that is, the agreements there involved, I would like to compare with what I am about to offer here. Your Honor, may recall that that case involved dealings between these same eight major distributors and a large circuit in Texas, called the Interstate Circuit, which was affiliated with the distributor Paramount. They were in effect the Texas partners of Paramount, and a number of theaters there operating, in some cases under the name of Interstate Circuit, Inc., others under the name of Texas Consolidated Theaters, Inc., and in that case their position was one of dominance in the principal larger cities of Texas, Fort Worth, Dallas, Austin, Galveston and Houston. They owned all or substantially all
580 of the first run theaters, and then they operated

second or subsequent runs theaters in those cities and then they also operated theaters in smaller towns in other cities in Texas and in New Mexico, particularly in the Rio Grande Valley in Texas. In some cases they owned all of the theaters in those cities, in others they had subsequent run competition. Of course, in this case in dealing with a circuit which in so far as its Texas operations were concerned, was confined very much to the towns in West Texas between about five thousand population up to towns as large as Lubbock, but there were also a similar patterns in that in many of these circuit situations there was no competition, in others there were competing first runs and in other towns there were so-called subsequent runs competitors. Now, in the Interstate Circuit case, what was attempted there was this, the Circuit wrote the same letter to each of the eight distributors in which they told the distributors that they would not agree to purchase the distributors' features for exhibition in their so-called eight theaters, their first run houses, to be shown at an admission price of 40 cents, unless the distributors agreed not to sell their pictures to subsequent run competitors of the Circuit on terms which would permit them to charge a smaller admission price than 25 cents, both of these prices being adult evening prices, or permit them to
581 double feature those pictures.

The COURT. These letters referred to were written by the exhibitors?

Mr. WRIGHT. Yes, sir, the letter is quoted in full at pages 216 and 217 of the Supreme Court opinion.

The COURT. What is that?

Mr. WRIGHT. 306 U. S. This letter appears at pages 216 and 217 in a footnote. Then they also requested that in the Rio Grande Valley towns the pictures that the Circuit showed at 35 cents admission price would not be shown subsequent run in the same Valley area at prices less than 25 cents.

The action taken by the distributors in response to that was this, two of them made an express agreement with the Circuit to put these restrictions into effect in certain of the towns involved, and not in others; then they did put them into effect by incorporating in the license agreements they made with the independents a 25 cent restriction; whereas, some of those people had been charging 15 and 20 cents before that.

582 Six of the distributors did not make an express agreement with the circuit to impose the restrictions but simply put them into effect. That is, they went ahead and made the requirements in substantially the same man-

ner as they did under the express agreement. With this exception, that one distributor, Paramount, agreed to impose the restrictions in certain Texas and New Mexico towns that were operated by the circuit where all the other distributors refused, so as to those towns and that distributor there was no conspiracy among distributors who opposed the restrictions and the trial court found none.

Now, it appeared in the trial of the case that the effect of these restrictions insofar as both the distributors and circuits were concerned, had been beneficial in that they increased the license revenue of the distributors overall from the area in which they were imposed, and had also increased the circuit business in the area. However, at the expense of the independent competitor, who of course lost business to the circuit as a result of having to increase their prices in that manner, but the increase gained to the distributors over the additional license fees they got from the circuit more than offset the loss of license fees from the adverse effects on the independents' ability to pay fees. The trial court in disposing of the case found, (1) A conspiracy between the distributors to impose, and the
583 defendant exhibitors to impose restrictions in all of the towns where they jointly imposed them, and ordered that all these agreements by which the restrictions were imposed be declared void and repetition of such agreements in the future was enjoined, and it also enjoined Paramount and the exhibitor defendants. It also declared void the restrictions imposed only by Paramount in the other towns in Texas and New Mexico, and enjoined the exhibitor defendants and Paramount alone from imposing further restrictions of that nature in that area so when the case came up on appeal it presented those two questions. The defendants insisted first that there wasn't any evidence of conspiracy between distributors in the situations where the conspiracy was found and in the case where no conspiracy between the distributor was found, the restriction having been imposed by a single distributor in the exercise of whatever privileges it had under the copyright laws. That was a perfectly valid restriction, and the decree must be reversed in any event regardless of the finding of conspiracy insofar as the restrictions which Paramount alone imposed are concerned. When it came up to the Supreme Court, in dealing with this point, which is the one which is applicable here, as there isn't any charge in this case of conspiracy as between the exhibitors, "We are only concerned with allegations of combination and conspiracy between the circuit and each

584 distributor singly." The Court said this, with respect to the separate agreements:

"The decree below enjoined enforcement and renewal of the separate agreements between each distributor and Interstate and of the contract between Paramount and Consolidated imposing the restrictions upon later-run theaters in certain cities in Texas and New Mexico, although the court found no conspiracy among the distributors to effect this latter restriction. Appellants assail this part of the decree on the ground that such separate agreements, if entered into without agreement or concert monopoly secured to the distributors by their copyrights."

The court then went on to say: "Under section 1 of the Copyright Act, 35 Stat. 1075, 17 U. S. C. section 1, the owners of the copyright of a motion picture film acquire the right to exhibit the picture and to grant an exclusive restrictive license to others to exhibit it. See Manners v. Morosco, 252 U. S. 317. Appellants argue that the distributors were free to license the films for exhibition subject to the restrictions, just as a patentee in a license to manufacture and sell the patented article may fix the price at which the licensee may sell it. Bement v. National Harrow Co., 166 U. S. 70; United States v. General Electric Co., 272 U. S. 476. That the parallel is not complete is obvious.

585 Because a patentee has power to control the price at which his licensee may sell the patented article, it does not follow that the owner of a copyright can dictate that other pictures may not be shown with the licensed film or the admission price which shall be paid for an entertainment which includes features other than the particular picture licensed."

Those statements were made because the Government in its brief had challenged the right of the copyright owner individually to fix admission prices in the license, then they went on to say:

"We have no occasion now to pass upon these or related questions. Granted that each distributor, in the protection of his own copyright monopoly, was free to impose the present restrictions upon his licensees, we are nevertheless of the opinion that they were not free to use their copyrights as implements for restraining commerce in order to protect Interstate's motion picture theater monopoly by suppressing competition with it. The restrictions imposed upon Interstate's competitors did not have their origin in the voluntary act of the distributors or any of them. They gave effect to the will and were subject to the control of Interstate, not by virtue of any copyright of Interstate, for it had none, but through its contract with

each distributor. Interstate was able to acquire the control and impose its will by force of its monopoly of
586 first-run theaters in the principal cities of Texas and the threat to use its monopoly position against copyright owners who did not yield to its demands."

The COURT. In that case, in addition to the Interstate the distributors were made parties, were they?

Mr. WRIGHT. Yes, they were parties defendant.

"The purpose and ultimate effect of each of its contracts with the distributors was to restrain its competitors in the theater business by forcing an increase in their admission price and compelling them through the double feature restriction to make their entertainment less attractive, and to preclude the distributors for the specified time from relaxing the pressure of the restrictions upon them."

The significance of that language as applied to these agreements here is this: These agreements which this circuit was able to make with these distributors and which are offered in evidence, are not just agreements which determine the terms upon which the circuit exhibits pictures. All of them go further and control, to a very large extent, the terms on which the same pictures that are covered by those licenses shall be made available to competitors of the circuit. In other words, you do not have here just a series of agreements like the ordinary film license——

587 The COURT. I think in presenting those you should call attention to those portions of these agreements——

Mr. WRIGHT. Yes, I think the best thing to do is to take that up as your Honor suggested, in concrete fashion.

Mr. COCHRAN. Are you through with your statement in connection with Interstate?

Mr. WRIGHT. Yes, sir.

Mr. COCHRAN. I would like to make a statement——

Mr. WRIGHT. Shall I finish my answer first?

Mr. COCHRAN. I would like to reply to your argument. I want to correct some mistakes in order that your Honor may try to follow our theory in regard to it. I want to say that so far as the Interstate case is concerned, it has no similarity whatever to the situation that exists up to the present time, and counsel by these documents, these contracts, is going to present nothing that is in any way related to the Interstate case. I am going to hand your Honor some references, two or three cases in which that Interstate case has been distinguished along the very line we are insisting on here——

The COURT. I was going to suggest that if you gentlemen have a trial brief the Court will be glad to have it.

Mr. COCHRAN. I have it assembled in a way but not in the form of a trial brief, but I will call your
588 Honor's attention to the cases as we proceed on these various points, but at the present time I want to state this: This Interstate case involved an entirely different situation. There the primary question was on the conspiracy end of it. Several of the distributors were parties to the case. The testimony showed that Interstate, through its officers, wrote a joint letter to each of those distributors, making a demand that it impose certain conditions on the competitors. The distributors who were found to be parties to the conspiracy complied with those requests. The argument was made in the Supreme Court by the distributors and by Interstate that there was no showing of an agreement between the parties. The court in that case simply held this: That inasmuch as a joint demand had been made by each exhibitor on the distributors, which was followed by uniform action on their part of each one of them complying with the request, that that was sufficient, in the absence of direct testimony; that there was no agreement that created an inference of agreement, concerted action or conspiracy. In that case the Supreme Court said that the testimony which had been offered in that connection was merely the testimony of the branch officers, whereas the joint demand had gone to the home office, and that the distributors had produced only the branch managers and had not produced the officers
589 who were at the head and to whom the letters were addressed, and who were responsible to the company and, therefore, they had not overcome that presumption of conspiracy.

590 Now, that is the conspiracy feature.

The Court further said this in regard to certain of the conditions that were in the contract referring to the agreements between the Interstate and an individual distributor, in which it was agreed between them as to what should be done in contracts which the distributor made with the opposition theater. There is nothing like that in any of these contracts, but they said in regard to certain of those things that they constituted an unreasonable restraint of trade. You will notice Judge Roberts' dissenting opinion on that, but that wasn't a conspiracy. So far as these statements made by representatives of the distributors we take the position that even though a contract existed in which there was an unreasonable restraint of trade, that that doesn't amount to a conspiracy. You may have a contract in unreasonable restraint of trade without having the conspiracy, and it is quite different from a conspiracy to have an agreement in a contract which is an

unreasonable restraint of trade; broadly speaking that is my position.

The COURT. The Court will give you ample authority to discuss the law questions. After the introduction of these contracts, and an explanation or disclosure of what they contain, will be very proper at this time.

Mr. WRIGHT. I would like to offer next, if the
591 Court please, a document previously identified as P–3, pages A to G inclusive, which I really should have offered before P–1, because it precedes it in point of time. This is an agreement dated July 17, 1934, between Paramount and all of these various exhibitor companies composing the circuit, including three of the defendants.

Mr. COCHRAN. Is that the document that you explained at length to the Court?

Mr. WRIGHT. No, it isn't. This is an agreement which was entered into, which preceded the making of the franchise agreement marked as Exhibit P–1, which was the one that I explained to the Court.

Mr. COCHRAN. That is what?

Mr. WRIGHT. P–3, A to G inclusive.

Mr. COCHRAN. That is not a document which we agreed had been executed by the parties. It comes in under clause 7, and we object to its introduction. I think I am right about that. We object to its introduction, if it is not included in paragraph 4, and we object to it for the reason that it appears to be an incompleted contract and evidently was followed by the instrument which was introduced here covering that same period, which was fully executed.

Mr. WRIGHT. There is no question about its having been followed by the execution of P–1. I take it there is
592 also no question but what the document P–3, A to G, was signed on behalf of the defendants by R. E. Griffith.

Mr. COCHRAN. It was not signed by the other party and is followed by a contract which is signed by both parties.

The COURT. You can offer it and we will see what it is.

Mr. COCHRAN. Wait just a minute; counsel says P–3 was stipulated. (Referring to exhibit.) I withdraw the objection.

The COURT. Very well.

Mr. COCHRAN. In that connection, I will say that some of these documents, which were presented originally, where they were not signed, we agreed that if Paramount would assure us that that was an executed document that we would go ahead and stipulate, and that is the reason for some of these documents.

The COURT. You are offering Plaintiff's Exhibit P–3, A to G, and it is admitted.

Mr. WRIGHT. Now, this document, if the Court please, as I say, is one that was dated July 17, 1934, and it sets forth the preliminary agreement which was later formalized in this three-year franchise, P–1. The principal differences are that by the time the franchise was executed, it included other theaters and acquisitions in the meantime, and there are also some changes of phrase-
593 ology, but I particularly wanted to trace the development of this agreement that first appears in this P–3 by this distributor, to furnish the circuit with runs, subsequent runs as it might want to use in its towns for no additional consideration.

Now, that particular provision as it appears in this Exhibit P–3 is on the page marked E, and reads this way:

"Distributor agrees that where requested subsequent runs are to be furnished in any or all situations without additional charge, except in Oklahoma City, where such runs are excluded for the Rialto and Reno Theaters only."

Now, let us consider exactly what that meant. This agreement between——

Mr. COCHRAN (interrupting): If the Court please, I object to the argument on each one of these. Just let the purpose be stated.

The COURT. He can tell us his theory in connection with it. Let me understand you. That agreement is to furnish certain first run pictures?

Mr. WRIGHT. No, this agreement covers the distribution of all of the Paramount pictures in the Griffith circuit during the succeeding three seasons; that is, it provides the first runs on percentage in certain specific limited
594 number of situations, and then all runs, in the other situations, first runs, at certain blanket rentals, payable, I believe, at weekly intervals.

The COURT. Let me understand. Let's suppose that the Paramount enters into a contract with certain distributors whereby it agrees to furnish them their entire product.

Mr. WRIGHT. With certain exhibitors.

The COURT. To furnish their entire product to certain exhibitors over a period of time.

Mr. WRIGHT. Yes, sir.

The COURT. And that is a part of the agreement, if they desire to re-run pictures at any time, then they may do so without additional cost. That is practically the substance of that, isn't it?

Mr. WRIGHT. Well, the substance of it is that, but you have to consider the background of the agreement itself.

What are you doing in these situations. These are not towns where there are no competitors.

The COURT. I am not considering the competitive feature at this time, but say there are competitors, but they agree now to sell their entire product to certain exhibitors.

Mr. WRIGHT. Yes.

The COURT. And if they carry out that contract so
595 far as their production is concerned, the competitors would be denied the privilege of having the product. Do you say that would be an illegal contract, even under the Sherman Act?

Mr. WRIGHT. I think it would. I think that under these circumstances, clearly where you have an area of this kind covering, let us say, 50, 60 or 100 towns in three states; they have been distributing pictures there, Paramount has in this case, and selling them to a large number of independents, attempting to compete with the circuit theaters and they have been selling first runs and subsequent runs in various situations. Now, what this agreement is, is simply from now on, even though we may not decide to use a single picture of yours, subsequent runs, in any situation we control, you cannot sell our competitors a run behind us because under this agreement you are bound to give us a subsequent run of a picture for our theaters wherever we may happen to want it. Now, this is a far more effective device, much simpler and much more drastic in its effect on independent competitors of this circuit than the agreements which Paramount made with Texas Consolidated was in the Interstate Circuit case. All that was agreed to there was that they would protect that circuit from competition, from subsequent run competitors, by seeing that there was a maximum 15-cent price dif-
596 ferential in the admissions of the circuit's first run theaters and the competing subsequent run.

The COURT. What does that contract there say about second run?

Mr. WRIGHT. I think the only thing it says is what I have read your Honor.

The COURT: What is that again?

Mr. WRIGHT. The distributor agrees that where requested subsequent runs—it isn't limited to second run, it is any run after the first—are to be furnished in any or all situations without additional charge, except in Oklahoma City where such runs are excluded at the Rialto and Reno Theaters only.

The COURT. Do you think that, within itself, would constitute a prohibition of them selling the second run to another theater?

Mr. WRIGHT. How could they possible sell a subsequent run to another theater, and how could another exhibitor possibly buy a subsequent run under that, following the circuit theaters, as long as the circuit has the right to the subsequent run?

The COURT. What would be the objection to the independent having the second run and these circuit theaters running it too, if they wanted to?

Mr. WRIGHT. There wouldn't be any objection, except from the circuit, of course, but the circuit very plainly, by this provision, has tied up that subsequent run as effectively as under any provision you could draw.

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The COURT. Suppose the distributor should say to the circuit: "We have an application to buy second run on certain pictures. Under the contract you have a right to these runs, if you require them. Now, do you require them?"

Mr. WRIGHT. Yes.

The COURT. And they would say, "Well, we don't desire to run them."

Mr. WRIGHT. All right.

The COURT. Is there any reason why they couldn't sell to the independents?

Mr. WRIGHT. No, but when that has been done, what kind of chance has the independent got in any situation, if his fate as to what runs he can buy from Paramount is going to be determined by this circuit at its pleasure? You know exactly the thing that is going to happen, will be what did happen, where they try to get but they don't get the runs.

The COURT. Suppose one independent should say, "We want first run on one of these pictures," and the distributor says, "We can't furnish you that; we have sold that to this circuit; you can't have it unless they release it." Is there any reason why they couldn't take it up with the circuit and say, "Do you want to release this; if so, we will sell it to somebody else."

598

Mr. WRIGHT. Where a run is sold, that is a different matter.

The COURT. They have sold a right?

Mr. WRIGHT. They have sold an option, an optional right.

Mr. COCHRAN. I can't see the point of counsel arguing at length on this provision, when it is admitted that this document was followed by the franchise which was executed, and under which the operation was had, by the supplement of 1936. He said he is simply giving that as a back-

ground. If he is going to discuss anything, he should turn to the provisions of the other document.

Mr. WRIGHT. I will be glad to do that, but as an evidence of intention, this is what these defendants and the rest of their circuit were interested in doing, tying up the subsequent run, and the right to say in any situation in which they operated, whether the opposition should be able to play Paramount pictures behind them or not.

The COURT. Do you think the distributor would be under any obligation to furnish second run to the independent or anybody else unless they wanted to.

Mr. WRIGHT. I should not suppose so, but normally he would be offering to sell such runs that he
599 had not already sold by actual specific contract.

The COURT. Say in Oklahoma City there would be a certain brand of clothing, say Steinbloch; they sell that to one retailer; here comes another merchant and says, I cannot get certain brands that I want, like Hickey Freeman or something else, and I want Steinbloch. They say we have agreed to sell Steinbloch to only one merchant in the town. Is that an illegal agreement?

Mr. WRIGHT. It is quite a different agreement. I haven't any idea whether it is legal or not; I would assume it is. But the difference between that and this, when he sells Steinbloch clothes, or suits, to one dealer, he doesn't use it and then the distributor sell it to someone else; there is no succeeding use of the same merchandise. They are not selling anything here at all.

The COURT. Here is the right to sell the product to a single person. I can't see that the distributor would be under any obligation to sell second run unless he wanted to.

Mr. WRIGHT. If the Court please, that is precisely the argument made and rejected by the Court in the Interstate Circuit case. They say we have a complete right here to say whether we are going to deal with Interstate.

The COURT. That is a law question and we will take care of that later. I will give you ample time on it.
600 Mr. WRIGHT. We understand what the facts are, that the effect of this was simply to put the determination in the hands of the circuit as to who should operate second run against them and who should not. I would like to follow this particular clause through the agreement and evidence here.

On page L of P-1, the clause takes its form in the following final agreement, as follows; this is 12 (b).

"The distributor agrees that whenever requested it will furnish to the exhibitor without additional charge therefor, except in Oklahoma City, a second run for not exceeding

each of twenty towns embraced within this agreement". In other words, between this preliminary draft and the final form, the distributor had succeeding in narrowing down the scope of the privilege to this extent, and I think it is quite apparent from the terms itself that the narrowing down was the result of pressure from the distributor's and not from the exhibitor. Of course, the distributor has nothing to gain whatsoever by making a provision of this kind; it simply ties his hands in advance and prevents him from realizing such additional revenue as he might get out of the free, unrestricted sale of subsequent runs involved. In any event, that is the form, and it is limited to twenty towns.

The COURT. You will admit that is the interpretation and construction placed upon the clause to which you referred in P–3?

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Mr. WRIGHT. Well, it was more in the nature, I suppose of a superseding agreement. I don't think there is any question but what the clause, as originally written in P–3, was broader than this, than it was narrowed down in the subsequent agreement.

The COURT. At least, that supersedes P–3?

Mr. WRIGHT. Yes, clearly. Then that clause again was modified by a subsequent agreement, dated September 22, 1936, which is pages U, V, W, and X of Exhibit P–1.

The COURT. U, V, W, and X?

Mr. WRIGHT. Yes, sir. That, I think you will recall, was after there had been complaints to the Department of Justice as to what was happening here with respect to this circuit, and also was about the time that the Interstate Circuit suit was filed in the District Court at Dallas. Now, this agreement of modification refers to this paragraph 12, and then as a whereas, it says,

"Whereas, the parties have never operated under said provision of the agreement in the manner and form as therein stated but in certain instances second run product has been furnished by the distributor to the exhibitor and other persons or corporations for whose benefit said agreement was made, in specified theaters, under the pro-

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visions of said franchise agreements."

That is legal language that is beyond me. They haven't operated under it and they have operated under it. We expect to show that they did unquestionably furnish runs under that option.

Then they say they desire to modify the agreement for a nominal consideration, and they then put a further limitation on the exercise of the privilege by modifying it to the extent so they only furnish 40 feature pictures and 80

shorts for second run in the following towns, naming nine specific towns. That is in addition to the subsequent runs in the Rialto and Reno at Oklahoma City.

Now, that modification, while in form was one which was supposed to, at least, make the agreement look somewhat reasonable, at least, as to licensing of some specific runs in specific situations, although there is still no additional compensation involved, but that modification in itself was a pretty clear recognition by the parties that, at least, in its prior form it had been restricting reasonably the rights of the competitors who were trying to operate against the circuit, and, of course, it came at a time that was too late to save many of them who already were then on their way out of business, such as the exhibitor in Plainview, which testimony we heard on Tuesday.

603 The COURT. Do you think there was a combination of circumstances controlling the Plainview situation.

Mr. WRIGHT. I suppose there is always a combination of circumstances in any situation which will determine whether or not any particular enterprise will succeed or fail, and we do not purpose to show, your Honor, in any event that any illegal restriction of which we complain was the sole cause of anybody's staying in or going out of business. All we propose to show by this Exhibit testimony is how these restrictions operated, what they did. In this case they kept a competing exhibitor, who needed the product, from even negotiating for second run of Paramount films in the town. Mr. Griffith didn't think he ought to have them, he didn't think the town ought to have second run, and the town didn't have. I say under this agreement he had assumed the functions that the distributor normally performs. In the ordinary performance of a contract, the distributor decides where he is going to sell the first run, second run, or third run, and how many runs he will sell, and how the pictures may be distributed, but by agreement that function has been turned over to the circuit itself, and, of course, the fate of the competitors of the circuit, under those conditions, is a foregone conclusion.

The COURT. It isn't the right of the distributor, but is the right of the exhibitor, to say whether or not he will release certain productions. You may proceed.

604 Mr. WRIGHT. We will next offer in evidence a document marked P–4 with the lettered pages A to D inclusive.

The COURT. What exhibit are you referring to?

Mr. WRIGHT. I am referring to P–4, pages A to D inclusive. This is the master agreement between Paramount

and the circuit for the exhibition of the '37–38 films. That is, including features, shorts and newsreels for a total rental payment of $240,386. That covers a schedule of towns that are attached, and it provides that the pictures are broken down in classification for the total rental of $42,000 odd dollars over the $8,055; ten at $45,000; 15 at $25,000; 15 at $21,000; and the total feature payments are $189,000 odd dollars and the rest is made up by shorts, news and "Hop-Alongs" which I believe are western pictures. Then the attached schedule shows the towns covered and second run is noted opposite Bartlesville, Berger, Texas, Enid, Norman, Okmulgee, Pampa, Texas, Seminole, Shawnee, Chickasha, Lubbock, Texas. Then it provides for two subsequent runs in Oklahoma City, altho this agreement on page A, the letter is simply signed Griffith Amusement Company, by R. E. Griffith, which covers towns in which the other four defendant companies and their affiliates operated theaters.

Mr. COCHRAN. What was that last you offered?

605 P–4, A to G?

Mr. WRIGHT. A to G, yes. Then the "G" relates to the subsequent runs, and that provision says: "It is agreed that the exhibitor is to be allowed second or subsequent run on thirty Paramount features, six Hop-Along Cassidy westerns and a selection of 90 releases of short subjects in the second or subsequent run towns and theaters as listed on the attached schedule A." Rentals on this product are included in the first run rentals as set forth in this agreement. The effect of that agreement on those second run pictures in these towns is to prevent any competitor from distributing second run produce in those situations, although in many of them competing theaters were operating.

The COURT. That was for the distributors of Paramount?

Mr. WRIGHT. These are still Paramount, yes. Under this agreement, of course, there was no obligation to pay anything for any of these features if they used 30 or if they used none. The obligation under the license agreement was exactly the same, so that in effect the exhibitor was prevented by this agreement from selling second runs in those situations, even though this circuit might not decide to use the film at all. Counsel in his opening statement pointed to the situation which he describes

606 as over-buying, which he apparently believes is the only way the Sherman Act can be violated, by an exhibitor over-buying; where you contract to pay for more

films than you use, which is the hard way of restraining or suppressing competition, the expensive way. The simplest, most effective way is to buy up the product without having to pay for it.

The COURT. That might be true with respect to this producer. There are dozens of producers. Is there any reason why the independent couldn't get pictures from any other producer?

Mr. WRIGHT. The reason why, as to other distributors, of course, will be apparent when we put the other agreements in.

The COURT. I get your theory.

Mr. WRIGHT. Even as to this distributor we would say that in itself is an agreement which restrains trade unreasonably and is a violation of Section 1 of the Act because it is collectively made on behalf of all these exhibitors. Some of it was closed and some of it was competition. The effect of it would be to exclude the competitors from any opportunity to compete with them in showing Paramount films second run.

The next agreement I will offer is one previously marked for identification as P–5. The page numbers are marked —I don't believe I offered P–4 in evidence. Is
607 there any objection to that?

Mr. COCHRAN. No objection to P–4.

Mr. WRIGHT. I am now offering P–5, A to AA, inclusive. That is a master agreement dated October 18, 1938, between Paramount and the defendants, Griffith Amusement Company and Consolidated Theaters, Inc., the Oklahoma City defendants, signed by H. R. Falls and covers not only their theaters, but a large group of theaters affiliated with them.

The agreement covers the 1938–39 season, Paramount features, shorts and newsreels as outlined in the schedule attached, and it also includes an agreement for one special product called "Men With Wings" for which a separate price is specified. The total to be paid over the circuit for "Men With Wings" is approximately $9600; then five more features in next rental classification were sold for a total of $36,000, $7,000; twelve more on the next bracket for a total of $6,000; ten more for a total of $31,000; twelve more for $14,000 and twelve more for $11,000. I am simply quoting round numbers, and the total in the feature deal is $153,000 and six Hop-Along Cassidy westerns were sold for $5600 and the grand total of the deal is $159,000. Then it is almost similar to the prior agreement provisions we have brought over and provides for certain deductions in case Paramount releases less pictures than are licensed,

52 in this case, and no foreign made pictures
608 *are included, and there is* an elimination privilege specified of 10 percent to be made from the lowest bracket, and the payment for the shorts is put on a weekly basis, to start in November, '38, and it is agreed that the circuit is not required to play the product in the order of release, and for that privilege it is required to play or pay for 25 percent of all the product sold during each 13 weeks period, quarterly payment.

Then there is an agreement as to when the subsequent runs from the Rialto and Reno here at Oklahoma City are to be made available. Then it is understood the standard form of exhibition contract attached becomes part of the agreement and the physical operation should be governed by the terms of the contract. In case of conflict, of course, the provisions of the typewritten agreement prevails.

Attached to that are schedules which show the towns operated by the Griffith Amusement Company and by Consolidated Theaters and by theaters affiliated with them respectively and the number of exhibition dates that are sold, and then in situations which are starred with an asterisk, the exhibitors are permitted to play 40 of the features, plus six Hop-Along Cassidys, and in the others the commitment is all.

Page D of the schedule is headed "Griffith, second or subsequent run deal," and that specifies 13 towns
609 in which second run is sold, and the two subsequent runs in Oklahoma City and it says: "In the above listed towns the exhibitor has to second or subsequent run privilege on 30 Paramount features, and six Hopalong Cassidy westerns and 90 reels of short subjects, excluding shorts in the Oklahoma City theater." Rentals for these second or subsequent runs are included in the first run monies outlined within this agreement. In that respect it is substantially as the preceding agreement. There is no additional rental charge for the payment of such second runs as they choose to use. Then there is a schedule of payment for shorts; separate schedule for news and then a schedule, pages G to L here, of the breakdown of the rentals by towns, how much of the total is to be allocated to each town in each of the five classifications used to designate the features, A, B, C, D and E, and then attached is the face of the standard form M, which simply contains the name of the two defendant exhibitors involved; to start on or before December 1, 1938, and to be played at the rate of release. Neither the agreement nor the sample standard form fixes any minimum admission price. Then attached are further schedules and then the schedule breakdown of

the picture "Men With Wings" and the schedule breakdown for the Hopalong Cassidy westerns, and that completes the exhibit, and that is offered in evidence.

610 Mr. RICE. The Dallas defendants object because they are obviously not parties to that. It is just an Oklahoma contract involving towns not operated by R. E. Griffith.

The COURT. The objection will be noted.

Mr. COCHRAN. P–7 covers R. E. Griffith Theaters, doesn't it?

Mr. WRIGHT. Yes. Of these documents, the first one P–6, A to K, inclusive, which is a license bearing the name of Westex Theaters, Inc., and dated September 28, 1938. It is unsigned, but it was agreed it represented the agreement under which the parties operated, and that contains a schedule of the Westex towns and then the similar general provisions about including no foreign made pictures, and deductions for failure to release the full amount, and the elimination privilege of 10 per cent to come out of the bottom or E bracket, and the exhibitor is not required to play the product in the order of release, but pays for that privilege 25 per cent of the money due each 13 week period. Then the distributor agrees to serve the New Mexico towns from the Dallas branch, and it is agreed the standard form becomes a part of it, and governs the physical operations, and that form is attached. It shows this limitation of pictures starting playing on or before October, 1938, and to be played at the rate of release; adult admission

611 prices to be not less than 15 cents.

Mr. COCHRAN. There is no second run clause in that contract is there?

Mr. WRIGHT. I don't see one.

Mr. RICE. I wish you would find it if you can.

Mr. WRIGHT. I think not. Most of the towns covered by this P–6 contract were towns in which there were virtually no competing theaters, if any.

Mr. RICE. What was that statement?

Mr. WRIGHT. I think there are no competing theaters in most of these towns that are covered by the contract P–6.

P–7 is a similar unsigned agreement with R. E. Griffith Theaters, Inc., operating the same way and covers that company's towns, which are mostly in New Mexico, and the provisions, I believe, are just the same as those on P–6, the general provisions, although, of course, the schedules allocating the film rental specify different amounts.

Mr. RICE. No second run agreement.

Mr. WRIGHT. That is right. And the provision, the standard form, is also at the same date, September 28, 1938, as

all admission prices to be not less than 15 cents. I offer those in evidence. I take it they are admitted without objection.

612 Mr. RICE. No objection.

The COURT. That is P-6?

Mr. WRIGHT. 6 and 7.

Mr. COCHRAN. It will be noted by the Court, of course, that those contracts are for the 1938-39 product by R. E. Griffith and Westex and relates to no Griffith Amusement Company or Consolidated Theaters towns.

The COURT. What pages did you offer in P-7, all of it?

Mr. WRIGHT. Yes. They are offered in their entirety, both P-6 and 7.

The COURT. What are the dates?

Mr. WRIGHT. The dates of both agreements are the same, September 28, 1938.

Mr. COCHRAN. P-7 covers pages A to J.

Mr. WRIGHT. That is right. Then I believe there is a ratification of the R. E. Griffith agreement dated September—not a modification but a preliminary agreement between R. E. Griffith and J. J. Unger of Paramount, dated September 13, 1938, which has been marked as P-8, A and B. A is a letter agreement from Mr. Unger to Mr. Griffith dated September 15, 1938, which outlines the blanket total of the deal which is $76,000 for the features and westerns and then about $17,000 additional for what is a news and then the attached sheet is a detailed breakdown of

613 the feature rentals for each bracket in each situation prepared by Mr. Lockhart. That was apparently simply the preliminary work sheet.

Q. Which was later incorporated primarily in P-6 and 7. Is that correct?

Mr. COCHRAN. Right.

Mr. RICE. There is no second run provision in that is there, Mr. Wright?

Mr. WRIGHT. I think this provides, "I wish to confirm and summarize herewith our understanding with reference to the deal agreed upon for our 1938-39 (Group S-10) product, for the forty towns now operated by you, including one second run; namely, Victoria."

A carries the Paramount master agreement with the defendants through the 1938-39 season.

I will now offer a series of agreements between the defendants RKO——

The COURT. What is RKO?

Mr. WRIGHT. RKO Distributing Corporation. Those letters stand for Radio, Keith, Orpheum. The first RKO document offered will be RKO-43, consisting of pages A to G, inclusive.

The COURT. 43?

Mr. WRIGHT. RKO 43. Labeled "RKO, Griffith franchise."

614 This is a letter agreement dated March 18, 1935, in the form of a letter from Herb McIntire, Southern Division Manager of RKO to Mr. R. E. Griffith at Dallas, and bears the notation "Accepted. Griffith Amusement Company by R. E. Griffith" and approved by RKO by Jules Levy, Vice-President.

This is a preliminary agreement which is later incorporated primarily in the franchise.

Mr. COCHRAN. Your RKO A to G is the shorts for the 1934-35 season?

Mr. WRIGHT. You are quite right.

615 Mr. WRIGHT. This agreement is dated March 18, 1935, and is short, so I think I may as well read it.

"Dear Mr. Griffith: In accordance with our agreement, I am attaching hereto Schedule 'A' showing list of the situations in your circuit together with the allocated prices per group, on features and per unit of product on short subjects.

"These allocations are on the same basis as the 1933-34 season"—I think your Honor will recall the evidence here, that the circuit didn't buy RKO in '34-35; that was the year they were out of the circuit—"these allocations are on the same basis as the 1933-34 season with the exception of the towns of Cushing and Gainesville, which situations are based upon the same allocations as set up for the 1935-1936 franchise deal." In addition to that deal, is the one that I will introduce in a moment, numbered RKO 44. "In addition to these situations, a price set up is indicated in certain situations on one reel subjects, for which no price was agreed upon for the 1933-1934 deal. There is also indicated on the attached Schedule 'A' a price set up for single reel color subjects.

"You are to have the privilege of using the 1934-35 product in these situations on the following terms:"

—this was near the end of the 1934-35 season—

616 "You are to play or pay for 1934-35 product as used based upon the allocations in a minimum amount of $20,000.00, with the right to use 100% of our releases based upon these allocations.

"2. You are not definitely obligated to any given number of features or short subjects in any one situation but are to have the privilege of playing product in the minimum amount of $20,000.00 over the entire twenty-five first run and seven subsequent run situations as listed on the attached Schedule 'A'." In other words, under this agree-

ment, the product is really distributed over the towns by the circuit as it sees fit, and not bound to use any particular number in any particular situations.

"3. Starting date of the play off of the commitment to be March 15, 1935, and to be completed by November 1, 1935.

"4. We are to have the the privilege of designating rentals on feature releases." That designation refers to the classification of features in the various rental brackets.

"5. Playing time is to be the same as provided for in the 1933-34 deal.

"6. Becky Sharp and La Cucaracha made with the three color process are not included in this deal."

617 Then the last page says, "The above is a memorandum of the 1934-1935 agreement and you agree to sign whatever form of contract or agreement the home office may decide is necessary to cover the provisions of this deal."

Attached are schedules showing the allocations in the Griffith Amusement Company towns, the Consolidated towns and the R. E. Griffith Theaters, Inc. towns and a schedule of the production numbers of the pictures released for that season.

Mr. COCHRAN. You say it covers the Griffith Amusement Company and the Consolidated Theater towns. It covers only certain towns.

Mr. WRIGHT. Well, I don't mean to suggest that it covers all the towns. The schedule shows such towns of those defendants as are included in the agreement. And the last schedule "B", appearing on page F are the production numbers and titles of the features for the season covered, and on page G is the schedule "C" of the shorts. This agreement provides for subsequent runs in certain specified towns.

Mr. COCHRAN. On what page?

Mr. WRIGHT. That is schedule "A", pages D and E.

Mr. COCHRAN. There is nothing of that kind in the document covered by our agreement that I can see so far.

618 Mr. WRIGHT. Pages D and E?

The COURT. You are referring to Exhibit 44?

Mr. WRIGHT. No, I am referring to Exhibit 43.

Mr. COCHRAN. I beg your pardon; proceed.

Mr. WRIGHT. That is offered in evidence.

Mr. COCHRAN. No objection.

Mr. WRIGHT. In view of the reference to the '33-34 agreement, I suppose we ought to have a copy of that. Mr. Kime calls my attention to the fact that we do have that, and I think I had better offer it. It is marked No. 42, A to O, inclusive.

The COURT. RKO?

Mr. WRIGHT. RKO, No. 42, pages A to G.

The COURT. A to G?

Mr. WRIGHT. Yes, sir. It is an agreement made between the RKO and Griffith Amusement Company and Consolidated Theaters.

The COURT. Dated when?

Mr. WRIGHT. Dated August 25, 1933, signed on behalf of the——

The COURT. That merely fixes the schedules as referred to in the other?

Mr. WRIGHT. This is a prior agreement, and covers the '33–34 season. You will recall that tihs agreement that I read, P–43, which referred to pictures released for
619 the '34–35 season, incorporated some of the terms of this agreement. I now offer it. This agreement, as I say, covers the 1933–34 season and it has attached to it a schedule of the towns supplied, showing the number of features, two-reel comedies and single reelers committed in each, and it also provides for some subsequent runs in five towns, two of them in Oklahoma City. The general terms of the agreement are that the exhibitor contracts to play or pay for features and shorts varying in number, as set out opposite the towns in Exhibit A attached—that is the schedule I referred to—with the privilege of playing any and all of the pictures in the theaters in the towns for the minimum or maximum number of days in keeping with the policy of the theater. Then it refers to the subsequent runs in the listed towns and the amount to be received by the distributor for the features and shorts licensed under the agreement, including the first and subsequent run situations, is $53,000 odd, and that sum is arrived at: It is understood that the sums are arrived at in the following manner, and for the first run situations only, and the Lucky Seven as announced by the distributor, in groups of two pictures, at a rental of $2550 each, and five pictures at a rental of $1630. These pictures are included in all of the thirty-three first run situations. Then it specifies the pictures, specifying according to
620 stars, two Wheeler and Woolsey, one Ann Harding, one Constance Bennett, two Irene Dunne, and each picture is priced at $924. Then the distributors to select and designate during the life of the agreement six other pictures to be played at the same rental for the twenty towns in which the contract is for fifty-one pictures and the balance of the fifty-one pictures in the twenty towns, thirty in number, are to be furnished at a rental of $455 each, and in the thirteen first run situations, where only

twenty-six pictures are committed to each, there is a group to be designated by the distributor, six in number, at a rental of $207 each; then for the same number of thirteen towns where the twenty-six pictures are licensed first run, the balance of the twenty-six pictures are to carry a total allocation for the thirteen towns of $151 each. Then the agreement includes three two-reel comedies, Amos and Andy cartoons, and the rental specified for those, then the total money commitment for the features, comedies and cartoons in the subsequent run theaters, six in number, listed on the schedule, is twenty-six features, twenty-six two-reel cartoons, two-reel comedies, and thirteen cartoons. And then it states the total number for the combined subjects—I think that means rental instead of number—$2,960 odd. Features and shorts to be played are to be selected by the exhibitor, the runs in each theater to
621 be second run except Oklahoma City, the runs to be the same as the '32-33 season. A color special is excluded from the agreement, and then the short subjects are specified with the price stated; then there is an elimination privilege, that the exhibitor has the privilege of eliminating six pictures from the lower allocations in any or all towns contracting for fifty-one pictures. It is understood that the lump sum of the agreement, $53,000 will be broken down and allocated against the various groups of features and shorts; the exhibitors required to make the allocations against each town. And they have signed individual contracts prepared by the distributor in Oklahoma City. Then the exhibitor is required to play or pay for twenty-five per cent of the features and shorts in each situation, each thirteen weeks; and then the starting date of the contract in twenty situations is fixed at October 15, 1933, and the balance of the towns begin November 15, 1933, and subsequent runs when and as available.

"It is understood and definitely agreed that the exhibitor is not required to date or play pictures in order of release, in the towns and theaters where the exhibitor has not contracted for the product, the exhibitor is required to select or reject pictures within ninety days after national release date." That is the date on which the pictures become generally available. And the commitment excludes foreign made pictures.

622 The three-year franchise that I have referred to is RKO 44–A to S, inclusive; that is the deal that was made for the three seasons beginning with '35–36 and ending with '37–38.

The COURT. What is the date?

Mr. WRIGHT. This is dated March 19, 1935, and that is a three-year franchise deal between RKO and the defendant corporations, except Westex, which was not then organized, and certain interests affiliated with them, operating other theaters in Oklahoma and Texas, and this covers the entire fifty features and thirty-six shorts, thirty-six two-reel shorts, thirty-six one-reel shorts, for first run in the towns that are listed on pages G and D; then thirty-two features and a number of shorts are licensed for exhibition in another group of towns, and twenty-six features and some shorts are licensed for exhibition in a third group of towns which are listed on page E, and the features described are those generally released by the distributor for the seasons I have mentioned, '35-36, through '37-38.

The agreement excludes the color features and Pathe News is also excluded; and there is an agreement, and I believe, your Honor, it will become significant in connection with the testimony of one of the witnesses:

"It is further agreed that the Kiowa Theater of
623 Hobart, Oklahoma, is to be added to this franchise agreement effective with the 1936-37 season at rentals that are agreed upon and included herein as part of schedule 'A' commitment of 45 feature length photoplays, 36 two-reel short subject photoplays, and 36 one-reel short subject photoplays".

We expect to show that the exhibitor who had then been RKO's customer in Hobart, this product by this agreement was taken away from him and included in the franchise deal without his having being given, of course, any opportunity to even negotiate for a continuance of his run.

Then on page F there are 45 features and some shorts licensed for three other specified towns. The general provision is that for the number of playing dates, shall be one to four. The total rental to be paid is $62,000 odd for the features and about $7600 for the shorts. I beg pardon, $7600 for the two-reel shorts and about $4000 for the one-reel shorts, making a total commitment of $74,000, which is to be paid in installments at the rate of about $700 a week for ten weeks beginning in September of '33, then $2000 per week for ten weeks, beginning in November of '33, and $1400 a week for 32 consecutive weeks, then finishing out the year. There is also a provision for a refund or credit in the event all features licensed are not released, and then a schedule classifying the features released in groups of four for
Class A, eight for Class B, ten for Class C, and
624 twenty-eight for Class D; then the features in each group are allocated in the schedules among the towns

covered by the license. Then similar provisions are made for the '36–37 and the '37–38 seasons, of the increase in the total rental of each year, the rental for '36–37 to be about $83,000 and for '37–38, a total of $87,000.

There is also the provision on page J that in the event the exhibitor decides to close his theaters in any town, he is relieved of the commitment in that town providing, however, that their weekly payments are kept up as provided in the agreement, unless there is a permanent closing and then he receives a credit, and foreign made pictures are excluded and defined.

The statement about clearances is that it will be mutually agreed upon, subject to any zoning and clearance schedule which may be adopted pursuant to the code of fair competition for the motion picture industry and any clearance herein provided for shall be deemed modified in accordance with any such schedule. That was the set-up under the National Recovery Act.

625 Then there is a provision for the subsequent run theaters operated in Oklahoma City, and a provision as to the time in which the prints are to be made available to the theaters covered by the circuit, one-third covers 23 days of the total release; the other third covers 46 days and the last third 70 days of the general release, and the agreement found in the other master deals with towns in New Mexico which are to be served from the Dallas exchange. 11- An agreement that if the exhibitor shall, during the term of that agreement open additional theaters in any of the towns covered herein, with the exception of Oklahoma City, any of the feature photoplays, short subject photoplays, may be exhibited therein any place in any of the theaters herein. In other words, they give the circuit complete flexibility to transfer product from such theaters as they might drop those they might acquire. The terms and conditions of the standard form are incorporated and controlled, subject, of course, as modified by the typewritten agreement, and this is signed in the name of the three corporate defendants, Griffith Amusement Company, R. E. Griffith, Consolidated Theaters, by R. E. Griffith, and also signed by him on behalf of the dozen or so affiliated operators whose theaters are included in the deal. The schedules I don't think need to be referred to in any detail. They are similar to those we have already discussed. I offer that in evidence.

626 The Court. We will recess at this time until 2:00 o'clock.

Mr. Rice. In yesterday's transcript beginning with Exhibit 137, they are marked Plaintiff's Exhibits. They

should have been marked Plaintiff's Exhibits for identification from then on.

Plaintiff's Exhibit 181, for identification, is an agreement by R. E. Griffith Theaters, Inc., Raymond O. Bartlett, individually, and as trustee, and covers operation of the Cactus and Tower Theaters in Carlsbad, New Mexico, dated July 1, 1940.

(Hereupon Court adjourned until 2:00 o'clock p. m. this day.)

627 AFTERNOON SESSION

May 10, 1945, 2:00 o'clock p. m.

PROCEEDINGS

Mr. COCHRAN. Your Honor please, I have here a few cases which I would like to call to your Honor's attention, in connection with the Interstate case. I will hand you the list. I have given the Government's counsel a copy.

Mr. WRIGHT. If the Court please, in connection with the documents I have offered and which are already admitted, RKO–43 and RKO–44, those are respectively the so-called short deal for the '34–35 product and the franchises for the three succeeding seasons, I want to offer a letter marked RKO–11, pages A to C inclusive, which is dated February 23, 1935, New York, New York, addressed to Mr. Griffith and is unsigned, but bears the notation at the bottom "O. K. R. E. Griffith", in his handwriting. The stipulation with respect to this document says only that it is a document which was found in the files of the RKO Company and produced by them pursuant to subpoena and we offer it not as an actual agreement, the agreements being reflected
628 in the documents I have already offered, but merely as explanatory of the negotiations.

Mr. COCHRAN. We are objecting to that document for the reason that it is not a signed agreement, and the agreement, whatever the negotiations were prior to that time, is reflected in the instrument which was duly signed. That is the reason we didn't agree to this document.

The COURT. Overruled, let it be admitted, and an exception allowed. It perhaps would not be prejudicial, if covered by a later contract.

Mr. WRIGHT. Then the next document that will be offered is RKO 45, consisting of pages A to E inclusive. That is an agreement between RKO and the four corporate defendants and their affiliated theaters.

The COURT. What is the date?

Mr. WRIGHT. It is dated May 14, 1937, and refers to a group of towns evidently acquired since the original franchise covering that period was made.

629 The towns are listed on page A and the agreement is to pay approximately $6500 for pictures to be played for the period September 1, 1936, to September 1, 1937, to be selected from the 1936-37 product, and that is broken down by character of the films.

There is a provision that the exhibitor shall have the privilege of using short subjects to apply against the money commitment of $6,585. That was the commitment I referred to as having been made in lieu of features where such is necessary in order to met this commitment. The rentals to be agreed on the same as the 1937-38 short product.

There is a provision whereby the distributors and exhibitors agree generally on the reclassification of the product and the payments as the pictures are played, and the amounts allocated to the respective pictures for the respective theaters, the full payment to be made in any event by September 1, 1937, and the agreement excludes "March of Time" and Disney cartoons, and certain other special shorts.

Then it is agreed that attached allocation sheets showing the breakdown on the feature product for each situation, the number of days of exhibition of each subject, and so forth, and shall be part of the agreement, and it is again understood there is no commitment as to the amount
630 of product to be played in individual towns, the money commitments and obligation over the circuit as a whole, the minimum or maximum of the amount of product used in individual towns will be jointly computed in arriving at the total money commitment.

It is also understood the exhibitor is not required to play films in the order of release and foreign pictures are excluded, and the license agreement is incorporated by reference.

The schedule for the towns is attached as page (D) and the standard form of license in front of it is page (E). I offer that in evidence.

Mr. COCHRAN. Did you state that covered non-franchise towns?

A. I said on its face I don't think it describes them, but I believe they will appear from the other evidence later. these towns acquired since the franchise was made.

Mr. COCHRAN. At any rate, they are towns not covered by the franchise with RKO, which was executed and which has been referred to as RKO A to F.

Mr. WRIGHT. It appears on the face of the exhibit. I take it that will be admitted.

The COURT. It will be admitted.

Mr. WRIGHT. I next offer an agreement of the same date, May 14, 1937, which has been marked RKO–47, A to
631 F, inclusive.

Mr. COCHRAN. What are you doing with No. 46?

Mr. WRIGHT. I am trying to offer these in chronological order rather than in the order of the exhibit numbers.

Mr. COCHRAN. In (A) to what?

Mr. WRIGHT. (A) to (F) inclusive. That, as I said, bears the same date as RKO.

632 Mr. COCHRAN. Is that a duplicate?

Mr. WRIGHT. No, I think it covers certain additional towns under the Westex Theaters.

Mr. COCHRAN. No, I think the difference is, Mr. Wright, that RKO–45 covers the same towns, but as to the product of the 1936-37 season, and this is the product of the 1937-38 season.

Mr. WRIGHT. Well, it also appears on the first page, A, of both of those agreements that there are towns listed under Westex Theaters, Inc., on RKO–47 which do not appear in the similar listing on RKO–45.

Mr. COCHRAN. That's right; there are some variations as to the towns, because hardly any of these contracts, I believe none of these contracts, cover all of the towns. There is a variation in the towns.

Mr. WRIGHT. In any event, the towns covered by each are listed on the face there, page A, and in this agreement, RKO–47, is the same parties and dates as the other. The agreement is to pay RKO a minimum guarantee of $23,500 odd for the pictures released in the '37–38 product, to be played between November 1, 1937, and October 1, 1938; and the other provisions, the general provisions, I think, are substantially identical with those that are found in RKO–45. We offer in evidence Plaintiff's Exhibit 47.

Mr. COCHRAN. No objection.

633 Mr. WRIGHT. RKO 46, A to E, for identification, is an agreement dated September 16, 1938, between RKO, the two Dallas corporate defendants and several of their affiliates, which covers the towns listed on the first two pages, and which provides for a minimum guarantee of approximately $40,000 for pictures to be played and paid for in the named theaters; the schedules shows the names of the towns with the theaters in each, within the period from November 1, '38, to October 31, '39, to be solicited from the following '38–39 product. Then the product is broken down as five "A" features, six "B", nine "C", twenty-eight "D", and six O'Brien westerns with a blanket

price for the circuit for each feature. The rest of the provisions I think are substantially similar to RKO–47 and 45, relating to the preceding seasons. The schedule is attached as page D showing the allocations by towns, and "E" is the face of the standard form of license. We offer that in evidence.

Mr. COCHRAN. No objection.

The COURT. They will be admitted.

Mr. WRIGHT. That completes the offer with respect to RKO, with the exception of on these forms. We have assembled here all of the forms of agreements, the standard forms, that were used by each of these companies during the period in question. However, inasmuch as part
634 of these standard forms are already in evidence, I think it might be better to simply agree that such of these other forms which have been identified as RKO 67, one to twenty-five inclusive, that either party who may wish to may refer to them and they may be put in evidence, rather than to go into the record at this time all of the forms. Is that agreeable?

Mr. COCHRAN. That is not agreeable. It is agreeable wherever one of these documents that has been offered and admitted in evidence refers to the standard form of contract for that year, and we are objecting to the introduction of that unless they put in the standard form applicable to that period. I don't want every printed form they have, but where it is referred to in the document introduced in evidence, the understanding was that it was to go in to complete the agreement, because they are offering things that are going to be material.

Mr. WRIGHT. So far as we are concerned, we are perfectly content to rely on these provisions here. As I say, it seems to me——

Mr. COCHRAN. (interrupting): That being true, we move to strike each and every one of them because they refer to the standard forms, and part of the standard forms were copied and parts were not, and we made our stipulation based upon the fact that the complete document would be used. Otherwise we move to strike all of the documentary evidence.

635 The COURT. Does each of these contracts refer to the standard form?

Mr. WRIGHT. Yes, and in most cases the forms are attached. The reason this came about here, instead of photostating all the attached standard form they only photostated the faces.

Mr. COCHRAN. The backs constitute the material part.

The COURT. Are you offering the others?

Mr. WRIGHT. I am perfectly willing to offer all the forms and have them to go in the record if counsel prefers it that way. It seems to me it makes a needlessly complicated record, but if there are going to be objections we will offer them all.

Mr. COCHRAN. We threshed that out at the time of the agreement and I refused to stipulate until they were completed.

Mr. WRIGHT. I offer the standard form, RKO–67, numbered 1 to 25, inclusive.

Mr. COCHRAN. What is the next one?

Mr. WRIGHT. Fox. I might say, with respect to the RKO offer, that is completed and there were no master agreements produced for the 1938–39 season between RKO and the Oklahoma City defendants and their affiliates, so there was apparently none made for that season.

636 The first Fox document that will be offered is F–2, A to C inclusive, which is a letter agreement dated September 7, 1934, a letter to Mr. R. E. Griffith at New York, signed for Fox by Mr. W. J. Kupper, and also by Mr. Griffith. This simply states: "This will confirm our understanding relative to various points of the negotiations we have just concluded for RKO–K–2 product for the season of 1934–35. K–2 is simply a designation employed by Fox to indicate product of that season."

The contract is based on all the Fox pictures, presuming there will be 52 features, and those 52 are allocated in various rental brackets beginning at $5500 each over the circuit, for the top five brackets and goes down to $742.50 apiece over the circuit for the bottom 18.

Mr. COCHRAN. That doesn't say the whole circuit. It says the following named towns, naming the towns.

Mr. WRIGHT. That is correct. In such circuit towns as are named in the agreement. The towns appear on page A of the letter. Then are listed, first, 31 towns located in Oklahoma, Texas and New Mexico. Then follows the statement: "In the following ten towns we have a definite understanding there is to be a definite commitment of 44 Fox pictures." Then they have a special arrangement made up for a picture called "Cat's Paw" to be taken first-

637 run in each of the forty situations for a flat rental of $3000 over the forty towns, and for four George O'Brien pictures sold on the basis of $1218 for each picture on one run in the entire forty towns, and then it says that these two units, the "Cat's Paw" and George O'Brien pic-

tures are separate from the regular Fox product contracted for. "It is understood and agreed in these situations where the entire product is bought—" those would be the first thirty-one towns listed there— "you have the right to elimination as set up by the code offers and which is part of our regular contract." Then there is a contract as to score charges that they paid $2.00 a subject for booking in each of the situations, except 18 that are then specifically mentioned. As to those 18 towns it is provided that the price finally agreed upon for the lowest allocated pictures—that is, the lowest bracket on rental application—is to be set up on a minimum of $12 per booking and a proportionate share of this charge shall be set up as a score charge at the rate of $2.00 per subject. As to the Fox news, "We agreed the same situation would be supplied, the same number of runs and the same rentals. Those contracts are to follow the present existing contracts in those situations. We had agreed, however, we might substitute some other town or towns for a town or towns previously contracted and at the same price and run, provided, of course, that the sit-
638 uations are comparable." As to the short product the set-up appears to be identical with the '33–34 season's contract. Incidentally we subpoenaed the '33–34 contracts also, but no signed agreement was furnished and I don't believe that is included in the stipulation. We have, also, I think subpoenaed it from the defendants, and it has not been furnished or produced, so we have nothing but the unsigned agreement for the previous season. This page B of this Exhibit F–2 then goes on to provide for repeat runs, which is another name for second or subsequent runs following the first run. It states that as to repeat runs we agree to the following: Lubbock and Shawnee forty pictures at $17.50 each, Chickasha forty at $12.50 each, plus the $2 booking score charge, then some shorts. Then in the following situations we have set up the prices allocated against these for repeat bookings, no definite commitment being agreed upon; however, these would be the prices for all subjects plus the usual $2.00 score charge for booking, and those towns are Bartlesville, $12.50, Enid $17.50 and Okmulgee $12.50 and Pampa $12.50; Then there is the provision with respect to the two subsequent runs in Oklahoma City and the provision that they follow the Warner and the Cooper Publix runs, those are the prior run theaters in Oklahoma City. Then there is an agreement for a third run at Albuquerque at $17.50 per subject plus the
639 score charge. And this paragraph provides: "We also agree to the continuation of the product allowing

you to play some subjects out of order of release; however, we further agree that 25% of the commitment will be played in all situations every thirteen weeks; and it is further understood that this privilege is allowed and agreed upon only as a measure and means of expediting bookings to prevent congestion, and is not to be abused". Of course, the possible abuses in that situation, of not playing pictures in the order of release is quite apparent in so far as any following runs are concerned. Under a deal like this, where the circuit towns are the towns included in the deal, I don't have to play the pictures as they are made available. No competitor ever knows until the end of the season which pictures the circuit is going to play under this deal and which it is not, with the result that even though the circuit does not use the entire product in these situations during the season, the extent to which it is made available to the competitors during the season is determined by the circuit rather than by the distributor. And in so far as competitors who might seek to buy subsequent runs are concerned, that is, runs of films which are played first run in the circuit theaters, again, there is no assurance and no obligation here on the part of the exhibitor to play a picture that may be released at the beginning of the season
640 at that time or any later time, so that any subsequent run that was sold to a competitor who was trying to follow one of these runs, he would never know when any particular picture would be released and would be available to him, and that the circuit again, rather than the distributor, would determine the availability of those films, all the films covered by this license.

Mr. COCHRAN. May I make a statement with reference to that, inasmuch as counsel has gone ahead and stated his theory on the order of release, may I state my view of it now or later?

The COURT. You may do so now.

Mr. COCHRAN. It is our contention that this provision in this contract is not any more favorable to the exhibitor than the printed provisions in the standard form of contract which is attached and made a part of it. An examination of those provisions will show that the purpose of that agreement, as stated in my opening statement, was to see that the product was played reasonably in the order of release, or paid for; the distributor wanted pay for his product. This clause here which grants the privilege of playing out of order of release provides that payments shall be made for 25% of the product every thirteen weeks, in other words every quarter it must be paid for a fourth of that product;

641 therefore, so far as the distributor is concerned the purpose of this order of release provision has been complied with. We expect to show that under the printed form of contracts there were no provisions for the exhibitor, other exhibitors, the ordinary exhibitor, to be excused from playing that product in the order of release, providing his account was in good condition, and so forth; in other words, that provision was for the purpose of requiring the product to either be played or paid for in each of the contracts; therefore, it was just a normal provision.

Mr. RICE. On this particular contract, your Honor, I think Mr. Wright unintentionally misquoted it. It doesn't have the provision—it says 25% of the commitment would be played in all situations: it doesn't say paid for, but played in all situations; therefore, they couldn't be held over to the end of the year.

Mr. COCHRAN. Some of them read paid and played, and so forth, but the purpose of all is the same.

The COURT. The contracts would speak for themselves.

Mr. WRIGHT. As far as this privilege is concerned, there is no question but what it was paid for by all the exhibitors, and what they were paying for was a very severe competitive weapon so far as the opposition trying to compete with them is concerned. It did give them control over the opposition booking.

642 Attached to F–2 is a photostat complete, front and back, of a standard form marked F–2–D for identification, which is simply a sample agreement of an individual agreement, the individual agreements which were subsequently entered into pursuant to this master deal for each situation, and we have attached this in acordance with an agreement with counsel that rather than putting in all of the individual agreements which were made pursuant to this deal, we would just put in one representative one and this, I think, was for the town of Ada, which is generally characteristic of the others.

Mr. COCHRAN. You understand, your Honor, that this contract says that individual contracts for each town will be made up and signed, pursuant to this memorandum. The attorneys for the Government wrote me and asked me if I was going to object to the introduction of the memoranda without having the separate agreement, and I told them I would. Then the question came up as to the large number of those separate contracts which, so far as the printed forms were concerned, would be the same and would vary only in the typewritten part, which would be set up in accordance with the allocation agreement so, in order to make

it unnecessary to produce all of those separate contracts we agreed that a typical contract might be photostated
643 and that except for the typewritten parts it would be substantially the same for the others, with changes for the amounts and other matters which were written in, which would harmonize with the allocation agreement. Is that correct?

Mr. WRIGHT. Right.

Mr. COCHRAN. My copy only shows one page and somebody is compromising, which is all right, and the one going in is complete.

Mr. WRIGHT. The front of the standard form there is marked F–2–D and the back F–2–E, so I will offer in evidence F–2–A through E, inclusive.

Mr. COCHRAN. No objection.

Mr. WRIGHT. The next Fox agreement is marked for identification as F–3–A through C.

The COURT. Now, this F–2–D, that is a form of contract with the exhibitor?

Mr. WRIGHT. Yes, sir, the same exhibitors.

The COURT. You mean a contract with each town?

Mr. WRIGHT. Yes, sir; make the master agreement first here, and then pursuant to that agreement a license agreement in this standard form is prepared for each town and again signed apparently by the exhibitor and the film company, incorporating the individual rental terms as outlined in the master agreement.

644 The COURT. And made a part of the original contract?

Mr. WRIGHT. It is all a continuous deal.

The COURT. A break-down of the contract?

Mr. WRIGHT. Yes.

645 Mr. COCHRAN. As a matter of fact, the original contract was simply a memorandum, and as they had time they would prepare these separate contracts for each town.

Mr. WRIGHT. The next Fox contract is a letter agreement dated August 22, 1935, marked F–3, pages A to C, inclusive, that has a letter again signed by Mr. Kupper to Mr. R. E. Griffith and addressed to Mr. Griffith, care of the Park Central Hotel, New York.

The COURT. What is the date?

Mr. WRIGHT. August 22, 1935, and it covers the K–3 product for 1935–36.

The COURT. What is K, the number of the film?

Mr. WRIGHT. That is purely an arbitrary designation by Fox for its season's product. They use K–3 to designate the '35–36 product and K–4 to designate the '36–37 product, and so on. The letter reads: "This will confirm our understanding relative to the various kinds of negotiation we have just concluded for K–3 product for the season of 1935–36. The contracts are based on all Fox product, presuming there will be 51 features plus 4 O'Brien pictures." The O'Brien pictures, I believe, are western pictures. "Also the short product for the season will have a separate deal incorporated." Then the 51 features and the O'Brien pictures are allocated in various price brackets for all the towns covered by the agreement, the top three
646 pictures at $750 each; the bottom features at $870 each and the O'Brien pictures at $1560 each, and a total amount of the feature deal is $138,490. Then they agreed to buy shorts in the amount of $18,720. That includes no newsreels and it says, "short subject contracts to be worked out on a weekly payment plan and any shortage on delivery of product is to be deducted." Then as to the newsreels, the contract is $5790 and includes the same situations as the K–2 deal, plus some additional issues that are sent up for those towns recently acquired in the Dallas territory.

Then the towns to be served with features are divided into two lists. Those to be served out of the Dallas office and those served out of the Oklahoma City office, the latter are listed on page A and the former on page B, and the 10 per cent elimination privileges provided in accordance with the regular form, and there is an agreement including the score charge in the feature price. Then there is the following with respect to subsequent runs, that they are to have the privilege of using 30 Fox feature pictures and the price is to be allocated on the first run showing price. The towns which are to have this privilege are as follows, and then are listed eleven towns in Texas and Oklahoma.

Then the statement is made with respect to including the two subsequent runs in Oklahoma City. The
647 foreign pictures are excluded and the deduction is arranged for if the projected number of features are not delivered. The same provision is continued with respect to playing out of order of release in the same form as the prior agreement, and then specially there is an agreement as to the allocations per town per subject as to the prices for features to be set up at "your headquarters". That is "Griffith at Oklahoma City, or immediately upon your re-

quest so we can properly bill all subjects immediately." The allocations are divided among the theaters and the films are billed to the theaters in accordance with the allocation. On Twentieth Century Fox that was simply a designation for some of the features released by the Fox Company that year. "We agree to accept the following proposition, first run, in each of the situations listed," and there are three of those allocated at $3,750; four at $2,750; and five at $1,750. I don't think this D is included in our situation. I will omit that. Then, attached to this letter agreement F–3, A to C inclusive, are two forms of the licensing agreements which were later made for each town, one designated as F–3, F–E and F, which includes the front and back respectively of the form used for the Twentieth Century Pictures, and again Ada, Oklahoma, has been used as a sample form. And also attached is the form marked on the front F–3–G and the back F–3–H used in each of the
648 towns for pictures designated as Twentieth Century Fox pictures.

I offer in evidence F–3, A to C, and E to H, inclusive.

We have here a sheet marked for identification as F–4, which is headed "Original Griffith Deal, K–3 product" and shows the allocations for the towns included in the deal. The only stipulation with respect to this sheet is that it was found in the files of the Fox Company and produced pursuant to the subpoena calling for the contract.

The COURT. Is it anything more than a compilation of the contents of the contract?

Mr. WRIGHT. All of it is to show what the various allocations were. F–3 does not show those towns by town allocations on its face, and we offer it simply for the purpose of showing the allocation as per the Fox records.

Mr. COCHRAN. We did not stipulate in regard to those for two reasons. First, it does not appear to be complete, and second, it was not attached to the document which he has been offering. It is a document—whether that is the allocation that was made I do not know, so we do not stipulate it was correct, and there is nothing to show that was the allocation they had in fact made, and it is not complete. It covers only some of the towns.

Mr. WRIGHT. We offer it for what it is worth.

The COURT. Let it be admitted. I think we can
649 save time.

Mr. WRIGHT. The next Fox document is a letter agreement covering 1936–37 or K–4 product dated August, 1936, and marked F–5, A through E inclusive, given in the form of a letter from Mr. Kupper to Mr. Griffith and signed

by both Mr. Kupper and Mr. Griffith. Incidentally, with respect to each of these letters, although I believe the names of all the defendant corporations do not appear in the agreements, actually the agreements cover towns in which all of them and many of their associates operate theaters.

Mr. COCHRAN. That is not true as to all of them. I think it is true as to each of the other points you have produced up to the present time. In other words, the material portion, insofar as Fox is concerned, in 1938–39 they did not cover all the towns. In no case did they cover all the towns, but in 1938–39 there was a separate contract for the Griffith Amusement Company and Consolidated.

Mr. WRIGHT. That will appear when the contracts are offered. This is F–5 and is similar in general terms to the F–3 exhibit that is offered for the preceding season, and based on 52 pictures and 6 westerns; 4 Rogers reissues and it is again divided into rental classifications for each of the various types of features covered. The total amount of the deal is $165,000, and the towns covered are listed on page B according to whether they are served out
650 of the Dallas or Oklahoma City office, and a similar elimination privilege and a subsequent run privilege on 30 pictures in 11 named situations, subsequent runs in Oklahoma City, foreign pictures excluded and a deduction for failure to release all the pictures contracted for, and the same privilege with respect to playing out in order of release, and the allocations per town per subject, and the same provision with respect to that to be set up by the exhibitors at Oklahoma City, and the deal was divided into two groups of towns.

The statement is made that the additional towns acquired since the last deal are listed and incorporated separately, and those are the towns listed on page D of the agreement, and no allocations were produced with respect to this season, although I believe they were subpoenaed.

Mr. COCHRAN. If we had each one of those separate contracts, the necessity for allocation would be eliminated because the full contract is contained in that separate contract. I overlooked the fact we did not have the allocation when we stipulated. I don't care because I think it gives a sufficient idea of what the agreement is for the purposes of the case.

Mr. WRIGHT. I think so. Attached is a sample contract made pursuant to this agreement for the K–4 and it is marked on the front 5–F and on the back F–5–G and
651 again the town is Ada, Oklahoma.

The COURT. That is in two pages, is it?

Mr. WRIGHT. Yes, sir. The 5–F is the front and F–5–G is the back.

Mr. COCHRAN. I thought where there was a second run we were going to have one of each.

Mr. WRIGHT. I think it would be a good idea. In any event we will offer what we have.

Mr. COCHRAN. I think our agreement for two contracts applied as to 1938–39.

Mr. WRIGHT. I wanted to call attention to the fact under the terms of the agreement made heretofore, that is, for the 1935–36 and 1936–37 seasons, those are the exhibits just introduced there under minimum of admission price restrictions in the master agreement sheet sample, individual license form.

Mr. COCHRAN. For what season?

Mr. WRIGHT. These are for '35–36 and '36–37. I believe they were contained in the prior season, at 10 and 25 cent evening adult admission prices specified.

The next Fox agreement is marked for identification as F–7, A through D, and it is dated September 23, 1937, and is in the same form as the other letter agreement and is signed by Mr. Kupper for Fox and Mr. R. E. Griffith, and relates to the '37–38 deal and breaks down the——

652 The COURT. That is F–6?

Mr. WRIGHT. The exhibit number is F–7. The letter is A through D, inclusive. F–7 is the 1937–38 deal, dated September 23, 1937, and that is based on 55 features and four westerns and two Tarzan specials, and also short product, and then the features are broken down into brackets and the towns are listed which it covers, and a similar elimination of the 10 per cent clause is granted and there is an agreement for subsequent runs in the twelve named towns with the provision that the price is to be allocated on the first run showings. The other provisions with respect to schedules for foreign made pictures, and the payment of the 25 per cent of the total commitment, playing out of order of release and allocations, I think are substantially the same as before.

Then there is a list of 19 towns which are called one theater towns, and for which the commitment is only 42 subjects, and attached to it is a recapitulation marked (E) which shows a total deal of $202,000.

Mr. COCHRAN. There is no agreement in regard to that document. The agreement will speak for itself. This is something that was in the Fox files, but it is not part of the agreement and it is a recapitulation that anybody could

make from the contract, if it is correct, but it is not binding on us.

653 Mr. WRIGHT. I merely offered it as a convenient recapitulation. The contract itself does not state the totals. The recapitulation does. For that reason I thought we might use it.

Mr. COCHRAN. No, the defendant objects to the admission of that exhibit on the ground it is not part of the contract and it is not contended it is part of the contract. It is admitted by counsel for the Government that the document referred to as F–7–E was not attached to the contract as it was found in the Fox files, and is a separate document.

Mr. WRIGHT. It was produced with the contract pursuant to the subpoena. We will also offer a letter agreement dated September 24, 1937, which simply supplements the agreement already identified and signed by the parties and I believe covered by the stipulation. That is F–7–F.

The COURT. What was the recapitulation, (E)?

Mr. WRIGHT. The recapitulation was (E), yes. F–7–E.

Mr. COCHRAN. Do you want to state what that is?

Mr. WRIGHT. All it says is "Supplementary to our agreement dated September 23, relative to the K–5 product and to which this becomes attached and part of, as to the four Rogers Reissue productions for the 1937–38 season,

654 we agree the price to be established at $2500 each, with a two picture cancellation to one or all situations and for the situations in accordance with the aforesaid agreement, with the exception of the nineteen (19) one show towns, where there will be a one picture cancellation."

Mr. COCHRAN. In regard to the statement made by Mr. Wright that F–7–E was produced pursuant to subpoena requiring the production of contracts, that document was not produced pursuant to that subpoena but was produced as part of the subpoena which requires the production of any memoranda of——

Mr. WRIGHT. Relating to the contracts.

Mr. COCHRAN. In other words, we have no objection to the introduction of documents which are signed by us, which are documents which involve some action of ours, but where it is some document that Fox has in its files, and with which we had nothing to do, we are objecting to that.

The COURT. It will appear on its face if it is not competent evidence and the Court will disregard it.

Mr. WRIGHT. The next agreement we have offered is this standard form that was executed for Ada, Oklahoma, subsequently that is marked F–7–Y on the front and Z on

the back, which is representative of the forms that were made pursuant to the agreement.

655 Mr. COCHRAN. Is that E–6?

Mr. WRIGHT. This is group K–5, '37–38 season.

Mr. COCHRAN. F and G?

Mr. WRIGHT. F–7, Y and Z. In the intervening letters there is a whole series of correspondence.

Mr. COCHRAN. All right Y and Z.

Mr. WRIGHT. Yes. I again call attention to the fact there appears to be no minimum admission prices filled in here either. Then for the '38–39 season, there are two letter agreements, one for the Oklahoma companies and their affiliates, and the other for the Dallas companies and theirs; the first one dated August 8, 1938, is marked F–8, A to C, inclusive, and is a letter from Kupper to Horace Falls of the Griffith Amusement Company, Oklahoma City, and accepted by Falls, which is for 52 features, and then lists the towns, lists eight towns, for which the terms are given somewhat similar to the others, except that in this agreement, I believe, for the first time there are pictures to be played on percentage in those towns.

Mr. COCHRAN. Eighteen instead of eight.

Mr. WRIGHT. The top six pictures are to be played at thirty-five per cent each; that is, the rental is thirty-five per cent of the gross receipts; the next eight at thirty per cent; the next twelve at twenty-five per cent; and then the last twenty-six pictures are at varying flat rentals.

656 Mr. COCHRAN. You said there were eight, when there were eighteen.

Mr. WRIGHT. Eighteen is right.

Mr. KIMP. Seventeen.

Mr. COCHRAN. Seventeen, all right.

Mr. WRIGHT. Then, in another group of towns, classified on page D, classified on page D as B situations, the terms are stated, which call for flat rentals only, varying with the various feature classifications, from $2,185 each down to $359.50 each; then the following situations which are subsequent run showings, we agree to take picture commitments on the following basis, subsequent runs, ten are to be played at $450, eight at $245, and eight at $205. Those blanket prices cover the second run or subsequent run in thirteen named Oklahoma and Texas cities, plus the two subsequent runs in Oklahoma City. Then the same general provisions, as to excluding foreign pictures, granting the ten per cent elimination privilege where the whole product is bought, and providing that in six towns the commitment is for only 42 features, and a continuation of

the privilege of playing out of order of release, and the twenty-five per cent quarterly payment of the total commitment and the allocation of the rentals among the towns by the exhibitors in Oklahoma City. Then attached to this letter agreement is a standard form for that
657 season, F–8–D on the front and E on the back for Ada, Oklahoma, which is a representative form of those made in all of the situations covered, which again contains no minimum admission price restriction.

The deal with the Dallas defendants is August 24, 1938, another letter agreement marked F–10–A to D, inclusive a letter from Kupper to Mr. Griffith, signed by Mr. Griffith, and is similar, I believe, to the other agreement, except that this covers different towns, that is Griffith for the Westex towns, and the terms for the features are all on flat rentals.

The COURT. Did you offer F–9?

Mr. WRIGHT. I don't believe I did. I was going to offer it with this one. Both of them over the '38–39 season.

The COURT. All right.

Mr. WRIGHT. This agreement has the same provision as the others about playing out of order of release and paying the total commitment quarterly, and similar allocations privileges and break-down provisions for incorporating individual contracts. Attached to this we have a sample form executed pursuant to that agreement, which is marked F–10–E on the front and F on the back, which is for Roswell, New Mexico, and contains no admission price restrictions. Now, then, we will offer the complete set of
658 standard forms that have been assembled. F–96–1 through 19, inclusive.

The COURT. Is that F–11?

Mr. WRIGHT. That is F–96, 1 to 19, inclusive which covers all the standard forms involved. That, I think, completes the Fox offer.

The COURT. You didn't offer F–9?

Mr. WRIGHT. No. F–9 wasn't offered. The next Company is Loew's. This entire stack here should all be marked as admitted, physically.

The COURT. Let's see it begins there, with P–3, 4, 5, 6, 7, 8, 46, 42, 43, 44, 11, 45, 46, 67; Fox F, 2, 3, 4, 5. 7, 8, 10, 96, are all admitted in evidence.

Mr. WRIGHT. Now the Loew agreements begin with the five-year franchise marked L–1–A to D, which is a memorandum agreement dated May 8, 1930.

Mr. COCHRAN. What is the number?

Mr. WRIGHT. L–1–A to D. The memorandum is signed on behalf of Consolidated Theaters, Inc., and Griffith

Amusement Company and Walmur Amusement Company by R. E. Griffith, and by Metro-Goldwyn-Mayer Distributing Corporation by a signature that I cannot make out. Do you know who that is?

Mr. COCHRAN. W. J. Zoellner (spelling) Z-o-e-l-l-n-e-r.

Mr. WRIGHT. The first paragraph simply sets
659 forth, this is headed details of agreement for a five-year franchise beginning with the 1931-32 season, and paragraph 1 sets forth the towns in Oklahoma and Texas, that it covers. It specifies second run in Enid.

Mr. COCHRAN. You stated it details that franchise beginning with the '31–32 season, when it is '30–31.

Mr. WRIGHT. What's that?

Mr. COCHRAN. The franchise begins with '30-31 instead of '31-32.

Mr. WRIGHT. I think you misunderstood me, I mean '30–31.

Mr. COCHRAN. What did you get, Mr. Reporter?

(Previous statement read by the reporter.)

Mr. WRIGHT. It should be '30-31. And the second run downtown or third run city in Oklahoma City based upon 52 features, for which there is a guaranteed film rental of $125,000 for such year; for the next year the guarantee is an increase of 10%, and then 5% for each year thereafter. The product to be paid for on a weekly basis. The exhibitors have the right to eliminate not to exceed five pictures each year from the total of 52, and for each such picture eliminated the distributor receives one-half of the average film rental allocated against the picture.
660 The exhibitor must elect to eliminate within 90 days after the nationally advertised release date. Then there is a provision for sharing, which reads as follows: "The distributor agrees that the exhibitor is to have his operating overhead plus a profit of 70% of the guaranteed film rental paid to the distributor after which time the grosses in excess of those amounts to be divided equally, 50% to the exhibitor and 50% to the distributor." The agreement is thus simply a profiteering agreement where, after the exhibitor has received a certain amount of net profit in showing the films, then the excess profits are split between the distributor and the exhibitor. Then there is a provision that in computing exhibitor's home office operating expense, it is agreed that this item shall not exceed an average of 4% of the grosses during the five years. In this connection we will offer the agreements which show that these affiliated situations which were receiving the benefit of this group licensing paid 4% of the gross to one of the defendant companies for that

privilege, and that is charged as an expense. It is agreed that there should be a proportionate reduction in the event that less than 52 features are released, and then the distributor has the privilege of auditing the exhibitor's books so that the expense figures can be established, if necessary to compute that profit sharing film rental,
661 if any. Then, there are detailed auditing provisions.

Paragraph 12 provides that if certain towns are disposed of during the life of the franchise the exhibitor is liable for the total amount of the revenue allocated as film rentals against that town or towns for the ensuing year.

In 13 it provides that in the event the exhibitor acquires any additional town or towns, it is mutually agreed that those can be added to the franchise agreement and it is understood between the exhibitor and distributor that the rental for those additional towns are to be agreed upon, the total amount of the rental involved in an added town is to be added to the guaranteed price, the guaranteed film rental, and it is understood that the agreements covering the features and shorts in all situations for which the franchise is being made will apply to the additional situations acquired.

Mr. COCHRAN. To the additional situations acquired if it is agreed that they shall be added.

Mr. WRIGHT. I read the entire thing. The short product is then covered, and the number of days the product may be exhibited, the features and shorts, is one to four days in certain listed towns, and two to five days in certain other listed towns and for additional days the exhibitor is to pay an additional pro rata rental. Then this fran-
662 chise was modified by a series of amendments, the first of which is dated April 20, 1933, and is in the form of a letter from Conners of the distributor to L. C. Griffith and signed by Conners and Griffith.

The COURT. What is that number?

Mr. WRIGHT. The number on that is L–1, C and D. In order to have these chronologically I ought to first offer L–1–G, which is, I believe, the first amendment in point of time; that is dated October 20, 1932, and is a letter agreement from Conners to R. E. and L. C. Griffith signed by L. C. Griffith and Conners. This provides for certain reductions in certain towns and the elimination of certain towns from the franchise. Then the agreement I have previously described, marked L–1–C was made on April 20, 1933, which provides for certain modifications of rental terms, changing the profit sharing arrangement to straight

gross percentages of the gross receipts in certain situations for certain pictures and modifying the elimination privileges, and it has the provision requiring the playing of the films in the order of national release, and then there is some provisions for reductions on short subjects.

The next modification is L–2–A through C, which is a letter agreement dated September 12, 1934, and signed by Conners and R. E. Griffith; and it sets forth the understanding for change of terms in respect to the '33–
663 34 and the '34–35 product. Those are the last two years of the five-year deal.

Then it again provides for the payment of percentages of the gross receipts, instead of profit sharing, and an elimination of certain pictures from each percentage bracket. It again provides that the feature pictures are to be played in all situations in the order of territorial release, this time. The other referred to national release. And the playing arrangement is specified to be a proportionate share of the playing time in each situation. For example, if there are three changes a week in a situation, one-third of the product to be played on each change, it being understood as a minimum that we are to have thirty per cent of our product played on week-ends, including either a Saturday or a Sunday showing. By thirty per cent pictures it refers to those on which the rental was thirty per cent of the gross.

Mr. COCHRAN. You omitted the first part of that.

Mr. WRIGHT. Which?

Mr. COCHRAN. No. 2, the elimination part, right at the bottom of the page.

Mr. WRIGHT. Page what?

Mr. COCHRAN. The first page, in the last paragraph on the page.

Mr. WRIGHT. I mentioned that there were certain
664 elimination privileges. I didn't undertake to recite them in detail.

Mr. COCHRAN. Proceed.

Mr. WRIGHT. Then there is a section similar to the one dealing with the 1934–35 product. The provisions I just read dealt with the '33–34 product. And then there is a provision that the eliminations there provided are in lieu of any privilege of elimination under the code of fair competition for the motion picture industry or otherwise.

The final paragraph provides that a regular form of contract is to be signed in this case for each theater covered. The others are for each situation or town. And the sample form that has been attached here is marked L–2–D on the

face and E on the back, and is a contract for first run at the McSwain-Ritz Theaters at Ada, Oklahoma.

The COURT. What letter is that?

Mr. WRIGHT. That relates to the letter agreement of September 12, 1934.

The COURT. L–2–A to Z?

Mr. WRIGHT. L–2–A to Z. That agreement provides for the making of individual license agreements for the '34–35 season for each theater covered, and this is a sample. This contains the individual rental terms and restates
665 the provision that features are to be played in the order of territorial release, and also contains admission price restrictions; the evening adult prices specified are 25 cents at the McSwain, and 15 cents at the Ritz. That I think, completes the modifications of the franchise.

L–2–A to Z, L–2–D and E, are offered in evidence. I am offering all of L–1–A and B, L–1–G, L–1–C and D, L–2–A, through E, inclusive. Is there any objection?

Mr. COCHRAN. No objection.

The COURT. They will be admitted.

Mr. WRIGHT. The next agreement is one dated September 12, 1934, the same date of the modification, the last modification of the franchise, and is a letter between—signed by Conners and R. E. Griffith, marked L–3–A to C, inclusive. This reads as follows: "The following sets forth our understanding of the terms for each of your non-franchise situations as per list attached in respect to the '34–35 features and short product." The last prior exhibit covered the modifications of the franchise situation for '34–35 product. Then it sets forth the provisions for playing features on percentage terms and according to various franchises ranging from 35% down to 20% of the gross, and there is a guaranteed rental of $20,000 for the franchise and non-franchise situations. If the percentage on these two pictures for which there is a guar-
666 anteed rental of $20,000, the two pictures are licensed at 35% of the gross, and there is a $20,000 rental guarantee, and if the percentage exceeds the $20,000 guarantee, the balance of the receipts are to be shared 50–50. The others are a straight percentage agreement.

667 This again provides that the pictures are to be played in the order of territorial release, and has the same provisions for the proportionate Saturday and Sunday playing time, and then also provides that individual contracts for each theater and situation are to be signed on the regular form contract. Exhibit C leases the so-called non-franchise situations, which are ten towns in Oklahoma and New Mexico, and of course, this covers the

same season as the last exhibit there, and we haven't added any additional standard form. The form that would apply to this L–3, A to C, inclusive, is the one that is designated as L–2, D and E.

The COURT. D and E are contracts?

Mr. WRIGHT. Yes, the individual theater contracts. Then the document marked L–4, A to H, inclusive, is a letter agreement with attachments, signed by Mr. T. J. Connor of Loew and R. E. Griffith for the Griffith Amusement Company and Consolidated Theaters, R. E. Griffith Theaters, Inc., and their affiliated companies.

Mr. COCHRAN. E and F are not included in the situation.

Mr. WRIGHT. Perhaps we had just better offer A through D first then, and describe that.

The COURT. What is the date of that?

Mr. WRIGHT. That is dated August 27, 1935, and
668 covers the 1935–36 features and shorts.

The COURT. You are offering A and L?

Mr. COCHRAN. A to D.

Mr. WRIGHT. The agreement provides for general rental of shorts and features of $168,000 and in addition, $5000 is paid for first run exhibitions, in the 51 listed situations in the schedule marked A and for second and subsequent run in the 13 situations listed in the schedule marked B, and the individual allocations for the feature product are shown on the work sheets, and this agreement provides for the first time in the Loew series that the exhibitor is permitted to play the product out of order of release, but guarantees to "completely exhibit or pay in full for each feature and for each one and two reel production not later than 13 weeks after schedules release date, and for news and trailers as billed."

It also provides for the execution of individual contracts on the regular printed form, in this case for each situation or each theater, and there is to be no elimination privilege.

Unreleased pictures that are not designated in the work sheet by title or by personalities and allocated at a $900 or $1,200 rental are to come equally from each such allocation. Foreign pictures are excluded, and then the schedules are attached including the Griffith Amuse-
669 ment Company situation, the Consolidated Theaters situation, R. E. Griffith Theaters, Inc., and a number of so-called affiliated situations.

Schedule B provides for second and subsequent run, and second run and 11 named and 6 second run in Oklahoma City, 30 features, 30 two-reel shorts, 30 one-reelers to be selected, the same number of days as at present. I take it there is no objection to A through D.

Mr. COCHRAN. No objection.

Mr. WRIGHT. Then L-4, I and J is a sample of 1935-36 feature printed form agreement which was provided for in the document just introduced as to each situation. This contains the minimum price restrictions of 10 cents for children, 15 cents for adults, matinee and evening.

L-5-A to D inclusive, is a letter agreement from Connor to R. E. Griffith and to Horace Falls signed by R. E. Griffith and dated September 22, 1936. This covers the 1936-37 season and provides for the cancellation of unreleased '35-36 product, and is included in this agreement for release during this period. The prices to be paid are different flat rentals in various classifications, $12000 each for the top four, running down to $1100 for the bottom 11, and the total amount of the deal is $198,450. The exhibitor is to pay for the feature product as exhibited
670 but has to play it in order of release and guarantees to completely exhibit it or pay in full for each feature not later than 17 weeks after scheduled general release date and for news and trailers as billed. It also provides for the signing of individual contracts for each situation on the regular printed form. Clearance to be the same as for the 1935-36 season. Then the exceptions covered are outlined on the schedules, pages C and D, for the first run; news service on E; trailers on page F and second and subsequent runs are played on page G where second run is licensed in eleven towns in Oklahoma and Texas, 72 subsequent runs in Oklahoma City. That covers 30 features and 90 releases of shorts; film rentals for the above to be included in the first run film rentals with the exception of the two Oklahoma City subsequent runs, which rentals have been allocated.

Then H is an unsigned recapitulation which shows a total of $231,000; for the feature deal alone the total is $198,000.

Mr. COCHRAN. We object to that document, because the latter part of the contract is not signed by the defendants.

The COURT. It will be admitted.

Mr. KIME. It is stipulated.

Mr. COCHRAN. If it is stipulated the objection will be withdrawn.

671 Mr. WRIGHT. I is an agreement dated September 23, 1936, signed by R. E. Griffith and Connor for Metro in which an agreement was made with respect to the various films licensed shall be allocated in the rental bracket, four are to be $12,000; six at $7500; six at $56,000; seven at $4000, with the provision that these are to correspond with the distributors national allocation, and the last provision provides that the seven designated at $4000 each are to be

designated at this price only if they are delivered nationally as 25 per cent pictures. That is, if Loew would charge nationally 25 per cent of the gross receipts. This arrangement does not apply to "Piccadilly Jim" and "His Brother's Wife." Then the attached is a sample form for the 1936–37 season marked L–5, J and K, and this sample form contains no minimum admission price restrictions.

(Hereupon court adjourned until 10 o'clock a. m., May 11,.1945.)

672 PROCEEDINGS

May 11, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. KIME. If the Court please, continuing the offering of exhibits from the Metro stipulation, L–6, A to L, which has been stipulated, and I and J, which have not been stipulated but will be offered because it is a part of the same contract.

This is a contract between the Griffith Amusement Company, Consolidated Theaters, Incorporated, R. E. Griffith Theaters, Inc., and other affiliated interests and Loew's Incorporated, dated August 25, 1937, providing among other things that it covers first run exhibits for the 1937–38 theater product generally released by Loew's, and provides that it shall consist of not less than 44 or more than 52 features, the runs and number of exhibition dates are shown on the attached schedule including second and subsequent runs. The total amount of the contract as figured at that time was $232,587. It provides the distributor shall have the privilege of designated rental classifications that shall apply to each picture on a national basis, and that the exhibitor shall have the privilege of eliminating 10 per cent of the total number of feature productions released, and those eliminations shall be made equally between certain
673 classifications. Also the exhibitors to pay for feature product as exhibited and permitted to play said feature product out of order of release, and guarantees to completely exhaust or pay for any C–1 feature production not later than 17 weeks after national release date. The exhibitor to sign individual contract for each situation on Loew's standard forms and the clearance to be the same as obtained during the preceding season. Signed by T. J. Connor on behalf of Loew's and R. E. Griffith on behalf of all the exhibitors.

674 Page C of that number provides for second and subsequent runs in twelve situations in Oklahoma City; it provides the film rentals for the above runs are included in the first run film rentals with the exception of the two subsequent runs in Oklahoma City against which rentals have been allocated.

Page G provides for the term of the run in each location, and provides the play time for the top four may be increased not to exceed two days, which would be six days if the exhibitor so desired, and the next sixteen may be increased one day, which would mean that the exhibitor could exhibit it for five days, if he so desired. The recapitulation show that the total is $265,540.50, instead of $232,587.00 as estimated in the main portion of the contract.

Mr. COCHRAN. What page is that you are referring to?

Mr. KIME. Page H. Pages I and J have not been stipulated, but clearly show that it is the allocation I mentioned in the contract and we offer that, plus K and L, which is the individual situation contract which, in this instance, is for the town of Ada, and does not fix any admission prices but provides that the exhibitor has the privilege of prevue of any of the above subjects.

Mr. COCHRAN. Those that you said had not been agreed to?

675 Mr. KIME. I and J.

Mr. COCHRAN. Let's see what you have there (referring to exhibit).

Mr. KIME. For four A pictures as provided on page A of the contract.

Mr. COCHRAN. Was that attached to the contract and filed?

Mr. KIME. That I cannot say. I didn't take it from the files, but it clearly keys in and is no doubt the allocations provided in the contract.

Mr. COCHRAN. Inasmuch as this shows that it is not an allocation sheet but shows that it is an office work sheet, we make no objection.

The COURT. It may be admitted.

Mr. KIME. The next one is L–7, A to H inclusive.

Mr. COCHRAN. Just a moment, do you intend to offer the standard contract?

Mr. KIME. I did, I included that.

Mr. COCHRAN. What are those numbers?

Mr. KIME. In that one I think it was K and L. (Referring to Exhibit), that's right. All of which has been stipulated except page G, which I will detach. This is a contract between R. E. Griffith Theaters, Inc., Westex Theaters, Inc., signed by R. E. Griffith.

Mr. COCHRAN. Wait just a minute, I still haven't

676 gotten that standard form of contract.

Mr. KIME. Excuse me.

Mr. COCHRAN. On these matters, your Honor, that were

not included, in the original stipulation, I don't have them marked.

Mr. KIME. Dated August 25.

Mr. COCHRAN. L-6?

Mr. KIME. L-6-K on the front and marked L-6-7 on the back.

Mr. COCHRAN. All right.

Mr. KIME. This is dated September 9, 1938, and provides, among other things, that it is for first run exhibition of the '38-39 season's product for not less than 44 nor more than 52 features.

Mr. COCHRAN. Did you say with whom that was?

Mr. KIME. Yes, sir, I did.

Mr. COCHRAN. All right.

Mr. KIME. And that the exhibitor agrees to exhibit in the situations for the number of days shown on the attached schedule A, for a total amount as here estimated of $69,026, distributor to have the privilege of designating the rental classifications which shall apply to those pictures released on a national basis and exhibitor has the privilege of eliminating 10% of the feature productions, the eliminations to be made equally between two classifications, the ex-
677 hibitor to pay for the feature production as exhibited, but is permitted to play such feature production out of order of release and guarantees to complete exhibit or pay in full for each feature production not later than seven weeks after national release date, clearance to be the same as provided in the last contract. The exhibitor is to sign each individual contract for each situation on Loew's printed form. It is understood this agreement and the conditions of printed forms shall constitute the agreement. The recapitulation shows $81,696.96 instead of the $6926.00 on page A. Page D of this exhibit shows the situations and the theaters and the runs, as does E, which also provides that the exhibitor has the right to play the four top pictures for two additional days which gives him the right to, in some instances, play them five days in succession, and one additional day on the minors, which means four days spread.

Page H is the allocation. Page I is the individual situation contract for the town of Roswell, New Mexico, dated 10-6-38 and provides a minimum——

Mr. COCHRAN. As to H, we object to the admission of that for the reason it is not stipulated. You didn't mention G, did you?

Mr. KIME. No, I didn't mention G because it is not stipulated. I thought H was stipulated.

678 Mr. COCHRAN. No, H was not stipulated.

Mr. KIME. You are right. It was not stipulated. Let's see what it is. I submit, your Honor, these allocations as made from the contract and the page itself, show there were four feature productions allocated to the towns as shown on pages D and E of the exhibit, and that eight productions, four series of eight productions, one of ten shown on (A) and one of six, and the totals shown on that.

We offer L–7, A to F, H, I and J.

Mr. COCHRAN. We object to the offer as a whole for the reason that some of them are stipulated and others are not.

The COURT. All are stipulated except H?

Mr. KIME. All are stipulated except H.

Mr. COCHRAN. There is no I in that stipulation.

Mr. KIME. I is the individual stipulated contract for the town of Roswell, New Mexico, dated 10–6–38, providing minimum admission prices shall be 10 and 15 cents and a prevue privilege of features and junior features.

Mr. COCHRAN. November 4, 1938?

Mr. KIME. That is when it was approved.

Mr. COCHRAN. That is the L–7?

Mr. KIME. L–7, I, and the back is J.

The COURT. Objection overruled, exception allowed. Let it be admitted.

679 Mr. KIME. The next one is designated as L–8, A to N. The stipulation covers all except I, J, K, and L, which I will eliminate, leaving A to H, inclusive, and M and N, which is the individual situation contract, dated November 17, 1938, for Ada, Oklahoma. The individual situation contract is dated November 17, 1938. The main contract is dated October 15, 1938, signed on behalf of the Griffith Amusement Company, Consolidated Theaters', Inc., and affiliated theaters by H. R. Falls and bearing the initials of T. J. C., for T. J. Connors of Loew's, Incorporated. This provides among other things that it is for the first run exhibition of the 1938-39 season feature product released by Loew's, except "Gone With The Wind." The runs and number of exhibition days are shown on the attached schedule, including second and subsequent runs for a total of there estimated $174,880, the recapitulation showing a total of $201,759.00, as shown on page C. It provides the distributors will have the privilege of designating classifications that shall apply to each picture on a national basis. The exhibitor has the privilege of eliminating the 10 per cent of feature production, the exhibitor to pay for feature productions as exhibited, and to play it out of order of release and to pay for it in full not later then seventeen weeks after national release date, the exhibitor signing individual contracts. The clearance to

680 be the same as preceding season, which was the same as the two preceding ones as per the last three contracts.

Page D is the subsequent run sheet referred to in the main portion of the contract and provides 13 second run situations, in addition to Oklahoma City, and provides film rentals for the above runs are included in the first run film rentals, with the exception of Oklahoma City.

Page E sets out the towns and runs and provides that play time may be increased two days on the top four and one day on the next sixteen, which increases it to five days in succession on the top four pictures if the exhibitor so desires.

We offer this Exhibit A to H and M and N.

Mr. COCHRAN. What is that date?

Mr. KIME. The date of the contract is November 17, 1938, and approved by Loew's on December 9, 1938. It does not provide any minimum admission charge, although that gives the right of prevue.

Mr. COCHRAN. What is that next document, October 28? Is that L and A, M on the front and N on the back?

Mr. KIME. That is right. We have the standard forms identified as L–129, one to 19 inclusive, and these have been stipulated, if your Honor please.

Mr. COCHRAN. No objection.

681 The COURT. They will be admitted.

Mr. KIME. The next is the Warner series. These all have been stipulated and are W–3; A to M, inclusive; W–4, A to D inclusive; W–5, B and C.

Mr. COCHRAN. Well, I would rather we take these up separately.

Mr. KIME. I thought I would dispose of the stipulation at one time. I will take them up separately if you desire.

The first one is W–3, A to M, contract dated September 28, 1933, between Griffith Amusement Company, Consolidated Theaters, Inc., R. E. Griffith Theaters, Inc., and Allied Theaters. All of these Warner contracts are in the same one except W–4, which has an additional paragraph thrown in. I had planned to refer to these as a series——

The COURT. Suppose you go over the first one and it will not be necessary to go over the others.

Mr. KIME. All right. This first contract, W–3, provides that it is for all the production of Warner for first and second run, and contains the provision that new towns as acquired may be serviced——

Mr. COCHRAN. We object to the statement it is first and second run. It is not for feature product first and second

run. It specifically shows first and second runs are listed in the schedule.

682 Mr. KIME. "This will constitute the agreement between you and the undersigned in respect to the matters covered herein:

"We hereby grant you and you hereby accept a license and agree to exhibit all Warner Brothers and First National feature motion pictures, excluding 'foreign made' pictures and 'Gold Diggers of 1933,' the scores and trailers in connection with each thereof and all Vitaphone short subjects released for such motion picture season 1933–34 by us."

Mr. COCHRAN. For the specified run or runs set opposite each said town in schedule A, and schedule A is attached, and it shows the towns second run.

Mr. KIME. That doesn't follow. "You will exhibit each motion picture, short subject and trailer in each of the towns listed on the schedule attached hereto, and made a part hereof and marked schedule A, at the respective theaters for the number of days and for the specified run or runs set opposite each town."

Mr. COCHRAN. I submit, when you file schedule A and it shows Ada, Oklahoma, first run, one to three days, and Bartlesville, Oklahoma, first and second run one to four days, that means it is first run in the town where it is listed as first run, and second run in the town where it is listed as second run.

683 The COURT. I think, gentlemen——

Mr. COCHRAN (interrupting): I just wanted to call your attention to that.

The COURT. The Court will examine them.

Mr. KIME. The statement I made, your Honor please, was that this covered all of the feature releases except "Gold Diggers", I didn't include that, and that, I submit is exactly what the contract provides.

The second paragraph in this contract, and generally throughout this series, provides that the film rental shall be paid $100,000.16, to be paid in equal weekly installments of whatever proportion it bears.

Paragraph 1-B of this exhibit provides that should there be release of less than 52 pictures, then there shall be a reduction in the mathematical formula therein set out.

Paragraph 3 provides that they shall commence the exhibition of each motion picture, short, trailer and so forth on the dates determined as follows, and then they set out a formula: that they shall notify the exhibitor in writing from time to time as they become available, and such available dates may be different for different towns, "and thereafter

you agree to give us reasonable notice of the date you want to play, subject to the terms of prior runs and clear-
684 ances heretofore or hereafter granted to other exhibitors", and they agree to make each motion picture available, one-third or more, if possible, of the towns served out of each exchange within a period of thirty days, the next one-third in sixty days and the last one-third in ninety days.

Paragraph 4 of this contract, and all of the series except W–4, provides that they shall have the right to prevue each picture.

Paragraph 5 provides that they agree to play all of the pictures licensed first run prior to December 15, 1934, made available, and all second runs prior to February 15, 1935, and none after those dates.

"You agree not to exhibit any motion picture licensed hereunder as part of a double feature."

That is signed for Vitagraph Incorporated by Sears, and for Griffith Amusement Company and Consolidated by Falls, and R. H. Griffith by R. E. Griffith, and for the others by Falls and Griffith.

Schedule A sets out the towns, and theaters, the runs, and the period.

Page F is the first page of the standard form; on page C is a contract dated August 24, 1933, between Griffith——

Mr. COCHRAN. Can't we get the standard form for that particular season?

Mr. KIME. I propose to offer all of the standard
685 forms as stipulated at the conclusion, but I can offer them now.

Mr. COCHRAN. It doesn't make any difference just so we can have time to identify them.

Mr. KIME. I will give you the form number, it is 90–W, July 1933, FR–25,000.

Mr. COCHRAN. How do you have it designated, W what? 60 what?

Mr. KIME. W–3–F is marked on the face of Exhibit A, bearing the initials——

Mr. COCHRAN. That is the first sheet.

Mr. KIME. Bearing the initials REG, HRF, and something else.

Mr. COCHRAN. That is the first page, the first sheet of the contract, but that is not the complete standard form for the season 1933–34.

Mr. Kime. I never suggested it was; I said it was the first sheet.

Mr. COCHRAN. I was asking about the complete form. If you don't care to introduce it now, we can take it up later.

Mr. KIME. We don't have the complete form. We agreed to substitute a standard form.

Mr. COCHRAN. That is what I am asking for, the standard form for that particular season. I seem to
686 have difficulty making myself understood.

Mr. KIME. Your Honor please, I will offer what has been designated as W–60, 1 to 11, being all of the standard forms referred to in any of these exhibits, and the one Judge Cochran is now inquiring about in this series is W–60–1.

Mr. COCHRAN. Go ahead.

Mr. KIME. The next contract in this series is one dated August 24, 1933, between Griffith Amusement Company, Consolidated Company, R. E. Griffith and affiliated interests, signed by R. E. Griffith for all of those named and by Sears for Vitagraph, and provides for the picture "Gold Diggers".

The COURT. What page is that?

Mr. KIME. That is G.

The COURT. That is a part of W–3?

Mr. KIME. Yes, your Honor, G, H, I, J, and L, of that series, L being the first page of the standard form of that same year, which is exactly the same as the standard form on F.

And a further amendment of the contract, dated October 11th, between the same parties, relating to "Gold Diggers" in additional towns.

Mr. COCHRAN. What page is that?

Mr. KIME. M and N, of W–3, and that concludes
687 W–3. That is signed on behalf of the exhibitors by Falls and there is no signature for Vitagraph, but we have been informed that it was exhibited, and we have so agreed, your Honor please. We offer that.

Mr. COCHRAN. No objection.

The COURT. Admitted.

Mr. KIME. Exhibit W–4 is the only one of this series that contains the additional paragraph data.

The COURT. That is A to G?

Mr. KIME. W–4 A to G, inclusive.

The COURT. And the date.

Mr. KIME. And the date is September 4, 1934, between Griffith Amusement Company, Consolidated, R. E. Griffith and affiliated interests, signed by R. E. Griffith for all of the affiliated interests and his own companies, and by Mr. Sears for Vitagraph.

Paragraph 1 of this contract is very similar, if not exactly the same as, and I won't say it is exactly the same,

but is in content. It says: "We hereby grant you and you hereby accept a license and agree to exhibit all Warner Bros. and First National feature motion pictures, excluding foreign made pictures, the scores and trailers in connection with each thereof, and all Vitaphone short subjects released for the motion picture season 1934-35 by us.

688 You will exhibit each motion picture short subject and trailer in each of the towns listed on the schedule attached hereto, made a part hereof and marked schedule A at the respective theaters, for the number of days and for the specified run or runs set opposite each town. You will pay us film rental in the amounts of $110,000.28, at certain specified times, for certain mathematical installments of that total amount.

Paragraph 1–B provides: "In addition to the total sum mentioned in subdivision A of this paragraph, you agree to pay us, on or before the 31st day of March, 1936, 50% of the aggregate gross box office and all of the receipts representing admissions derived in all theaters during the exhibition of the feature motion pictures licensed hereunder, after deducting only the following items, applicable to the theaters in which such motion pictures were exhibited, for the number of days during such exhibition took place:

"1. Admission taxes imposed by governmental authority.

"2. Actual rent payable to persons or corporations unaffiliated with you.

"3. Interest on mortgages, if any.

"4. Taxes other than income profit taxes, insurance, license fees, and other governmental or municipal charges.

689 "5. Depreciation and/or amortization of the basis reported by you in your federal income tax report.

"6. Actual operating expenses.

"7. An amount equal to the sum mentioned in subdivision A of this paragraph, minus all deductions under subdivision C of this paragraph, if any.

"8. A sum equal to 50% of the amount defined in subdivision 7 of this paragraph 2 (B).

"9. Fair allowance for home office expense, allocated on the basis of gross box office and other receipts."

On page C, "should there be released for the motion picture season 1934–35 less than a total of 52 Warner Bros. pictures then there shall be deducted the same mathematical formula as obtains in all of these Warner series.

"3. You agree to deliver to us, on or before the 15th day of March 1936, a statement, certified to as correct by a

duly authorized officer, showing, with respect to all theaters in which the feature motion pictures licensed hereunder were exhibited during the period of their exhibition.

"A. The gross box office and all receipts representing admissions derived at all such theaters from the exhibition of the feature motion pictures licensed hereunder and

690 "And (b) the amount paid or allowed for each of the deductible items listed in subdivision b of paragraph hereof for all theaters in which such motion pictures licensed hereunder were exhibited for the period of their exhibition.

"We shall have the right for a period of three months after the 31st day of March, 1936, to inspect and audit all your books and records, pertaining to and affecting the exhibition of the motion pictures licensed hereunder, and the theaters in which said exhibition takes place."

Then follows, paragraph 4, which is similar to paragraph marked 3 in all of the other contracts of this Warner series. Now, if your Honor cares to have me do so, I will read those.

The COURT. It is not necessary at all.

Mr. KIME. Now, what has been designated at W-9, A to E, is a contract for one picture, known as "Border Town", dated January 27, 1938, between Griffith Amusement Company, Consolidated and Westex, R. E. Griffith and affiliated theaters.

Mr. COCHRAN. 1938?

Mr. KIME. January 27, 1938.

Mr. COCHRAN. Aren't you out of order on that? The last one was '34-35?

Mr. KIME. W-4, A to G, inclusive, is a contract

691 dated September 4, 1934.

Mr. COCHRAN. That is the one you have just gone over.

Mr. KIME. We offer in evidence W-4.

Mr. COCHRAN. No objection.

The COURT. Admitted.

Mr. KIME. W-5 is a contract, two contracts, for three pictures, the first contract is on page B of that exhibit dated May 14, 1935, and is a letter to Vitagraph signed by R. E. Griffith for the picture "Forty-Second Street". It says, "I hereby agree to use 'Forty-Second Street' in the following towns at a price of $12.50 per town with a score charge of $2.50. This agreement is subject to your standard exhibition form of contract." And it lists the towns of Blackwell, Berger, Duncan, Enid, Guthrie, Hobart, Stillwater, Altus, Oklahoma City twice, Miami and Ada.

The next contract is dated the same date, page C of that exhibit, for the pictures "Public Enemy" and "Smart Money". It is likewise a letter addressed to Vitagraph, signed by R. E. Griffith, whereby they agree to exhibit that picture for $10 with a score charge of $2.50, subject to the standard exhibition form contract, in a series of towns, and opposite the town of Hobart is a question mark, which may appear in some of the testimony of one of the later witnesses.

692 We offer in evidence W-5, B and C.

Mr. COCHRAN. No objection.

Mr. KIME. W-6 is a contract, this is A to G, a contract dated August 15, 1935, between Griffith Amusement Company, Consolidated, R. E. Griffith and affiliated interests, signed by R. E. Griffith, for all of the exhibitors, and Sears for Vitagraph.

693 The COURT. What is that date again, please?

Mr. KIME. August 15, 1935. This has the same provisions as W-3. With your Honor's permission I will not read it.

The COURT. You need not. I think you have identified them properly.

Mr. KIME. We offer Exhibit W-6.

The COURT. It is admitted.

Mr. KIME. W-7, A to F, inclusive is a contract dated September 1, 1936, between——

Mr. COCHRAN. Just a minute. You are offering W-6, A, B, C and D?

Mr. KIME. No.

Mr. COCHRAN. That is what you described.

Mr. KIME. No, I did not describe A. I took A out at the outset and told you I would not offer that. I took A out of 5. Six is offered, A to G, inclusive.

Mr. COCHRAN. No objection.

Mr. KIME. W-7, A to F. which has been stipulated in toto, is the contract dated September 1, 1936, between the Griffith Amusement Company, Consolidated Theaters, R. E. Griffith, Westex and affiliated interests signed by Griffith for all the exhibitors and Sears for Vitagraph, and contains the same provisions as I enumerated relative to W-3 and 6. I offer W-7, A to F inclusive.

694 Mr. COCHRAN. No objection.

Mr. KIME. W-8, A to I inclusive, which has been stipulated in toto, is a contract dated September 8, 1937 between Griffith, Consolidated, R. E. Griffith, Westex and affiliated interests, and signed by Griffith for all of the exhibitors and Sears for Vitagraph, to which is attached the first page of the standard form, marked page G, the

form G. W. F. 37–38 and page H of this is an amendment to the contract which is described provides that:

"This will further amend the agreement between you and us dated September 8, 1937, licensing the exhibition of the features, the scores and trailers in connection therewith, and the Vitaphone short subjects released by us for the motion picture season 1937–38 in the theaters and towns specified in the aforesaid agreement as follows:"

And it modifies the agreement to be paid for film rentals on page H and that, except as otherwise specifically provided are the terms and conditions of the aforesaid agreement to remain in full force and effect.

I offer in evidence Plaintiff's Exhibit W–8, A to I inclusive.

Mr. COCHRAN. No objection.

Mr. KIMR. W–9, A to E, as they have stipulated, is the contract of January 27, 1938, between the Griffith Amusement Company, Consolidated Theaters, Westex and
695 R. E. Griffith Theaters and Vitagraph, Inc., signed by G. W. Sears, per (somebody) and agreed to for the exhibitors by H. R. Falls.

By the COURT:

Q. What is the date of that?

Mr. KIMR. The date is January 27, 1938. This is for one picture, 'Border Town" for the sum of $1000 in the situations set out on page D, which is schedule A of that contract.

Mr. COCHRAN. No objection.

Mr. KIMR. Exhibit W–10 is an instrument dated January 13, 1938, between Griffith Amusement Company, Consolidated, R. E. Griffith, Westex, and affiliated interests signed by Falls for the exhibitors and says:

"This will further amend the agreement between you and us dated September 8, 1937, licensing the exhibition of the features, the scores and trailers in connection therewith and the Vitaphone short subjects released by us for the motion picture season 1937–39 in the theaters and towns specified in the aforesaid agreement, as follows:

"1. There shall be excluded from the license granted under the aforesaid agreement for exhibition, second run, at the theaters specified in the town of Shawnee, Oklahoma, the features released by us for the motion picture season 1937–38 bearing the following release numbers:"

And certain short subjects, and I think that is all
696 of the vital provisions of that. I offer Exhibit W–10, A and B, which have been stipulated.

Mr. COCHRAN. No objections.

Mr. KIMR. W–11 A to E, is a stipulated contract dated August 22, 1938, between the Griffith Amusement Company,

Consolidated, and Westex Theaters, signed by H. R. Falls for all of the exhibitors, and for Vitagraph by the same man or person who signed the preceding contract, whose name I cannot distinguish. This contains the same provisions as all of the preceding contracts except for individual films and W–4 as heretofore explained.

Mr. COCHRAN. The same as W–4 or W–3? You have been referring to W–3.

Mr. KIME. The same as W–3. This is not the same as 4. I offer Exhibit W–11, A to E inclusive.

Exhibit W–12, which is the last of the Warner series is identified, A to E inclusive, which has been stipulated in toto is a contract dated September 14, 1938, between R. E. Griffith Theaters, Westex, and the Long Griffith Theaters signed by R. E. Griffith for exhibitors and Vitagraph by Sears, and contains in general the same provisions as W–3 and all the others except the individuals and W–4. I offer Exhibit W–12, A to E, inclusive.

The COURT. It will be admitted.

Mr. KIME. The next one is the Columbia and first I will offer the forms which have been designated C–27–1
697 to C–27–21, which are the forms referred to in the contract.

The COURT. Both are standard forms?

Mr. KIME. Yes, referred to in contracts which I will offer, C–1, A to F, which has been stipulated in toto is a contract entered into the 8th day of August, 1933, between Columbia Pictures and Griffith Amusement Company for the towns set out in the opening paragraph and for certain affiliated corporations in the town in which they exhibit.

Paragraph 1 of this agreement, or the first paragraph after the opening paragraph of the subsequent agreements provide: "It is understood and agreed by and between Columbia Pictures Corporation and the above corporations that the output of Columbia Pictures to be released during the season of 1933–34 shall be exhibited in the above named theaters or paid for under the following arrangement. The exhibitor agrees to pay the distributor as a minimum commitment not less than $33,000 for pictures to be played and paid for in the following theaters within the period from September 1, 1933 to December 31, 1934, on terms listed as to each individual theater, and they are set out, the run of each situation and the amount that was to be paid for the specials and features and westerns and two-reelers and one-reelers and also provides second run in six situations. The standard form is made a part
698 of the contract and is attached hereto, one page of which, I should say, and is marked pages E and F. I offer in evidence C–1, A to F, inclusive.

Mr. COCHRAN. No objection.

Mr. KIME. C–2, A to D, inclusive, is stipulated in toto and is a contract dated August 8, 1933, the same date as the preceding one between Columbia and R. E. Griffith Theaters and Westland Theaters. Paragraph 1 is very similar to the paragraph of C–1 and provides they shall take the output of Columbia to be released during the season of 1933–34 to be exhibited and paid for under the following arrangements, which sets out the run and the amount for each situation and provides for first and second runs and provides the standard form shall be part of the contract and attached to or two pages of that standard form but not the back of each third page. I offer Exhibits C–2, A to D, inclusive.

Mr. COCHRAN. No objection.

Mr. KIME. C–3, A to E inclusive, as stipulated in toto, is a contract dated August 29, 1934, between Columbia and the Griffith Amusement Company and R. E. Griffith Theaters for the theaters and towns set out on page A, and B continues the affiliated theaters. Page C, the first paragraph thereof is the same as the two preceding. The output of Columbia Pictures to be released for the
699 1934–35 season shall be paid for under the following arrangements, and it then sets out they shall be paid for as to certain amounts and for certain towns and gives the runs available to those towns, three and four days. It provides for second run in six situations. It also provides they may be previewed and no foreign pictures; not required to be played in order; obligated to play the 10 specials in every town except Sapulpa, Oklahoma, and exhibitors can revise schedules or allocations by towns provided the total amount per picture in each application remains the same, and the standard form to be a part of the contract, the first page of which is attached hereto bearing the signature of R. E. Griffith and Rube Jackter. We offer Exhibit C–3, A to E, inclusive.

Mr. COCHRAN. No objection.

Mr. KIME. Exhibit C–4, A to E, inclusive, has been stipulated to, pages H and I.

The COURT. What is the date of that?

Mr. KIME. C–4 is dated September, 1935 between Columbia and Consolidated Theaters, R. E. Griffith and Griffith Amusement Company and associated interests. I started to say, your Honor, it has been stipulated as to A to E, inclusive, F, G, H and I, are allocations on a film work sheet for '35–36, and will be offered with the others, since
700 they are clearly applicable to and a part of this contract.

Page 1 sets out the theaters and the runs, the number of days and provides for first and second run in several situations. The first contractual paragraph on page B is the same as the first contract, as the other contracts heretofore offered, and is not numbered, and provides for the output of Columbia to be released during the season of 1935–36 with the exception of "The Voice of Experience," and shall be exhibited in the above named theaters and paid for under the following arrangements, and in quotations "All Columbia product is excluded from Sapulpa, Oklahoma except eight Dick Foster reissues and eight Ken Maynard Westerns."

A provides the exhibitor agrees to pay as a minimum the amount of $6000, and allocations for each picture at page C provides for the prevue privilege and no foreign made pictures. He is not required to play any; not required to play pictures in order of release; is obligated to play the four specials except in Sapulpa; is obligated to deliver to the distributor immediately after receiving the approval of this contract detailed allocation which we submit are those on pages F to H, inclusive, and that the standard form shall be a part of the contract. That was signed by R. E. Griffith and Rube Jackter for the Columbia Pictures Corporation. We offer Exhibit C–4, A to I inclusive.

701 Mr. COCHRAN. We object to the introduction of any part of the offered documents except A to E inclusive, for the reason that the other documents offered are not within the stipulation and have not been properly identified or designated.

The COURT. Objection overruled and exception allowed.

Mr. KIMP. Next I offer Exhibit C–5, A to J inclusive, A to F and J, which have been stipulated to, and G to I have not been stipulated but clearly are the allocations referred to in the main portion of the contract. This is a contract dated August 31, 1938, between Columbia Pictures and Consolidated Theaters, R. E. Griffith, Griffith Amusement Company, Westex and associated interests for certain situations set forth on page A and B, the bottom of B is the opening paragraph common to all the output of Columbia to be released during '36–37 and shall be exhibited in the above named theaters and paid for under the following arrangement, containing a number of exceptions that all Columbia product is to be excluded from Sapulpa, Oklahoma, except eight Tim McCoy reissues and eight westerns and eight Peter B. Kyne westerns. In C the exhibitor agrees to pay a minimum of a certain amount as allocated to certain production and is also given the prevue privilege and the exhibitor is not obligated to

play any foreign made pictures, and not required to play pictures in the order of their release, and there is a special provision that the two special productions allocated at five must be Capra productions and all such Capra productions delivered under this contract in addition to the other specials to be designated to play at $2100. They must play in each and every town with the exception of Sapulpa. It is understood first, that special production shall be "Lost Horizon." The exhibitor is obligated to deliver to the distributor immediately after receiving the approval of this contract detailed allocation which we contend are the allocations heretofore described and that the standard form shall be made a part of the contract.

We offer Exhibit C–5, A to J—let me describe J in brief. That is a supplemental contract by which the distributor agrees to allow the exhibitor the privilege of using product offered by the above contract in the following theaters, and then it says, "Over" but there is no "Over" page or the back page of this contract has not been photostated and signed by R. E. Griffith and Rube Jackter.

Mr. COCHRAN. We have no objection to the admission of C–5, A to F and C–5, J, but we do object to the admission of the remainder of the documents for the reason they are not signed by the defendants, or either of them; not a part of the contract. They have not been indenti-
703 fied as such and not properly authenticated.

The COURT. Overruled. Exception allowed. They are the same allocations referred to heretofore.

Mr. KIME. The next I will offer is C–6, A to M and five has been stipulated to. N, O, P, Q, R, T and V are allocations mentioned in the contract and which we contend are the allocations properly belonging to this contract. 6–K is a contract for a particular picture "You Can't Take it With You."

Mr. COCHRAN. What was for a particular picture?

Mr. KIME. P–K–6 it starts on. F–6, K, L and M is the contract for the picture "You Can't Take it With You." C–6–A is the first page of the contract dated September 3 1937, between Columbia, R. E. Griffith Theaters, Consolidated Theaters, the Griffith Amusement Company, Westex and associated companies, the first page setting out the exhibitions involved, or runs, which includes first and second runs in certain situations, first in all, of course, and second in some, and the number of days to be shown.

The first paragraph on B "It is understood and agreed that Columbia Pictures Corporation, the distributor and the exhibitor agrees as follows: That the output of Columbia Pictures to be released during the season of 1937–38,

shall be exhibited in the above named theaters and paid for under the following arrangements," and that all
704 Columbia product is excluded from Sapulpa, Oklahoma, except the westerns.

The first paragraph on page C, the exhibitor agrees to pay a certain amount in certain allocated places for the features and graduated down. He is to have the privilege of prevuing the product in all towns and not obligated to play any foreign made picture and not required to play pictures in order. Four specials must be played in every town with the exception of Sapulpa; no capital productions in this agreement. The exhibitor is obligated to deliver immediately after the approval of the contract the detailed allocation on all subjects enumerated in this agreement, standard form to be attached and made a part of it.

Mr. COCHRAN. E is the first page?

Mr. KIMR. E is the first page of the standard form. (F) provides for the subsequent run.

Mr. COCHRAN. What is the page, photostatic page number in your left-hand corner?

Mr. KIMR. Of F?

Mr. COCHRAN. Yes.

Mr. KIMR. Ninety-five.

Mr. COCHRAN. That is a rider.

Mr. KIMR. That is a rider which is signed by H. R. Falls and Rube Jackter for second run for certain
705 pictures in certain situations, setting out about a dozen towns and Oklahoma City, dated October 5, 1937.

G is a contract dated September 14, 1937, between Columbia and all four corporate defendants, signed by R. E. Griffith for them and Rube Jackter for Columbia and provides:

"1. You agree to license to us for exhibition hereunder, all the photoplays of feature length generally released by you for distribution to motion picture theaters in the United States during the period commencing September 1st, 1938, and ending August 31, 1939, as part of your 1938–39 product and embraced in your groups B–4 and B–5.

"2. We hereby accept such license and agree to pay to you a minimum sum of money which minimum sum of money shall be five per cent more than the minimum sum payable us to you for your 1937–38 product. The license herein granted is limited to the same number of pictures and in the same theaters and for the same number of days playing time as specified in the agreement between us dated September 3, 1937, with respect to our 1937–38 product.

"The individual price allocation for the 1938–39 product in accordance with subdivision "A" of the typewritten portion of our agreement is to be determined by you.

"3. You agree to license to us for exhibition
706 hereunder, all the photoplays of feature length generally released by you for distribution to motion picture theaters in the United States during the period commencing September 1st, 1939, and ending August 31, 1940, as part of your 1939–40 product and embraced in your groups C–4 and C–5."

Then follows a similar provision as to the designation and it provides for 5 per cent more than the minimum of the preceding season, and the individnal price allocation in accordance with subdivision "A" of the typewritten portion of our agreement is to be determined by you.

"3. We agree that all the terms and provisions of your form of 1938–39 and 1939–40 exhibition contracts shall be deemed included herein and all the terms and provisions other than the film rental terms of our 1937–38 agreement shall be deemed included herein."

The agreement not to be assigned without the consent in writing of Columbia.

I, is a supplemental contract dated August 31, 1939, providing that the distributor agree to allow exhibitor to use any product from contracts 144, 145, and 146 at the prices listed on said contracts, and apply same against money commitment for the 1939–40 season for Columbia. This is in consideration of Consolidated Theaters Inc., and Griffith Amusement Company having disposed of three other towns, namely, Mangum, Frederick and
707 Wewoka, Oklahoma, which were to have applied on the 1939–40 money commitment." That is signed by Falls and Rube Jackter.

Page J is a rider to the 1938-39 contract providing for eight runs of certain product in certain towns listed, about six, plus Oklahoma City, and signed by Rube Jackter and H. R. Falls.

Page K is a contract dated October 10, 1938, between Columbia and Griffith Amusement Company, Consolidated Theaters, R. E. Griffith, Westex and affiliated or associated interests, setting out the towns and the corporation involved and the runs, which is first in all cases, and second in certain situations.

Page 2 provides that "You Can't Take It With You"—that is what this contract is about—will be released in those theaters named above and paid for in the following manner: $7500.

Standard form to be made a part of the contract; assigned by Horace F. Falls for the defendant corporate interests, and Rube Jackter for Columbia. The succeeding pages are N, O, P, Q and R, and are the allocations as referred to in the contract and are keyed into the contract S is page 1 of the standard form, and it is the first page of the standard form of the "You Can't Take It With You" contract. T sets out the towns in which "You Can't Take It With You" is to be exhibited and the runs, which includes first
708 and second, and the theaters. U and V are the allocations for the '38–39 season and we offer them. The last two pages of the allocations are for the '38–39 season.

The COURT. What is the date of this?

A. The first contract is dated, on page A of the exhibit, September 3.

The COURT. What year?

A. 1937.

Mr. COCHRAN. The trouble is he is mixing up a number of different contracts, the way he is offering them.

Mr. KIMR. I did not assemble these and only came into the case after they were assembled.

The COURT. Is there another contract?

Mr. KIMR. Yes. There is another one on page C-6-G, which is a contract for the '38–39 season and the '39–40 season, and that is dated September 14, 1937, about a year before it was to become effective.

Mr. COCHRAN. We object to C–6, N, O, P, Q, R, U and V, for the reasons stated in connection with other documents which are not included in the stipulation and which have not been identified or authenticated.

The COURT. Overruled and exception allowed.

709 Mr. WRIGHT. If the Court please, we only have two more of these series.

Mr. COCHRAN. What was the last you said?

Mr. WRIGHT. I now offer the Universal contracts. The first number is U–1 and page A of that is a letter agreement dated September 10, 1934, between Universal——

The COURT. That date again?

Mr. WRIGHT. September 10, 1934. This is made with the defendant corporations, two of them, signed by R. E. Griffith, and covers the product for the '34–35 season in a schedule of towns and theaters appearing on page B.

The contract provides for a minimum money commitment of $60,000 on the features and shorts plus a money commitment of $5,000 on the newsreels, payable as and when the pictures are dated and played; however, it was

understood and agreed that, at least, $15,000 was to be paid quarterly; there is a privilege of playing out of order of release, foreign made pictures excluded, individual prices allocated by Griffith; and then there is a definite commitment to deliver two pictures named here, "Show Boat" and "Sutter's Gold" at $2250 per picture.

"It is also understood and agreed that in any individual situation exhibitor has no commitment as to the
710 number of features or shorts played, as this contract, with the exception of the newsreel, is a money commitment transaction.

"Should the distributor release less than the amount of product specified on the attached schedule, commitment to be reduced proportionately."

And then attached as page C is a break down of the feature rental brackets according to classifications.

On page D the starting date is shown as December 1, 1934.

Page E is the face of an attached standard form.

Page F is a memorandum that I will detach as it was not included within the stipulation.

There is one thing I would like to explain about this contract in this Universal series. In these cases you will note that all that the exhibitor agrees to do is to pay a certain amount of money for the product over the season. The allocations that are set up are set up on the basis of all the product to be released, if the circuit should play all the product released by the distributor, which is covered by the contract, they would pay an amount in excess of the guaranteed figure. For example, on this particular deal the allocated rentals on all of the features that are covered, if played in all situations, would amount to perhaps
711 more than $100,000. The only commitment is to pay $60,000 in accordance with such product as used, without any obligation to play any particular number of features in any one situation, or in all situations except with these special commitments that are made with respect to certain numbers of higher bracket features, so that the result of the agreement of this character is that during the entire season until the end of the season when it has been finally determined which pictures the circuit is going to play and where, the entire product has been excluded from any competing theater, although there has never been at any time an obligation on the part of the circuit to mutually use it in its theater.

Mr. COCHRAN. Did I understand you to say that U-1-E was the first page of the standard contract?

Mr. WRIGHT. Yes, sir, it is labeled "Schedule of feature contract". It also has the signatures on it of R. E. Griffith and J. E. Grainger.

Mr. COCHRAN. Let me check that.

The COURT. What letter is that?

Mr. COCHRAN. I am just trying to get my lettering straight.

Mr. WRIGHT. This is U–1, page E.

The COURT. What letters do you have in that exhibit?

Mr. WRIGHT. U–1 consists of letters, pages A
712 thro[redacted] inclusive.

Mr. COCHRAN. Our stipulations covers A through F.

Mr. WRIGHT. You did cover F?

Mr. COCHRAN. No, I didn't intend to cover F.

Mr. WRIGHT. All right.

Mr. COCHRAN. Let's check that again.

Mr. WRIGHT. All right.

Mr. COCHRAN. Our stipulation is not intended to cover F. You are offering A to D?

Mr. WRIGHT. A through E.

Mr. COCHRAN. A through E is right, and there is no objection.

The COURT. They will be admitted.

Mr. WRIGHT. No master agreement was produced for the '35–36 season. The next agreement is U–2, A through D, inclusive, which is dated August 26, 1936, and covers the '36–37 season, and is executed on behalf of the defendants by R. E. Griffith, all four corporate defendants being included, and affiliates. The towns and theaters appear on the first two pages, and in this case the circuit agrees to play a commitment of $80,000. Then the feature product is allocated by class features in various rentals brackets, and subsequent run situations are specified on page C, and
713 the circuit agrees to pay a minimum of $20,000 against the commitment quarterly. The standard form of exhibition contract is made a part of the agreement, as are the allocation sheets. There is a special schedule of one-theater towns, attached and marked as page D. I will offer that exhibit in evidence.

Mr. COCHRAN. No objection.

Mr. WRIGHT. The '36–37 season is covered by the agreement dated October 1, 1936, pages A through D.

The COURT. That is U–3?

Mr. COCHRAN. U–2 is for the '36–37 season.

Mr. WRIGHT. I beg pardon.

Mr. COTHRAN. U–2 covers the '36–37 season you said a moment ago.

Mr. WRIGHT. Ours is marked U–3.

Mr. COCHRAN. Look at U–2. U–2 is dated August 26, 136, covering the '36–37 season.

The COURT. U–2 is dated October 26, 1936, and this one is dated 10–1–36.

Mr. WRIGHT. Both U–2 and U–3 refer to the '36–37 product. This last one I referred to is dated 10–1–36, is U–3, and page A is the contract itself, on the one page. It is signed by R. E. Griffith for the circuit, and it refers to the same money commitment of $80,000, but the allocations and towns covered are apparently changed here.

714 Mr. COCHRAN. It also provides that definite contract price allocations shall be submitted.

Mr. WRIGHT. It provides that there are to be twenty-six top pictures allocated at twenty-eight one-theater towns of this release, and thirty-six top pictures in the balance of the towns, and it says six westerns are a definite commitment in all situations, and the eight top pictures and six westerns are definite in twelve subsequent run situations.

Mr. COCHRAN. Didn't you say U–3 was dated October 26?

The COURT. October 1st.

Mr. COCHRAN. The date shows August 26.

Mr. WRIGHT. August 26.

Mr. COCHRAN. It shows it is a memo. It shows it is the original memo of the contract which was more drawn at length and dated the same day, which has been introduced as U–2–C.

The COURT. U–3 is dated August 26?

Mr. COCHRAN. It is dated August 26. In other words, it is a preliminary memo and is to be considered with U–2. Mr. Wright also, I believe, failed to call attention to page B of U–2, which provided that the exhibitor agrees to notofy the distributor of pictures to be eliminated within sixty days after release.

715 Mr. WRIGHT. Do I understand that both of these bear the same date?

Mr. COCHRAN. Yes, sir. We that situation to come up in connection with one of the other customers. You remember when there was a preliminary contract and apparently U–3 was the preliminary contract and it was followed by U–2.

Mr. WRIGHT. U–3 should have been offered first.

Mr. COCHRAN. That's all right.

Mr. WRIGHT. With that understanding, it is agreeable to us that U–3 was a preliminary deal and was superseded by U–2, covering the '36–37 season.

Mr. COCHRAN. Do we have the individual contracts which were referred to in that preliminary agreement? It says that it is further agreed that definite contract shall be submitted.

Mr. WRIGHT. This is all that was produced in response to the subpoena.

Mr. COCHRAN. I imagine, that doesn't say a definite contract for each situation, but refers to U–2. In other words, that is the contract, and the allocations are the ones that were to be submitted by October 1. All right.

Mr. WRIGHT. We offer in evidence U–3.

The COURT. It will be admitted.

716 Mr. WRIGHT. And the allocation sheets attached, marked B, C, and D, to which I believe there is no stipulation, except that they came from the files of Universal.

Mr. COCHRAN. The same objection in regard to those as heretofore interposed.

The COURT. Overruled.

Mr. COCHRAN. Exception.

Mr. WRIGHT. The '37–38 season is covered by an agreement marked U–4, A to C, and is the agreement, itself being dated October 14, 1937, signed by and on behalf of all corporate defendants and affiliated companies by R. E. Griffith; the towns and theaters are specified on the first two pages, and the total money commitment for the circuit is $50,000; then there is an allocation of features to be released in the various price allocations.

The COURT. Let me ask you, all of these master agreements provide for the execution of the individual contracts with exhibitors, do they?

Mr. WRIGHT. No, they all do not.

The COURT. Some of them do?

Mr. WRIGHT. Some of them do and some don't, but in any event, the contracts are subject to the terms of these agreements, and these typewritten agreements control where there is any conflict.

The COURT. Yes.

Mr. COCHRAN. I don't agree with that statement.

717 Where there is a specific contract drawn and executed, they supersede, if there is any difference, they supersede the memorandum.

The COURT. That is a law question.

Mr. WRIGHT. I was simply stating our theory in that respect. Then the circuit is given the privilege of playing subsequent runs in about twelve specific situations, for twelve top pictures, and five westerns.

Mr. COCHRAN. You are overlooking the fact that this contract on page B only covers twelve.

Mr. WRIGHT. That is what I said.

Mr. COCHRAN. No, not second run, but first run; first run.

Mr. WRIGHT. That's right.

Mr. COCHRAN. Twelve.

Mr. WRIGHT. The $50,000 commitment relates to twelve top pictures, and the same twelve are referred to in the subsequent run privilege there, plus five westerns, and in addition to the twelve features, it also covers five westerns designated by name; then there is other additional product specified on page C for four named towns, and the circuit agrees to pay quarterly $12,500 during each thirteen-week period; the allocation sheets to be made are incorporated in the agreement and it is agreed that the standard
718 form of exhibition contract attached becomes a part of it and to govern the physical operation and in the event of any conflict the provisions of this agreement control. Then attached as page D is the front of a standard feature contract.

Mr. COCHRAN. Page D you have it marked, is the first page of a schedule of feature contracts.

Mr. WRIGHT. Yes, and page E is the printed form for the four Buck Jones and Bob Baker pictures.

Mr. COCHRAN. All right.

Mr. WRIGHT. Page F is the reverse side of the form, containing the initials REG, and the signature of Mr. Grainger for Universal. The succeeding pages, G and H are the allocation sheets.

We offer Exhibit U–4, A through H, inclusive.

Mr. COCHRAN. No objection.

The COURT. Admitted.

Mr. WRIGHT. Exhibit U–5, A through C, is a master agreement dated September 17, 1938, covering the '38–39 season, and that is signed by R. E. Griffith on behalf of the two Dallas defendants and affiliated theaters, and it covers the towns and situations specified on pages A and B, and in this case the circuit agreed to pay a minimum guarantee of $30,000 for product to be played and paid for in the named theaters and towns during the period from December 15, 1938, to December 14, 1939, to be selected
719 from the following '38–39 product. Then there is listed the features, westerns and shorts in graduated rental bracket classifications, and there is a further agreement that the top eight pictures named in those brackets shall be certain named productions. Then the exhibitor agrees to pay, provided sufficient product is made available, $7500 on his commitment each thirteen weeks; and the privilege permitting the playing out of order of re-

lease, and to exclude foreign productions, is also included, and other provisions with respect to the allocation schedule, and it is agreed that there is no commitment as to the amount of product to be played in the individual towns, the money commitment being the obligation of the circuit as a whole. The standard form of exhibition contract is to become a part of this agreement, and the physical operations to be covered thereby; in case of conflict, this form to prevail, or rather, this typewritten agreement to prevail. The form is attached, the face of it marked D and the allocations are attached, marked E.

We offer in evidence Exhibit U–5, A through E, inclusive.

Mr. COCHRAN. Page D, according to your list, is the page of the standard form contract?

Mr. WRIGHT. Yes.

Mr. COCHRAN. And E is the allocation sheet?

Mr. WRIGHT. Right.

720 Mr. COCHRAN. The same objection is made to U–5–E which has heretofore been made to the documents which are not included within the stipulation.

The COURT. Overruled. Exception allowed.

Mr. WRIGHT. U–6–A through D inclusive, is an agreement dated September 1, 1938, made with the Oklahoma City corporate defendants and their affiliates signed by H. R. Falls on their behalf and covers also the '39-39 seasons. The towns and theaters are specified on pages A and B, and the commitment of the theaters and towns involved here is $70,000 for product to be selected from the '38–39 releases, and those releases are then listed in rental classifications A, B, C, D and E, western pictures, shorts, serials with a blanket rental for each.

It is also provided that the exhibitors are not required to exhibit any definite number of serials or shorts in each individual town or theater, and in twelve towns designated on page B, known as "one-theater towns", the exhibitor has the privilege of playing only the twenty top allocated pictures plus the six westerns, twenty-seven episodes of serials and forty release sheets. In the balance of the towns the exhibitor has the privilege of playing thirty-four top allocated pictures plus six westerns, twenty-seven serials and seventy-eight shorts. The exhibitor

721 agrees to notify the distributor of any pictures to be eliminated within 60 days after release. In the following, second and subsequent run situations then are listed, about 14 towns and the exhibitor has the privilege of playing eight top allocated features, six westerns and 28 reel shorts. There is a special provision for the Rialto

and Reno Theaters in Oklahoma City, and the agreement to pay the total amount of the commitment in quarterly installments of $17,500 each, and the pictures are not required to be played in the order of release. Foreign pictures are excluded, and the standard form is incorporated in the agreement the same as in the others. There is also an agreement with respect to providing prints, one-third within 23 days after national release, one-third within 45 days and one-third within 70 days.

I offer Exhibit U–6, A through D, and that completes the Universal offer.

Mr. COCHRAN. No objection.

(Whereupon court adjourned until 2:00 o'clock p. m.)

722 AFTERNOON SESSION.

May 11, 1945, 2:00 o'clock p. m.

PROCEEDINGS.

The COURT. You may proceed.

Mr. WRIGHT. The last distributors to be dealt with here is United Artists and the first documents that we will offer are those dated September 30, 1937. There were other United Artists' contracts which were subpoenaed and produced as to prior seasons, but this, I believe——

Mr. COCHRAN. (interrupting). Not covered by stipulation?

Mr. WRIGHT. Yes, there are others included in the stipulation of prior years.

Mr. COCHRAN. This is '33, you say?

Mr. WRIGHT. No, this that I am about to introduce is dated September 20, 1937.

Mr. COCHRAN. I beg pardon. What is the number?

Mr. WRIGHT. The first exhibit number is U–A–69, A to D, inclusive. These that I am about to introduce represent the first of the circuit deals made with United Artists.

723 comparable to those made with the other distributors. This 69, A through D, inclusive, is a contract for the single picture "Nothing Sacred", a Selznick international production, for a flat license fee of $5300.

Mr. COCHRAN. What is the date of that?

Mr. WRIGHT. "Nothing Sacred."

Mr. COCHRAN. What is the date of the contract?

The COURT. 9–20–37.

Mr. WRIGHT. Right.

Mr. COCHRAN: I don't find that date here.

Mr. WRIGHT. The date is on page B.

Mr. COCHRAN. All right.

Mr. WRIGHT. The exhibitor parties are the four corporate defendants and some affiliated companies, and the con-

tract is signed for them by R. E. Griffith. It consists merely of the printed form of license, plus this rider which is attached, and lists the towns and the theaters and runs, and number of days of playing time in the various theaters, where the picture is to be exhibited. The rider also contains the statement that the exhibitor is granted the privilege of playing a prevue in any of the above listed situations.

Then U–A–70, A to D, inclusive, bears the same date, is made between the same parties, but is for seven features designated as Walter Wanger productions, with a blanket price for each one ranging from $2150 to $5300. That is again on a similar standard form with a typewritten
724 rider, signed by Mr. R. E. Griffith, listing the towns, theaters, runs, and number of days of playing time in the various situations, and contains an additional provision on the last page D that in these 19 situations, in 19 situations the productions "Meet My Love Again" and "Personal History" are sold and that there is to be deducted from the total annual rental on each picture the same amount of money on these two pictures that is allocated by the various theaters listed herein, with "Kiss in Paris" and the "Man with Ten Models."

725 Also the same date on the same form and between the same parties is an agreement for the exhibition of six Samuel Goldwyn productions at a flat rental of $5300 each.

The COURT. That is U–A–70?

A. That is numbered U–A–71, A to D inclusive. The rider there is also signed by R. E. Griffith and it is substantially the same form as the other one. Then the next United Artists contracts are the series dated December 30, 1938, the first of which is U–22, the pages are A to I, inclusive. On page A is a statement of the titles of the two features that are licensed, both Selznick productions, one at a flat rental figure for all of the situations covered which are listed on page B, and this agreement is made on behalf of the Dallas corporate defendants.

Mr. COCHRAN. Is U–A–22–G included in that stipulation?

Mr. KIME. No, it is not.

Mr. GRIFFING. It is A, B and F.

Mr. COCHRAN. We object to the introduction of the pages being offered other than U–A–22, A, B and F. Those other pages are not allocation pages.

Mr. WRIGHT. Well, I think it appears on their faces
726 that they are. C is entitled "Contract Change Report" and bears the date of January 25, 1939.

Mr. COCHRAN. That is true, but that is a document not signed by the defendants in this case at all, and it is not an allocation that is referred to. It is one of these documents about which there is controversy.

The COURT. What is there about it that identifies it as a part of this?

Mr. WRIGHT. I was going to read what it said. This page C of U–22 is on United Artists form called "Contract Change Report" and it is dated January 25, 1939, and it is signed only by Roy Sachs, exchange manager, and the only stipulation is that it was found in the files of his company and produced pursuant to subpoena. It does, however, appear on the face of the report that the picture referred to is "The Young at Heart." It is one of the pictures in this contract, U–A–22, and broken down opposite each situation is a separate rental figure, and then the statement "The blanket contract reflects the rental as $11yy.50, which is the amount shown on the first page of U–A–22. (Reading) "It is necessary to put this form No. 51 through to all of the contracts which the records will reflect as the allocated rental as outlined herein."

Mr. COCHRAN. We object to that document for the reason it purports to be a report made by a man by the name of Sachs, who I understand was not even a branch
727 manager but was a booker. It is a report of a past transaction. It has not been authenticated. It is purely a hearsay statement of a report by an agent purporting to be a report by an agent to a transaction which is not connected with these defendants or relating to some of these transactions.

728 The COURT. How is it material?

Mr. WRIGHT. Well, I offer it only because it was produced by the United Artists Corporation, apparently, as we thought, a part of or supplement to this document that has been identified as U–A–22, A and through B.

The COURT. Suppose it was not allocated; how would it be material?

Mr. WRIGHT. I don't think it makes any difference as far as we are concerned whether the allocation was actually made in the form shown or not.

Mr. COCHRAN. I am objecting. We are not willing that the document be admitted simply because they appear in these files, and the statement that it was produced as a part of this contract is not correct, because the numbering on the pages, which was made by the company delivering them, shows it is not consecutive numbers.

Mr. WRIGHT. It apparently refers to this contract on its face. I don't think it makes any great difference to us whether it is in, or not; we are simply offering the material.

The COURT. Suppose it be left out. I don't see its materiality, that is, how it could affect the issues in this case one way or the other.

Mr. WRIGHT. I will detach B, D, and E. Was G, H, and I covered by the stipulation?

729 Mr. GRIFFING. B, D, E, G, H, and I are not covered by the stipulation.

Mr. COCHRAN. Well, G——

The COURT. What are these that you have eliminated?

Mr. GRIFFING. G, H, and I are not covered by the stipulation.

The COURT. C, D, and E, and what?

Mr. GRIFFING. C, D, and E and G, H, and I are not covered.

Mr. WRIGHT. So the document as it goes in consists of U–A–22, pages A, B, and F.

The COURT. A, B, and F?

Mr. WRIGHT. The next number is U–A–23. Page A is another contract on a similar form dated September 30, 1938, for five Edward Small productions, to be played at a flat rental for each picture over the circuit in accordance with a rider which specifies the towns and theaters covered, which appears on page B. This again, the only defendants making this contract are the Dallas defendants. I will remove C to H, which are similar allocations by United Artists.

Mr. COCHRAN. C through H?

Mr. WRIGHT. Yes, sir, and the exhibit as offered will then be U–A–23, A, B, and I.

Mr. COCHRAN. No objection.

730 Mr. WRIGHT. U–A–24 is a contract of the same date between the same parties, for three Samuel Goldwyn productions, to be played in the situations covered by a rider which is page B, for a blanket rental of $1780 each.

Mr. COCHRAN. That is for the R. E. Griffith Theaters, Westex Theaters, and the Long Griffith Theaters also?

Mr. WRIGHT. Yes, sir. The document offered is just U–A–24, A and B.

Mr. COCHRAN. I believe G is included in the stipulation.

Mr. WRIGHT. Is it included?

Mr. COCHRAN. I believe it was.

Mr. WRIGHT. G appears to be a duplicate.

Mr. KIME. G is a rider.

Mr. WRIGHT. I know, but it has exactly the same data that appears on B, as far as I can see.

Mr. COCHRAN. I don't see it here. Is it a duplicate?

Mr. WRIGHT. It appears to be.

The COURT. It will be A and B then?

Mr. WRIGHT. A and B.

Mr. COCHRAN. All right.

Mr. WRIGHT. The next is another contract on similar form, the same date, the same parties, for five
731 Walter Wanger productions.

Mr. COCHRAN. What is your number, please, sir?

Mr. WRIGHT. The number is U–A–26.

The COURT. You don't have 25?

Mr. WRIGHT. Well, I am not offering it.

The COURT. All right.

Mr. WRIGHT. I don't know offhand just what it is.

The COURT. Very well.

Mr. WRIGHT. A is the contract specifying the pictures covered and the flat rental for each one in the situations covered by the rider; B is the rider which specifies the towns, theaters, and runs.

Mr. COCHRAN. Is the date of that contract the same as the other?

Mr. WRIGHT. The same as the preceding U–A–24. The rider in this case consists——

Mr. COCHRAN. (interrupting): That is page B, is it?

Mr. WRIGHT. B. And then are these succeeding pages C to X covered by stipulation.

Mr. GRIFFING. Only A, B, M, N, and V.

Mr. WRIGHT. I will remove C to L and the riders M and N includes the same pictures at other specified rentals, for a number of other situations, which I believe
732 are those operated by the Oklahoma City defendants.

Mr. COCHRAN. Did 26 cover the Oklahoma City?

Mr. WRIGHT. 26, U–A–26, A, B, M, and N.

Mr. COCHRAN. That covers the Dallas defendants, doesn't it?

Mr. WRIGHT. No, there are two riders, one rider, B, for the R. E. Griffith Theaters, and Westex situations, and the rider M and N, which covers other Oklahoma and Texas situations without naming the exhibitors.

Mr. COCHRAN. It should be a part of the other contract, Let's look at that a minute. In other words, we are not agreeing that that is a part of that contract, but will agree that the documents were properly executed. That belongs with the other contract which you are going to introduce next. M, for instance, numbers M and N are pages 241 and 242, as they are numbered by the company and L bears the number 240, and 239 is 26–K. You have certain contracts all bearing No. 26 that relate to separate contracts with Oklahoma City and with Dallas, isn't that true?

Mr. WRIGHT. The only 26 contract that we have, the only number with the number U–A–26, is this one signed by R. E. Griffith and then there is the rider with the names of R. E. Griffith Theaters, Inc., Westex Theaters, Inc., and Long Griffith Theaters, with a list of Westex and R. E. Griffith situations, and then the rider of two
733 pages, bearing the same date, showing the other Oklahoma and Texas situations.

Mr. COCHRAN. Your Honor, the point I am making is this. We are not stipulating and the stipulation doesn't so recite, that these pages in the '38–39 contract which he is now introducing, and which showed the heading that they relate to the Oklahoma towns, we are not agreeing that they were any part of these contracts, which were made with R. E. Griffith and Westex, and in the documents as they were presented to me at the time the stipulation was made, these documents, although bearing the number 26, did not follow the contracts in such a way as to indicate that the Government would contend they were a part of the contract, so our stipulation only goes to the effect that we are admitting they were signed by the parties, and we are not raising any question—by the parties whose names appear thereon, but we are not agreeing that these pages relating to the Oklahoma City situation have anything to do with the Dallas contracts because the contracts were separately executed during those seasons, with United Artists.

734 Mr. WRIGHT. I think the documents speak for themselves. We are offering them as they are found here. I think it will appear on the contracts what contracts were made.

Mr. COCHRAN. The point is that counsel has done the placing of documents and they are not in the condition they were in when received from United Artists.

Mr. WRIGHT. I will offer 26–A, B. You have no objection to the admission of those, do you?

Mr. COCHRAN. None at all.

Mr. WRIGHT. We will offer the others 26–M and N, and if I can find a contract of the other companies I will offer that with them. Maybe that will solve the problem.

Then there is another contract marked UA–27–A, which is between the same parties, the Dallas defendants, and United Artists signed by R. E. Griffith and the same date, December 30, 1938, covering five Hal Roach productions to be exhibited at a flat rental over these situations that are set forth on schedule B attached, and will offer 27–A and B.

Mr. COCHRAN. No objection.

Mr. WRIGHT. And the next is the contract of the same date for two Selznick International productions at a flat rental.

735 Mr. COCHRAN. What is the number?

Mr. WRIGHT. UA-18. It is for the situations of the Oklahoma City defendants and attached are allocations made by United Artists marked B through F inclusive, which we will offer and which if objected to I assume will be excluded. Do you object?

Mr. COCHRAN. Oh, yes, but I am first trying to find out if any of this is included in the stipulation.

Mr. KIMR. I imagine not because they do not appear to be signed by anyone for Griffith.

Mr. WRIGHT. It appears to be signed on page H by H. R. Falls for the Griffith Amusement Company and Consolidated Theaters. There is no one signing for United Artists Corporation.

Mr. KIMR. Oh, yes. There is a perforation signature there.

Mr. COCHRAN. Where is the perforation?

Mr. KIMR. On A.

Mr. COCHRAN. That page is not signed by Mr. Falls.

Mr. KIMR. The rider.

Mr. COCHRAN. You are now offering A.

Mr. WRIGHT. I will separate them for convenience. I first offer UA-18-A-G-H-I- and J.

Mr. COCHRAN. Even though it is not included in the stipulation, I see no reason why it should not be

736 admitted. We have no objection to its introduction.

The COURT. Let it be admitted.

Mr. WRIGHT. I will offer also the United Artists allocations for that contract which are marked as sheets B, C, D, and E, L, M, N and O.

Mr. COCHRAN. That is the same thing we objected to awhile ago, the same type?

Mr. WRIGHT. Yes.

Mr. COCHRAN. We object to that because they are change reports and Mr. Wright said he is not insisting on them.

Mr. WRIGHT. I said I am offering them. I just want to get a ruling on them.

The COURT. Very well. You both agree they are not material.

Mr. WRIGHT. I don't say they are not material. They may become material. I am offering them because they are necessary to a complete understanding of the contract. They do not change the essential character of the deal at all, but I think they are material to the extent that they show the manner in which the parties actually carried out the deal.

The COURT. They were attached to the contract?

Mr. COCHRAN. No. They are dated January 24, 1939, months after the contract was made and an ex parte
737 statement.

The COURT. Of course, it might have been just an office memorandum.

Mr. WRIGHT. That is all it purports to be, is a memorandum made in the United Artists office signed by United Artists. There is no question about that.

The COURT. The objection will be sustained. I don't think it would be material.

Mr. COCHRAN. The numbers we have admitted, that were admitted on this, then, are A, G, H, I, and J, and that document dated December 30, 1938, is that right?

Mr. KIME. That is right.

Mr. WRIGHT. And the next one is another document of the same date marked UA–19–A, which is a contract for the five Edward Small productions and the flat rentals to be played in the situations listed in the rider, taking B, C, and E, signed by H. R. Falls on behalf of the Oklahoma City companies.

Mr. COCHRAN. That also was not included in the stipulation but we have no objection to its admission.

The COURT. It will be admitted.

Mr. WRIGHT. The next is a contract of the same date, in the same form, same parties for the three Samuel Goldwyn productions No. UA–20–A the contract form. The rider is B and C signed on behalf of the Oklahoma City
738 companies by H. R. Falls.

The COURT. Let it be admitted. What is the date of that?

Mr. WRIGHT. December 30, 1938. The next is a contract of the same date between the same parties for five Hal Roach productions marked UA–21–B and C, signed by H. R. Falls and we offer it in evidence.

Mr. COCHRAN. No objection.

The COURT. It will be admitted.

Mr. WRIGHT. And the next is a contract bearing the same date and between the same parties for the five Walter Wanger productions, consisting of three pages. That is UA–25, A, B, and C, signed by H. R. Falls.

Then we are also offering the series of standard forms furnished by United Artists which cover the period in question, marked Exhibits UA–68–1, through 14, inclusive. We have one document here which I believe should have been offered with the Fox exhibit. It had been stipulated

but was apparently overlooked at the time we offered the others. That was the document marked F–1, A through E. It is the deal for the 1933–34 season, dated August 11, 1933.

Mr. COCHRAN. That is not covered in the stipulation. That is an unsigned document and we question its authenticity, and Fox has advised the Government it was not a document which was operated under that year, so
739 Mr. Caskey advised me. All I know is I did not stipulate to it.

Mr. WRIGHT. There is no doubt it is not signed. I understood they had advised us that it was one of those they did operate under.

Mr. COCHRAN. Let's check it. If we find it was operated under we will go ahead.

Mr. WRIGHT. We were furnished with a sample form in this situation marked F–1, which was apparently for that season.

Mr. COCHRAN. I understand what happened. You made a request after I agreed that typical contracts, separate contracts, might be introduced for each year, and that we would request Fox to furnish you those typical contracts, and the Fox office advised Mr. Nickerson, who was here in Oklahoma City, who had those contracts to make photostats of them and furnish them to you. That does not mean this document. There is a signed contract for every town for that year. That is what Mr. Caskey says.

Mr. WRIGHT. May we offer F–1? That is a signed contract that was made for that year.

Mr. COCHRAN. I think we had better wait until we can find out whether there was a master deal, and if there was not, I do not see any way we can avoid having all of the contracts for that season, if we are going to find out what was done. In other words, if there was no master
740 contract signed we will have to have separate contracts, of course. The agreement as to these typical contracts on my part only provides where there was a master deal, which referred to the contracts which were to be executed. If they have a master deal, let's get it.

(Discussion off the record.)

Mr. WRIGHT. We will withdraw the offer.

Mr. COCHRAN. Between now and the next session I will check it.

Mr. WRIGHT. The next thing I think we will offer will be the interrogatories and answers of the defendants. I don't know whether you want those read into the record.

The COURT. Yes, read them into the record.

741 Mr. KIMP. Your Honor please, I propose to read first the answer to the second paragraph of the in-

terrogatories as propounded to Griffith Amusement Company, in their answer. I assume there is no need, since these interrogatories are in the record, to read the interrogatory itself, is there?

Mr. COCHRAN. I believe you will have to read the interrogatory in order to understand it.

Mr. KIMM. All right. The second paragraph says:

"State the respective addresses of the principal executive offices and all branch offices of defendant (excluding the respective offices of each theater operated by defendant) indicating the nature and extent of the business which is carried on at each office. Further, with respect to each such office, give the following information:

(a) The name of each manager of each such office since April 28, 1934, and the periods during which each such manager was so employed;

(b) The duties and authority of each such manager."

Mr. COCHRAN. Do those answers show the date as of which those are answers?

Mr. KIMM. I had proposed to read that as I concluded.

Mr. COCHRAN. That's all right.

742 Mr. KIMM. The time it covers, is, sworn to before me this 5th day of August, 1943.

Mr. COCHRAN. The time it covers.

Mr. KIMM. The time covered is from April 28, 1934, to April 28, 1939.

The answer is:

One principal office, namely: 11½ North Lee Avenue, Oklahoma City, Oklahoma.

No branch offices.

Nature and extent of business carried on at office: General administration, bookkeeping and executive duties performed at principal office.

(a) R. M. Clark (now deceased) was General Manager from April 28, 1934, to November 17, 1934, (date of his death).

H. J. Griffith, General Manager, November 17, 1934, to March 1, 1939.

B. J. McKenna, General Manager, March 1, 1939 to Present.

(b) Duties and authority of manager: Duties of General Manager are those generally exercised by administrative officer, has charge of personnel, designation of duties for other employees.

743 No. 3 is: Give the names and addresses of all persons who have been directors or officers of the defendant, or persons performing similar functions, at any time since April 28, 1934, indicating in each instance the office held and the term thereof.

Answer:

Name	Address	Office Held	Term
L. C. Griffith	Oklahoma City, Okla.	Director & Pres.	4/28/34 to Present
Jas. R. Boyle	Unknown	Director, V. Pres. Treasurer	4/28/34 to 12/11/34
R. E. Griffith	Dallas, Texas	Director	4/28/34 to Present
		Asst. Sec.	2/15/35 to Present
H. J. Griffith	Kansas City, Mo.	Director & Secretary	4/28/34 to Present
R. M. Clark	(deceased)	Asst. Sec.	4/28/34 to time of death in Nov. '34
Foster McSwain	Ada, Okla.	Director	12/11/34 to Present
		V. Pres.	12/11/34 to Present
A. R. Powell	Guthrie, Okla.	Director & Asst. Treas.	12/11/34 to Present
Harry Lowenstein	Ardmore, Okla.	Director & Treasurer	12/11/34 to Present
B. J. McKenna	Okla. City	Asst. Sec.	2/15/35 to 2/23/40
		V. Pres.	2/23/40 to Present
H. R. Falls	Okla. City	Asst. Sec.	2/23/40 to Present
Henry S. Griffing	"	Asst. Sec.	2/23/40 to Present

744 Interrogatory No. 4 is: State the total amount of defendant's stock authorized and outstanding, listing each class of stock separately and describing the rights granted to stockholders of each class.

Answer to Interrogatory No. 4:

Authorized Stock: Class "A" 3000 shares
Class "B" 3000 shares

Outstanding Stock: Class "A" 1400 shares
Class "B" 1400 shares

Rights of Class "A" Stockholders: The holders of the Class "A" stock shall at all times have the right to elect three (3) directors of the corporation, to be known as Class "A" Directors.

Rights of Class "B" stockholders: The holders of the Class "B" stock shall at all times have the right to elect three (3) directors of the Corporation, to be known as Class "B" Directors.

Except as above provided, the Class "A" Stock and the Class "B" Stock shall be in all respects equal and similar.

Interrogatory No. 7 is: List the respective names and addresses of the ten largest stockholders of record of each class of Stock and the number of shares thereof held by each, stating any changes which have occurred therein since April 28, 1934.

745 The answer to Interrogatory No. 7:

Name	Address	Stock owned "A"	Stock owned "B"	Changes Since 4/28/34
L. C. Griffith	Oklahoma City, Okla.	616	12	None
R. E. Griffith	Dallas, Texas	616	12	None
H. J. Griffith	Kansas City, Mo.	168	123	None
L. C. Griffith, Tr. Consolidated	Oklahoma City, Okla.		239	None
R. E. Griffith, Tr. R. E. G. Thea.	Dallas, Texas		199	None
Foster McSwain	Ada, Okla.		149	
B. J. McKenna, Tr. Asso. Inv.	Oklahoma City, Okla.		154	None
				None
Harry Lowenstein & Helen Lowenstein or survivor	Ardmore, Okla.		82	None
Jimmie Zartaludes	Sapulpa, Okla.		59	None
A. R. Powell	Guthrie, Okla.		74	None

Changes since April 28, 1934—

On April 28, 1934, the largest stockholders were:

	Class "A"	Class "B"
Universal Chain Theatres Corp.		1397
L. C. Griffith	616	
R. E. Griffith	616	
H. J. Griffith	168	

On December 11, 1934, Universal's stock was canceled and reissued as follows:

746 R. E. Griffith	12
L. C. Griffith	12
H. J. Griffith	4
W. T. Spears, Treasurer Western States	751
Harry M. Lowenstein, Treas. G. A. Co.	618

On December 1, 1938, W. T. Spears, Treasurer Western States Theaters, Inc. 751 shares were canceled and reissued as follows:

L. C. Griffith, Trustee for Consolidated	239
R. E. Griffith, Trustee for R. E. Griffith Thea.	199
Foster McSwain	149
B. J. McKenna, Treasurer Associated Investment	154
Eva Lowenstein	5
Treasurer G. A. Co.	5

Harry M. Lowenstein, Treasurer Griffith Amusement Company 618 shares canceled and reissued as follows:

4/11/35	W. T. Spears, Treas.	207	
4/11/35	Harry M. Lowenstein, Tr.		10
5/ 3/35	W. T. Spears, Treas.	20	11
9/28/35	W. T. Spears, Treas.	20	10
10/ 2/35	W. T. Spears, Treas.	230	50
10/16/35	W. T. Spears, Treas.	60	
		537	81

747 Harry M. Lowenstein, Treasurer Griffith Amusement Company 81 shares canceled and reissued as follows:

10/16/38	W. T. Spears, Treas.	28
12/ 2/38	W. T. Spears, Treas.	40
10/29/38	W. T. Spears, Treas.	13
		81

On December 1, 1938, W. T. Spears, Treasurer Western States Theaters, Inc. 618 shares were canceled and reissued as follows:

J. H. Griffin	35
H. J. Griffith	119
Harry Lowenstein	21
A. R. Powell	74
R. F. Wilbern	40
I. G. & Jeanie Killough	50
Sol Lowenstein	50
W. T. Spears	50
Jimmie Zartaludes	59
W. J. Moore	25
Harry & Helen Lowenstein or the survivor	82
F. G. Roberts	4
H. G. Stettmund	9
	618

748 Interrogatory 10 is: List the names of all other corporate defendants in the above entitled cause which at any time since April 28, 1934, have owned, directly or indirectly, any securities issued by the defendant or its subsidiaries, with a description of the nature and amount of said securities so held by each such corporate defendant, the respective dates such securities were acquired, the respective dates such securities were disposed of, the respective names and addresses of the persons from whom they were acquired, and the respective names and addresses of the persons to whom they were transferred.

Answer to Interrogatory 10 is Griffith Consolidated Theaters, Inc., owns 239.791 shares of Class B. stock in Griffith Amusement Company. This stock was acquired December 1, 1938, from W. T. Spears, Treasurer of Western States Theaters, Inc., Oklahoma City, Oklahoma.

R. E. Griffith Theaters, Inc. owns 199 shares of Class B stock in Griffith Amusement Company, acquired December 1, 1938, from W. T. Spears, Treasurer of Western States Theaters, Inc., Oklahoma City, Oklahoma, and 12 shares of Class B stock acquired from R. E. Griffith, Dallas, Texas, on February 1, 1939.

Interrogatory No. 12 is: List the names of all other corporate defendants in the above-entitled cause or subsidiaries thereof which have been indebted to the defendant at any time since April 28, 1934, with the date
749 each such indebtedness was incurred, the amount of the indebtedness involved, and the date when payment was made or when payment is due.

Answer to Interrogatory No. 12:

Consolidated Theaters, Inc., and R. E. Griffith Theaters, Inc. were the only corporate defendants indebteded to Griffith Amusement Company for said period. The indebtedness was in the nature of a running account for supplies, maintenance, services, etc. The amounts per year are as follows:

Consolidated Theaters, Inc:

April 28, 1934—Records do not disclose amount due on that date.

Beginning of fiscal year 1935	$10,960.41
	5,219.79
" " " " 1936	2,960.41
" " " " 1937	2,689.72
" " " " 1938	5,175.00
" " " " 1939	1,275.00
	836.50

R. E. Griffith Theaters, Inc.:

April 28, 1934—Records do not disclose amount due on that date.

Beginning of fiscal year 1935	2,954.11
" " " " 1936	1,480.11
" " " " 1937	1,313.84
" " " " 1938	2,257.72
" " " " 1939	2,577.33

750 Interrogatory No. 17: List the names and addresses of each theater in which the defendant now owns, or has owned at any time since April 28, 1934, a financial interest, directly or indirectly, and with respect to each theater listed, state the following information:

A. The nature and extent of the interest of the defendant therein and the date it was acquired;

B. If any person other than the defendant owns a financial interest therein, state the names and addresses of such persons and the nature and extent of the interests respectively owned by them;

C. If the defendant no longer owns such interest, the date it was disposed of.

Answer to Interrogatory No. 17:

Town	Theater	Date acquired	Int. owned	Name and address of associate	Int. owned
Ada, Okla.	McSwain	5- 6-29	80%	Mr. & Mrs. I. G. Killough, Ada, Oklahoma	40%
	Kiva (Liberty)	7- 7-30	"	"	"
	Ritz	5- 6-29	"	"	"
Bartlesville, Okla.	Lyric	11- 1-28	100%		
	Odeon (Liberty)	7- 1-29	"		
	Osage (Odeon)	7- 1-29	"		
	Rex (Midwest)	4-10-31	"		
Blackwell, Oklahoma	Midwest	12- 1-25		R. P. Leachman, Blackwell, Okla.	
	Palace	3-16-29	66 2/3%	C. E. Leachman, Blackwell, Okla.	33 1/3%
	Rivoli	11- 1-26			
Borger, Texas	Rex	8-16-26	100%		
	Rig	8-16-26	"		
	State	11-30-28	"		
	Circle	11-10-28	"		
Chandler, Oklahoma	H & S	5-10-30	10%	H. G. Stettmund, Chandler, Okla.	90%
	Odeon	5-10-30	"	"	"
Duncan, Oklahoma	Folly	9- 1-27	50%	R. F. Wilbern, Duncan, Okla.	50%
	Palace	9- 1-27	"	"	"
Elk City, Oklahoma	Elk	9-28-35	51%	H. R. Falls, Okla. City, Okla.	
	Rex[1]	12- 1-25	"	"	
Enid, Oklahoma	Arcadia	3- 1-32	50%	Texas-Okla. Enterprises, Inc. Dallas, Texas	50%
	Aztec	1- 1-28	"	"	"
	Cherokee	2-17-28	"	"	"
	Mecca	6- 1-29	"	"	"
	Criterion	3- 1-32	"	"	"
Guthrie, Oklahoma	Melba	5-12-26	50%	A. R. Powell, Guthrie, Okla.	50%
	State	4- 6-28	"	"	"
	Guthrie	8-31-3	"	"	"
Henryetta, Oklahoma	Blaine	5-20-27	100%		
	Morgan	"	"		
Hobart, Oklahoma	Kiowa	1-11-32	100%		
Hugo, Oklahoma	Erie	5- 1-26	100%		
	Ritz	6-21-32	"		
Kermit, Texas	Kermit	4-14-36	56%	Lester Dollison Lovington, N. M	30%
	Texas	7-25-37	"	Fred Morley Dallas, Texas	14%
Maud, Oklahoma	Arcadia	2-27-32	100%	Sold to Messrs. Barrett and Holt, Maud, Okla. 9-27-36	
Norman, Oklahoma	Campus	8- 1-28	50%	Lowenstein Bros. Ardmore, Okla.	25%
	Sooner	11- 1-28	"		
	University	8- 1-30	"	Mr. and Mrs. I. G. Killough, Ada	8 1/3%
	Varsity	7-14-27	"	A. R. Powell Guthrie, Okla.	16 2/3%
Oklahoma City, Oklahoma	Rialto	5- 1-26	100%		

1 Upon expiration of lease, this theater leased by landlord to another exhibitor.

Town	Theatre	Date acquired	Int. owned	Name and address of associate	Int. owned
Okmulgee, Oklahoma	Inca	9-25-37	100%		
	Orpheum	7-31-36	"		
	Yale	4-13-32	"		
	Rex (Cozy)	8-13-27	"		
Pampa, Texas	LaNora (Crescent)	4-13-29	100%		
	Rex	9-15-26	"		
	State	4-10-31	"		
Seminole, Oklahoma	Rialto	6- 6-35	100%		
	State	3- 1-31	"		
	Seminole (Rex)	12-31-36	"		
Shawnee, Oklahoma	Avon	3- 1-36	75%	A. F. Hornbeck, Shawnee, Okla.	25%
	Bison	10- 9-37	"	"	"
	Criterion	6- 1-29	"	"	"
	Rex[1]	1-10-31	"	"	"
Stillwater, Oklahoma	Aggie	4-29-36	66 2/3%	R. P. Leachman, Blackwell, Okla.	33 1/3%
				C. E. Leachman, Blackwell, Okla.	
	Campus	12- 1-33	"	"	"
	Mecca	4-29-36	"	"	"
753 Wellington, Texas	Ritz	1- 1-29	100%		
	Texas	10- 1-33	"		
Wink, Texas	Rig	1-16-38	80%	F. E. Morley, Dallas, Texas	20%
	Rex	9-27-28	"	"	"

[1]Lease expired 3-15-36—not renewed.

Interrogatory No. 22: State the names of the towns in which the Complaint alleges the defendant operates one or more theaters; where no theaters other than those in which the defendant owns a financial interest have been operated at any time since April 28, 1934.

Answer to Interrogatory No. 22:

April 28, 1934–April 28, 1939
Chandler, Oklahoma
Guthrie, Oklahoma
Henryetta, Oklahoma
Hugo, Oklahoma
Wellington, Texas
Wink, Texas
Maud, Oklahoma.

Interrogatory No. 23: State the name and address of each theater operated at any time since April 28, 1934, in the towns in which the Complaint alleges the defendant operates one or more theaters, in which the defendant has not owned a financial interest at any time since said date. If such theaters were not operated during the entire period from April 28, 1934, to the present, state the approximate dates of their operation.

Answer to Interrogatory No. 23:
April 28, 1934—April 28, 1939.

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Town	Theater
Ada, Oklahoma	Strand and Ada
Bartlesville, Oklahoma	Crown
Blackwell, Oklahoma	Plaza
Borger, Texas	Crown
Duncan, Oklahoma	Ritz
Elk City, Oklahoma	Lamar and Rex
Enid, Oklahoma	Rivoli and Royal
Hobart, Oklahoma	Oklahoman and Palace
Kermit, Texas	Texas
Norman, Oklahoma	Oklahoman
Pampa, Texas	Crown and Rialto
Seminole, Oklahoma	Chief
Shawnee, Oklahoma	Ritz and Odeon
Stillwater, Oklahoma	Camera

This information is given from memory. No records were kept on opposition theaters. This list may be incomplete.

This was sworn to by F. J. McKenna, and it says it covers the period from April 28, 1934 to April 28, 1939, and was sworn to before a notary public on the 5th day of August, 1943.

The next one is the Consolidated Theaters, Inc. answers. Does your Honor want me to read that interrogatory again?

The Court. No, I think not.

Mr. Kimb. Answer to interrogatory No. 2.

One principal office, namely: 11½ North Lee Avenue, Oklahoma City, Oklahoma.

No branch offices.

Nature and extent of business carried on at office: General administration, bookkeeping and executive du-
755 ties performed at principal office.

(a) Manager since April 28, 1934: L. C. Griffith, (President).

(b) Duties and authority of Manager: Duties are those generally exercised by administrative officer, has charge of personnel, designation of duties for other employees.

Answer to Interrogatory No. 3:

Name	Address	Office held	Term
L. C. Griffith	Oklahoma City Okla.	Director	4/22/34 to Present
		V. Pres.	4/22/34 to 1/15/35
		President	1/15/35 to Present
H. J. Griffith	Kansas City, Mo.	Director & Sec-Treas.	4/22/34 to Present
Tom Blair, Sr.	(deceased)	Director	4/22/34 to 1/15/35
Harry Lowenstein	Ardmore, Okla.	Director	4/22/34 to Present
B. J. McKenna	Okla. City	Director	4/22/34 to Present
		V. Pres.	1/15/35 to Present
R. M. Clark	(deceased)	Director & President	4/22/34 to time of death in Nov. '34.
H. R. Falls	Oklahoma City	Director and Assistant Secretary-Treas.	4/22/34 to Present
756 C. O. Fulgham	Okla. City	Director	1/15/35 to Present
G. M. Bond	Oklahoma City	Director	1/15/35 to 2/15/36
		"	2/ 1/39 to 2/22/40
C. B. Akers	Oklahoma City	Director	2/15/36 to 2/1/39
		"	2/22/40 to Present
Verna Mae Clark	Oklahoma City	Director	2/15/36 to 2/1/39
W. T. Spears	Altus, Okla.	Director	2/1/39 to Present
Henry S. Griffing	Oklahoma City	Assistant Secretary	2/22/40 to Present
R. E. Griffith	Dallas, Texas	Assistant Secretary	2/15/36 to Present

Answer to Interrogatory No. 4:

Authorized Stock:
3000 shares (All common)
Outstanding Stock:
3000 shares
Rights of stockholders: Customary rights of common stockholders.

Answer to Interrogatory No. 7:

Name	Address	Stock Owned	Changes since 4-22-34
L. C. Griffith	Oklahoma City, Oklahoma	1530	None
H. J. Griffith	Kansas City, Missouri	552	None
Associated Investment Co.	Oklahoma City, Oklahoma	350	None
757 R. E. Griffith, Trustee R. E. Griffith Theaters, Inc.	Dallas, Texas	350	None
Verna Mae Clark	Oklahoma City, Oklahoma	225	25 shares formerly owned by R. M. Clark who died late 1934
Tom Blair, Sr.	(deceased)	22	None
C. O. Fulgham	Oklahoma City, Oklahoma	22	None
H. R. Falls	Oklahoma City, Oklahoma	22	None
Gates Corgan	Shawnee, Oklahoma	20	None
Griffith Consolidated Theaters, Inc.	Oklahoma City, Oklahoma	19	None

758 Mr. KIMB. Interrogatory No. 11: List the names of all other corporate defendants in the above-entitled cause or subsidiaries therof to which the defendant has been indebted at any time since April 28, 1934, with the date each such corporate defendant or subsidiary became a creditor, the amount of the indebtedness involved, and the date when payment was made or the date when payment is due. (As used in this respect, the term "indebtedness" shall not include any amounts due for current film rental.)

Answer: The only indebtedness due other corporate defendants is a running account indebtedness due to Griffith Amusement Company. Said indebtedness was incurred for supplies, maintenance, services, etc. The amount of the running account due each year is as follows:

April 28, 1934—Records do not disclose amount due on that date.	
Beginning of fiscal year 1935	$10,960.41
	5,219.79
" " " " 1936	2,360.41
" " " " 1937	2,689.72
" " " " 1938	5,175.00
" " " " 1939	1,275.00
	836.50

In response to interrogatory 12: Answer: Griffith Amusement Company was the only corporate defendant indebted to Consolidated Theaters, Inc. for said period.

759 The indebtedness was in the nature of a running account for supplies, maintenance, services, etc. The amounts per year are as follows:

April 28, 1934—Records do not disclose the amount due on that date.	
Beginning of fiscal year 1935	——
" " " " 1936	$1,358.45
" " " " 1937	——
" " " " 1938	921.64
" " " " 1939	——

In response to interrogatory 15 the answer is: R. E. Griffith Theaters, Inc., Dallas, Texas, engaged in the exhibition of motion picture films, owns 250 shares of Griffith Consolidated Theaters, Inc.; acquired October 19, 1936, original issue.

The answer to interrogatory 17:

Town	Theatre	Date acquired	Int. owned	Name and address of associates	Int. owned
Altus, Oklahoma	Delta (Rex - Old Empire)	11- 1-30	50%	W. T. Spears, Altus, Okla.	50%
	Plaza (New Empire)	10- 1-31	"	"	"
	Ritz	8- 1-37	"	"	"
	Paramount (Closed	7-16-33	"	"	"
		9-16-36)			
Chickasha, Oklahoma	Rialto	2-28-32	50%	Clara James Griffith, Kansas City, Mo.	50%
[illegible] Chickasha, Oklahoma	Ritz	5- 1-33	"	"	"
	Washita (Sugg) Destroyed by fire 12-27-29	2-28-32	50%	Clara James Griffith, Kansas City, Mo.	50%
	Kozy[1]	2-28-32			
Claremore, Oklahoma	Palace	4-22-30	66 2/3%	W. J. Moore, Fairfax Okla.	33 1/3%
	Yale	"	"	"	"
Cleburne, Texas	Palace	4-26-30	100%	"	
	Yale	"	"		
Clinton, Oklahoma	Del Rio	6- 1-35	33 1/3%	F. G. Roberts, Bald Knob, Ark.	33 1/3%
	Rialto	1-30-34	"	Mrs. H. M. Lowenstein, Ardmore, Okla.	16 2/3%
	Rex[2]	7-16-34	"	Clara James Griffith, Kansas City, Mo.	16 2/3%
Cushing, Oklahoma	American	2-22-35	100%		
	Dunkin	2-22-35	"		
	Paramount	4-27-30	"		
Drumright, Oklahoma	Midwest	9- 2-36	100%		
	Rex	"	"		
	Tower (Strand)	"	"		
El Reno, Oklahoma	Criterion	4-16-39	80%	R. R. Slocum, El Reno, Okla.	20%
	Empress	"	"	"	"
	Royal	"	"	"	"
Frederick, Oklahoma	Ramona	2-13-33	50%	A. R. Powell, Guthrie, Okla.	16 2/3%
	Ritz	"	"	W. T. Spears, Altus, Okla.	16 2/3%
	Grand	"	"	R. F. Wilbern, Duncan, Okla.	16 2/3%
Goldsmith,	Ector	8-14-37	100%		
Goldenville, Oklahoma	Dixie	5- 1-36	50%	Foster McSwain, Ada, Okla.	50%
	Grand	5-16-38	"		
	Liberty	5-16-36	"	" "	"
Seminy	Ritz	6-14-36	40%	Josephine B. Falls, Okla. City	50%
				R. E. Griffith, Dallas, Texas	5%
				Lindsey Theatres, Inc. Lubbock, Texas	5%
Sulphur, Oklahoma	Temple	4-29-37	100%	These theaters sold to John H. Thomas et ux on December 29, 1937.	
	Thomas	5- 1-37	100%		

[1]Lease expired 12-31-35--not renewed.
[2]Lease expired 7-15-37.

Town	Theatre	Date acquired	Int. owned	Name and address of associates	Int. owned
Mangum, Oklahoma	Greer	11- 1-37	100%		
	Temple	5- 1-38	"		
	Rialto	5- 1-38	"		
Midland, Texas	Rex (Palace)	4-27-30	50%	H. Howard Hodge, Midland, Texas	50%
	Ritz	4-27-30	"	" "	
	Yucca	4-27-30	"	" "	
Oklahoma City, Oklahoma	Reno	12- 1-30	51%	Lotta Sandefur, Okla. City, Okla.	49%
Ponca City, Oklahoma	Murray	5- 1-38	100%		
	Poncan	5- 1-38	"		
	Ritz	5- 1-38	"		
Sapulpa, Oklahoma	State	4- 5-38	50%	James Zartaludes, Sapulpa, Okla.	50%
	Empress	1- 1-36	"	" "	"
Sayre, Oklahoma	Rio	6- 1-36	33 1/3%	Geo. Stovall, Sayre, Okla.	33 1/3%
	Ute	7-15-36	"	Clara James Griffith, Kansas City, Mo.	33 1/3%
763 Sunray, Texas	Sunray	2-25-37	100%		
Vinita	Aztec	11- 1-35	66 2/3%	W. J. Moore, Fairfax, Okla.	33 1/3%
	Lyric	4-27-30	"	" "	"
	Grand[3]	4-27-30	"	" "	"
Wewoka, Oklahoma	Key	1-29-38	33 1/3%	J. B. Terry, Wewoka, Okla.	33 1/3%
	Paramount	"	"	Foster McSwain Ada, Okla.	"
	State	"	"	" "	"
Lubbock, Texas	Lindsay[4]	4-27-30			
	Palace[4]	4-27-30			
	Texas[4]	7- 1-33			
Cuaro, Texas	Trot[3]	6-22-38			
	Rialto[3]	"			
New Braunfels, Texas	Rialto[3]	6-22-38			
	Rex[3]	"			
Refugio, Texas	Rialto Rig	6-22-38			
Uvalde, Texas	Strand	10-14-38			
	Ritz	"			
Alvin, Texas	Alvin	2-27-38	25%	J. C. Long, Bay City, Texas	50%
				Westex Theaters, Inc. Dallas	25%
Bay City, Texas	Franklin	2-27-38	25%	" "	"
	Colonial	"	"	" "	"
El Campo, Texas	Floyd	"	"	" "	"
Texas City, Texas	Jewel	"	"	" "	"
	Texas	"	"	" "	"
763 Victoria	Ritz	2-27-38	25%	J. C. Long, Bay City, Texas, Westex Theaters, Inc. Dallas	25%
	Queen	"	"	" "	"
Wharton, Texas	Queen	"	"	" "	"

[2]Lease expired 11-15-35 and theater abandoned.

[3]These theaters are owned by Lindsey Theaters, Inc. Griffith Consolidated Theaters, Inc. owns 50% of the stock of this corporation and Mrs. Bettie Lindsey owns 50% of the stock.

[4]These theaters were owned by Jack Pickens Theaters, Inc. Griffith Consolidated Theaters, Inc. owned 50% of the stock of said corporation and Jack Pickens owned 50% of the stock.

No. 22 is as follows:

State the names of the towns in which the Complaint alleges the defendant operated one or more theaters; where no theaters other than those in which the defendant owns a financial interest have been operated at any time since April 28, 1934.

Answer: The following are the towns in which the Complaint alleges the defendant operates one or more theaters in which during the period from April 28, 1934, to the date of the filing of this audit, when the defendant owned a financial interest in a theater or theaters in such town, there were no competing theaters.

Claremore, Oklahoma
Drumright, Oklahoma
Holdenville, Oklahoma
Sayre, Oklahoma
Vinita, Oklahoma
Midland, Texas
Sunray, Texas.

These are sworn to by B. J. McKenna on the 5th day of August, 1943.

764 The next are the answers of R. E. Griffith Theaters, Inc.

Answer to Interrogatory No. 2 is as follows:

The principal office of the corporation was in Denver, Colorado from April 28, 1934, to September 28, 1934, at which time it was moved to the Tower Petroleum Building, Dallas, Texas, where it has since been maintained continuously. General administration, accounting, booking and the like are carried on here. No branch offices other than theater offices have been maintained. Mr. R. E. Griffith, President of the Corporation, was and is General Manager, negotiating and approving all major contracts and deals, leases, acquisitions and sales, counseling with all department heads as to general operations such as booking of pictures and policies of operation of the various theaters.

In answer to Interrogatory No. 7 the answer is:

The ten principal stockholders all hold common stock, the amount held by each being listed below. All of such stock was acquired between the date of incorporation and April 28, 1939, except in the case of R. E. Griffith, while stock was acquired by several of the individuals at different dates, no transfers have taken place and the amount stated opposite each name, therefore, gives the amount of stock held by each person on April 28, 1939.

Name of stockholders	Number of shares held
R. E. Griffith, Dallas, Texas	2,095
765 Griffith Employees Investment Company, Dallas, Texas	250
Marcello Griffith, Dallas, Texas	300
Griffith Consolidated Theaters, Oklahoma City, Oklahoma	250
Associated Investment Company, Oklahoma City, Oklahoma	250
Foster McSwain, Ada, Oklahoma	150
H. J. Griffith, Kansas City, Missouri	125
Fred Morley, Dallas, Texas	110
F. L. Stocker, Dallas, Texas	100
Dorothy V. Payne, Dallas, Texas	97

R. E. Griffith during this period disposed at various times of a total of 349 shares.

The answer in response to Interrogatory No. 15 is as follows:

All of the following corporations were organized for the purpose of engaging in the operation of motion picture theaters.

CONSOLIDATED THEATERS, NOW GRIFFITH CONSOLIDATED THEATERS, INC.

October 19, 1936, Defendant acquired 250 shares of common stock of Consolidated Theaters, Inc., from the issuing corporation.

GRIFFITH AMUSEMENT COMPANY

December 1, 1938, Defendant acquired 199 shares of Class A common stock of Griffith Amusement Com-
766 pany from W. T. Spears, Treasurer of Western States Theater Company, Oklahoma City, Oklahoma.

February 1, 1939, the corporation acquired 138 shares of Class A and 12 shares of Class B common stock of Griffith Amusement Company from R. E. Griffith. The class A stock was still in the name of R. E. Griffith on April 28, 1939, but is owned by this corporation.

WESTEX THEATERS, INC.

The corporation acquired no par value common stock in Westex Theaters, Inc., from that corporation, as follows:

May 4, 1935	500 shares
July 9, 1936,	7,500 shares
April 10, 1937	500 shares
April 16, 1937	500 shares
April 24, 1937	500 shares
April 3, 1937	400 shares
May 1, 1937	500 shares
March 29, 1939	2,500 shares

PARTNERSHIP THEATRES, INC.

January 1, 1939, the corporation acquired 6,000 shares of no par value common stock of Partnership Theaters, Inc. from that corporation.

BRADY AMUSEMENT COMPANY

June 28, 1935, the corporation acquired 25 shares of the common stock of Brady Amusement Company,
767 Brady, Texas, from Roy L. Walker, Lampasas, Texas. On June 27, 1936, this stock was transferred to Westex Theaters, Inc.

WESTERN STATES THEATERS, INC.

On March 20, 1935, the corporation acquired 200 shares of common stock of Western States Theaters, Inc., Oklahoma City, Oklahoma. On June 10, 1935, it acquired 164 shares of the same stock. On October 23, 1935, the last mentioned certificate was cancelled, and a new certificate for 123 shares was issued. This corporation was dissolved on December 31, 1938, and all stock cancelled. All stock was acquired from Western States Theaters, Inc.

GRIFFITH-ARIZONA THEATERS, INC.

On June 15, 1938, the corporation acquired from the original accommodation incorporators of the Griffith-Arizona Theaters, Inc., 40 shares of no par value common stock. On the same date it acquired from the corporation 1200 shares of such stock. On January 20, 1939, and on March 4, 1939, this stock was cancelled in a deal by which certain properties were taken over by this corporation and liabilities assumed.

WESTLAND THEATERS, INC.

The corporation acquired no par value common stock in Westland Theaters, Inc., Denver, Colorado, from that corporation, which was issued to R. E. Griffith, though owned by the corporation as follows:

768	June 27, 1932	10 shares
	December 29, 1932	47 shares
	December 29, 1934	34 shares

It also acquired stock of the same class directly from such corporation as follows:

June 27, 1932	480 shares
February 1, 1932	500 shares
December 29, 1934	192 shares
December 29, 1934	95 shares
December 26, 1938	16 shares
March 18, 1935	90 shares
March 29, 1937	463 shares
June 9, 1937	407 shares

June 27, 1936, the corporation transferred 10 shares of this stock to R. E. Griffith.

PUEBLO THEATER, INC.

September 23, 1936, the corporation acquired from the issuing corporation 18 shares of the Class A common stock

of the par value of $100.00 each of the Pueblo Theater, Inc., Pueblo, Colorado. On March 4, 1937, the corporation acquired from the issuing corporation 18 shares of the same stock. May 22, 1937 it acquired 99 shares from the issuing corporation. July 3, 1937, it acquired 44 shares from said corporation. On January 31, 1938, all of the above stock was cancelled and in exchange therefor the
769 corporation acquired from Chief Investment Corporation, a Colorado Corporation, 85 shares of Common stock of Chief Investment Corporation of the par value of $100.00 each. Pueblo Theaters, Inc., was then dissolved.

Mr. WRIGHT. I wanted to call your attention to the fact that we had prepared a tabulation of these acquisitions by years in towns so as to give the total number on specific dates and then we served on defendants on the form of a notice to admit, on May 2nd. Now they have served an answer which does not admit or deny the facts but simply say they are not bound to admit them and do not regard them as material. I think your Honor might be interested in having our tabulation in any event.

The COURT. You can submit that in the nature of a brief.

Mr. COCHRAN. I will say this, if your Honor please; I think that counsel should furnish that stipulation and we will furnish ours. I think we entirely agree there will not be many points of departure. When we get a chance to examine it we can then submit our brief.

(Hereupon Court adjourned until ten o'clock a. m. May 13, 1945.)

770 PROCEEDINGS

May 12, 1945, 10:15 a. m.

(The following proceedings were had out of the presence of the court, pursuant to agreement).

Mr. CASKEY. Pursuant to paragraph 4 of the Paramount subpoena, I produce agreement dated July 27, 1933, between J. A. Guest, operating the Ritz Theater at Duncan, Oklahoma, and Paramount Pictures Distributing Company. (Marked for identification as Plaintiff's Exhibit No. 183.)

Plaintiff's Exhibit No. 183 for identification, is produced and is a license agreement dated July 27, 1933, between J. A. Guest, operating the Ritz Theater, Duncan, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to "The Marx Brothers Production."

Plaintiff's Exhibit No. 184 for identification, is license agreement dated December 13, 1934, between J. A. Guest operating the Ritz Theater, Duncan, Oklahoma, relating to 11 pictures, group S-5.

Plaintiff's Exhibit No. 185 for identification, is license agreement dated December 13, 1934, between J. A. Guest operating the Ritz Theater, Duncan, Oklahoma, relating to the picture "Last Round-up."

Nothing is produced in response to paragraph 5.

771 Plaintiff's Exhibit No. 186 for identification, produced in response to paragraph 6 of the Paramount subpoena, is agreement dated July 12, 1933, between Frank Hunt, operating the LaMar Theater, Elk City, Oklahoma and Paramount Pictures Distributing Company, Inc., relating to group S–5 product.

Plaintiff's Exhibit No. 187 for identification, is license agreement dated July 12, 1933, between Frank Hunt, operating the LaMar Theater, Elk City, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to "The Marx Brothers Production."

Plaintiff's Exhibit No. 188 for identification, produced in response to paragraph 7 of the Paramount subpoena, is license agreement dated August 26, 1938, between Nagle & Funk and Paramount Pictures Distributing Company, Inc., Nagle & Funk operating the El Morro Theater, Gallup, New Mexico, relating to the group S–10 features.

Plaintiff's Exhibit No. 189 for identification, produced in response to paragraph 8, is license agreement dated August 5, 1933, between Palace Theater Operating Co., operating the Palace Theater, Hobart, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to group S–5 features, first run.

Plaintiff's Exhibit No. 190 for identification, is license agreement dated August 5, 1933, between Palace Theater

772 Operating Co., operating the Palace Theater, Hobart, Oklahoma, and Paramount Pictures Distributing Company, Inc., relating to the "Marx Brothers Productions."

Plaintiff's Agreement No. 191, for identification, is license agreement dated June 15, 1934, between Bernice Baker, operating the Palace Theater, Hobart, Oklahoma, and Paramount Pictures Distributing Company, relating to eight pictures, and marked "superseding contract."

Plaintiff's Exhibit No. 192, for identification, is license agreement dated December 5, 1934, between Palace Theater Operating Co., operating the Palace Theater, Hobart, Oklahoma, and Paramount Distributing Company, Inc., relating to two pictures of the group S–5 features.

Nothing is produced in response to paragraph 9.

Plaintiff's Exhibit No. 193 for identification, is a carbon copy of a letter from J. J. Unger to Mr. R. E. Griffith, dated September 16, 1938, together with a schedule entitled "Situations Recently Acquired".

Plaintiff's Exhibit No. 194 for identification, produced in response to subpoena served upon RKO Radio Pictures, Inc., is license agreement dated December 1, 1939, between Nona Kyser, operating the Strand or Ada Theaters, Ada, Oklahoma, and RKO Radio Pictures, Inc., relating to the second run of the 1939–40 product.

773 Plaintiff's Exhibit No. 195 for identification is license agreement dated December 1, 1939, between Nona Kyser, operating the Ada or Strand Theaters, Ada, Oklahoma, and RKO Radio Pictures, Inc., relating to the 1939–40 product first run, and granting the exhibitor "Preview Privileges".

Plaintiff's Exhibit No. 196 for identification, is license agreement dated February 15, 1939, between Nona Kyser and RKO Radio Pictures, Inc., relating to 20 pictures third run on the 1937–38 product, to which is annexed two change of contracts dated respectively April 23, 1940, and January 17, 1940.

774 Plaintiff's Exhibit No. 197 for identification, is license agreement dated November 28, 1938, between Lahan Theater, Inc., and RKO Radio Pictures, Inc. (Lahan Theater, Inc. operating the Bays Theater at Blackwell, Oklahoma) relating to 54 features of the 1938–39 production.

Plaintiff's Exhibit No. 198 for identification, is license agreement dated November 28, 1938, between Lahan Theater, Inc., operating the Bays Theater at Blackwell, Oklahoma, and RKO Radio Pictures Corporation, Inc., relating to 32 features, the 1938–39 production, second run.

Plaintiff's Exhibit No. 199 for identification, is an RKO change of contract form dated October 23, 1939, relating to contract No. 785, dated October 23, 1939.

Plaintiff's Exhibit No. 200 for identification, is an RKO change of contract form dated October 23, 1939, relating to contract No. 781.

Plaintiff's Exhibit No. 201 for identification, is produced in response to paragraph 3 of the subpoena, being an agreement dated December 5, 1934, between H. Ford Taylor operating the Ritz Theater at Brady, Texas, and RKO Distributing Corporation, relating to 1933–34 production, first run, and bearing approval stamp December 30, 1933.

Plaintiff's Exhibit No. 202 for identification, is license agreement and is in response to paragraph 4 of the subpoena, dated November 25, 1938, between Myrtle

775 Guthrie, operating the Ritz Theater at Clinton, Oklahoma, and RKO Radio Pictures, Inc., relating to 54 features for the 1938–39 production to which is at-

tached a special license agreement dated the same day, two RKO change of contract forms dated respectively June 20, 1939, and June 22, 1939.

Plaintiff's Exhibit No. 203 for identification, is a contract dated October 8, 1934, between J. A. Guest and RKO for the Ritz Theater at Duncan, relating to the 1934–35 season product, first run. Attached to it are three RKO change of contract forms dated September 7, 1936, May 14, 1936, and January 10, 1936.

Nothing is produced in response to paragraph 6.

Plaintiff's Exhibit No. 204 for identification is a license agreement dated September 19, 1934, between Frank Hunt, operating the LaMar Theater at Elk City, Oklahoma, and RKO Distributing Corporation, relating to 50 features of the 1934–35 production, first run.

Plaintiff's Exhibit No. 205 is a license agreement dated November 30, 1938, between Mary Hunt operating the Rex Theater at Elk City, and RKO Radio Pictures, Inc., relating to 54 features of the 1938–39 production.

Nothing is produced in response to paragraph 8.

Plaintiff's Exhibit No. 106 for identification, is a license agreement dated February 28, 1934, between
776 Charles H. Mahone operating the Oklahoma Theater, Hobart, Oklahoma, and RKO Distributing Corporation relating to 52 pictures of the 1934–35 production, first run.

Plaintiff's Exhibit No. 207 is a license agreement dated August 1, 1936, between Charles Mahone and RKO Distributing Corporation relating to 16 features of the 1935–36 production, second run, operating the Palace Theater, Hobart.

Plaintiff's Exhibit 208 for identification is produced, being a license agreement dated February 28, 1934, between Charles H. Mahone, operating the Oklahoma Theater, Hobart, Oklahoma, and RKO Distributing Corporation, relating to 52 features of the 1935–36 season, first run.

In response to paragraph 10 of the RKO subpoena, I produce Plaintiff's Exhibit No. 209 for identification, being license agreement dated September 17, 1934, between J. T. Whelan, operating the Roosevelt Theater at Hobbs, New Mexico and RKO Distributing Corporation relating to 50 features of the 1934–35 productions, first run.

Nothing is produced in response to paragraph 11.

Pursuant to paragraph 12 of the RKO subpoena, I produce Plaintiff's Exhibit No. 210 for identification, being license agreement dated September 26, 1938, between Smith & Bearden, operating the Tech Theater, Lubbock, Texas,

and RKO Radio Pictures Inc., relating to 40 fea-
777 tures for the year 1938–39, "When and as avail-
able."

I produce Plaintiff's Exhibit No. 211 for identification, being license agreement dated July 21, 1939, between Smith & Bearden, operating the Tech Theater, Lubbock, Texas, and RKO Radio Pictures, Inc., relating to 30 features of the 1939–40 product, third or fourth run, when available.

Pursuant to paragraph 13 of the RKO subpoena, I produce Plaintiff's Exhibit 212 for identification, being license agreement dated September 4, 1934, between Mrs. V. H. Boldman, operating the Campus Theater, Norman, Oklahoma, and RKO Distributing Corporation, relating to 1934–35 productions, first run.

I produce Plaintiff's Exhibit 213 for identification, being license agreement dated September 4, 1934, between Mrs. R. C. Berry operating the Oklahoma Theater, Norman, Oklahoma, and RKO Distributing Corporation, relating to 50 features of the 1934–35 productions, second run.

I produce Plaintiff's Exhibit 214 for identification, being license agreement dated June 19, 1935, between Mrs. Ray Berry, operating the Oklahoma Theater, Norman, Oklahoma, and the RKO Distributing Corporation, relating to three specified pictures, third run, of the 1934–35 productions.

The documents relating to Picher, Oklahoma, referred
to in paragraph 10 of the subpoena, if any, are
778 under subpoena in a private anti-trust action pend-
ing in the United States District Court for the Northern District of Oklahoma.

Nothing is produced in response to paragraph 15.

In response to paragraph 16, I produce Plaintiff's Exhibit 215 for identification, being license agreement dated November 23, 1938, between Joe L. Love, operating the Chief Theater, Seminole, Oklahoma, and RKO Radio Pictures, Inc., relating to 54 features of the 1938–39 productions, first run.

I produce Plaintiff's Exhibit 216 for identification, being license agreement dated November 29, 1939, between Joe L. Love operating the Chief Theater, Seminole, Oklahoma, and RKO Radio Pictures, Inc., relating to all of the 1939–40 productions, first run.

Response has previously been made to paragraph 17.

I produce as Plaintiff's Exhibit 217 for identification, license agreement dated November 29, 1938, between R. H. Russ, operating the Camera Theater, Stillwater, Oklahoma,

and RKO Radio Pictures, Inc., relating to 54 pictures of the 1938–39 productions, first run.

I produce as Plaintiff's Exhibit 218 for identification, license agreement dated November 29, 1938, between R. H. Russ, operating the Camera Theater, Stillwater, Oklahoma, and RKO Radio Pictures, Inc., relating to 15
779 features, of the 1938–39 productions, second run.

I produce Plaintiff's Exhibit 219 for identification, being license agreement dated October 3, 1934, between R. H. Russ operating the Camera Theater, Stillwater, Oklahoma, and RKO Distributing Corporation, relating to five features of the 1934–35 productions, second run.

I produce Plaintiff's Exhibit No. 220, for identification, being license agreement dated October 3, 1934, between R. H. Russ, operating the Camera Theater, Stillwater, Oklahoma, and RKO Distributing Corporation, relating to five features of the 1933–34 productions, first run.

In response to paragraph 19, a folder of correspondence has been produced and examined by counsel for the plaintiff, who states that none of it is within the terms of the subpoena.

Pursuant to paragraph 20 of the subpoena duces tecum, I produce Plaintiff's Exhibit 221, for identification, being license agreement dated November 23, 1938, between Joe L. Love, operating the Pix Theater, Wewoka, Oklahoma, and RKO Radio Pictures, relating to fifty-four of the 1938–39 features.

I produce as Plaintiff's Exhibit 222 for identification, license agreement dated November 23, 1938. between Joe L. Love, operating the Pix Theater, Wewoka, Oklahoma, and RKO Radio Pictures, Inc., relating
780 to 22 features of the 1938–39 productions, second run.

I produce Plaintiff's Exhibit No. 223, for identification, being license agreement dated November 29, 1939, between Joe L. Love, operating the Pix Theater, Wewoka, Oklahoma, and RKO Radio Pictures, Inc., relating to 52 features of the 1939–40 production, first run.

Pursuant to subpoena duces tecum served upon Twentieth Century Fox Film Corporation, returnable May 7, 1945, paragraph 3, I produce Plaintiff's Exhibit 224 for identification, being license agreement dated June 15, 1938, between Smith & Bearden, Lubbock, Texas, for the Tech or Arcadia Theaters, Lubbock, Texas, and Twentieth Century Fox Corporation of Texas, relating to all of the 1938–39 product, subsequent runs.

I produce Plaintiff's Exhibit 225 for identification, being license agreement dated October 12, 1939, between

Smith & Bearden for the Tech or Arcadia Theaters, Lubbock, Texas, and Twentieth Century Fox Corporation of Texas, relating to all of the 1939–40 product, third or fourth run.

As Plaintiff's Exhibit 226 for identification, I produce four contracts, each dated March 4, 1936 between A. A. Moulder, operating the Criterion Theater, Sapulpa, Oklahoma, and Fox Film Corporation, the first relating to all of the 1936–37 product, first run; the second relating
781 to one Elizabeth Bergner production; the third relating to four British productions first run, and the fourth relating to six Sol Lesser productions, first run.

I produce Plaintiff's Exhibit 227 for identification, being license agreement dated April 21, 1937, between A. A. Moulder, operating the Criterion Theater, Sapulpa, Oklahoma, and Twentieth Century Fox Film Corporation relating to all of the 1937–38 product, first run.

I produce Plaintiff's Exhibit 228, being license agreement dated April 8, 1938, relating to all of the 1938–39 product, first run, between A. A. Moulder, operating the Criterion Theater, Sapulpa, Oklahoma, and Twentieth Century Fox Film Corporation.

I produce as Plaintiff's Exhibit 229 for identification, license agreement dated May 9, 1939, between A. A. Moulder operating the Criterion Theater, Sapulpa, Oklahoma, and Twentieth Century Fox Film Corporation, relating to all of the 1939–40 product, first run.

In response to paragraph 1 of the Twentieth Century Fox subpoena, I produced, as Plaintiff's Exhibit 230 for identification, carbon copy of a letter dated March 7, 1941, from J. D. Guest to Twentieth Century Fox Film Corporation.

I produce Plaintiff's Exhibit 231, for identification, being carbon copy of a letter from Charles W. Clark to J. A. Guest, dated May 14, 1941.

782 As Plaintiff's Exhibit 232, for identification, I produce carbon copy of letter from Charles W. Clark to Mr. J. D. Guest, dated March 14, 1941.

In response to paragraph 5 of the Twentieth Century Fox subpoena, I produce Plaintiff's Exhibit 233 for identification, being license agreement dated June 19, 1935, between Roy McAmis, operating the Princess Theater, Sayre, Oklahoma, and Fox Film Corporation, relating to the 1936–36 product, first run.

I produce Plaintiff's Exhibit 234 for identification, being Twentieth Century Fox form 51, memo of cancellation dated July 23, 1936, relating to the Princess Theater. Sayre, Oklahoma.

In response to the subpoena duces tecum served upon Loew's Inc., returnable May 7, 1945, nothing is produced at this time in response to paragraphs 1, 2, 3, and 6. Search is continuing.

Response has previously been made to paragraph 7.

In response to paragraph 4 of the Loew's subpoena, I produce Plaintiff's Exhibit 235 for identification, being license agreement dated June 8, 1937, between Funk & Nagle, operating the El Morro Theater, Gallup, New Mexico, and Loew's Incorporated, relating to all of the 1937–38 features, first run.

I produce Plaintiff's Exhibit 236, for identifi-
783 cation, being license agreement dated July 18, 1930, between J. H. Moulder operating the Empress Theater, Sapulpa, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation, relating to the 1930–31 feature productions, first run.

I produce Plaintiff's Exhibit 237 for identification, being license agreement dated June 8, 1931, between J. H. Moulder operating the Empress Theater, Sapulpa, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation, relating to the 1931–32 feature productions, first run.

I produce Plaintiff's Exhibit 238 for identification, being license agreement dated May 3, 1932, between J. H. Moulder operating the Empress Theater, Sapulpa, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation, relating to three 1930–31 features, second run.

I produce Plaintiff's Exhibit 239 for identification, being license agreement dated June 6, 1932, between J. H. Moulder operating the Empress Theater, Sapulpa, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation, relating to nine features of the 1931–32 productions, second run.

I produce Plaintiff's Exhibit 240 for identification, being license agreement dated May 3, 1932, between J. H. Moulder, operating the Empress Theater, Sapulpa, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation,
784 relating to one picture of the 1931–32 productions, second run.

I produce as Plaintiff's Exhibit 241 for identification, license agreement dated May 3, 1932, between J. H. Moulder operating the Empress Theater, Sapulpa, Oklahoma, and Metro-Goldwyn-Mayer Distributing Corporation, relating to two pictures of the 1931–32 productions, second run.

In response to the duces tecum subpoena served on Warner Brothers Pictures, Inc., returnable May 7, 1945, paragraph 1, I produce license agreement, marked Plaintiff's Exhibit 242 for identification, dated January 28, 1933, between C. W. Guthrie operating the Ritz Theater, Clinton,

Oklahoma, and Vitagraph, Inc., relating to the 1932–33 First National productions.

I produce as Plaintiff's Exhibit 243 for identification, being license agreement dated January 28, 1933, between C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, and Vitagraph, Inc., relating to the Warner Brothers productions, 1932–33 season, first run.

I produce Plaintiff's Exhibit 244 for identification, being license agreement dated March 1, 1933, between C. W. Guthrie operating the Ritz Theater, Clinton, Oklahoma, and Vitagraph, Inc., licensing the picture "Forty-second Street" first run.

785 I produce Plaintiff's Exhibit 245 for identification being license agreement dated May 27, 1933, between C. W. Guthrie operating the Ritz Theater, Clinton, Oklahoma, and Vitagraph, Inc., licensing the feature "Forty-second Street" second run.

I produce Plaintiff's Exhibit 246 for identification, being license agreement dated April 14, 1933, between C. W. Guthrie operating the Ritz Theater, Clinton, Oklahoma, and Vitagraph, Inc., licensing the feature "Gold Diggers of 1933" first run.

I produce as Plaintiff's Exhibit 247 for dentification, license agreement dated April 14, 1933, between C. W. Guthrie operating the Ritz Theater. Clinton, Oklahoma, and Vitagraph, Inc., licensing the feature "Gold Diggers of 1933", second run.

Nothing is produced in response to paragraph 2.

In response to paragraph 3 I produce Plaintiff's Exhibit 248 for identification, being license agreement dated July 31, 1934, between Bernice Baker operating the Palace Theater, Hobart, Oklahoma, and Vitagraph, Inc., for the Warner Brothers productions for the 1934–35 season, first run.

I produce Plaintiff's Exhibit 249 for identification being license agreement dated July 31, 1931, between Bernice Baker, operating the Palace Theater, Hobart, Oklahoma and Vitagraph, Inc., relating to the 1934–35 First National productions, first run.

786

I produce Plaintiff's Exhibit 250 for identification, being license agreement dated September 1, 1933, between Bernice Baker operating the Palace Theater, Hobart, Oklahoma, and Vitagraph, Inc., relating to the 1933–34 Warner Brothers productions, first run.

I produce Plaintiff's Exhibit 251 for identification, being license agreement dated September 1, 1933, between Bernice Baker operating the Palace Theater, Hobart, Oklahoma, and Vitagraph, Inc., relating to the 1933–34 First National productions, first run.

I produce Plaintiff's Exhibit 252 for identification, being license agreement dated October 25, 1933, between Palace Theater Operating Corp., J. J. Hale, Manager, operating the Palace Theater, Hobart Oklahoma, and Vitagraph, Inc., relating to the feature "Forty-Second Street" second run.

I produce Plaintiff's Exhibit 253 for identification, being memorandum of agreement dated April 13, 1934, between Bernice Baker and G. L. Sears, relating to the 1934–35 Warner and First National features.

Pursuant to paragraph 4, I produce Plaintiff's Exhibit 254 for identification, being license agreement dated February 19, 1937, between Duffy Theaters, Inc.,
787 operating the Temple or Rialto Theaters at Mangum, Oklahoma, and Vitagraph, Inc., relating to the 1936–37 productions, to which are attached two notifications of cancellation relating to contract 1102, dated February 16, 1938, and December 13, 1937 (probably second run).

I produce Plaintiff's Exhibit 255 for identification, being license agreement dated June 5, 1936, between Duffy Theaters, Inc., operating the Temple or Rialto Theaters, at Mangum, Oklahoma, and Vitagraph, Inc., relating to the Warner Brothers and First National productions for the season 1936–37.

I produce Plaintiff's Exhibit 256 for identification, being license agreement dated February 19, 1937, between Duffy Theaters, Inc., operating the Temple Theater, Mangum, Oklahoma, and Vitagraph, Inc., relating to the picture "Anthony Adverse."

I produce Plaintiff's Exhibit 257, being license agreement dated February 19, 1937, between Duffy Theaters, Inc., operating the Temple Theater, Mangum, Oklahoma, and Vitagraph, Inc., relating to the picture "The Charge of The Light Brigade."

I produce Plaintiff's Exhibit 258 for identification, being license agreement dated February 19, 1937, between Duffy Theaters, Inc., operating the Temple or Rialto Thea-
788 ters, Mangum, Oklahoma, and Vitagraph, Inc., relating to the picture "One Way Passage."

In response to paragraph 5, I produce Plaintiff's Exhibit 259 for identification, being license agreement dated July 21, 1936, between Consolidated Theaters, Inc., operating the Princess or Rio Theaters at Sayre, Oklahoma, and Vitagraph, Inc., relating to the 1935–36 productions.

I produce Plaintiff's Exhibit 260 for identification, being license agreement dated July 23, 1935, between Roy McAmis operating the Princess Theater at Sayre, Oklahoma, and Vitagraph, Inc., relating to the 1935–36 Warner Brothers

and First National productions, to which is attached two notifications of cancellation, referring to contract 9167, both dated July 21, 1936.

I produce Plaintiff's Exhibit 261 for identification, being memorandum of agreement between Roy McAmis and Vitagraph, Inc., dated April 6, 1935, relating to the 1935–36 Warner and First National features for the Princess Theater, Sayre, Oklahoma.

(Proceedings to be resumed Monday, May 14, 1945, at 10:00 o'clock a. m.)

789 PROCEEDINGS

May 14, 1945, 10 o'clock a. m.

Mr. KIMB. Continuing reading the interrogatories from where I left off. I am reading 23 from R. E. Griffith Theaters, Inc., the answer is:

CARLSBAD, NEW MEXICO

A competitive theater was operated here for some time but its name and the dates of its operation are not known.

CLOVIS, NEW MEXICO

This defendant has no financial interest in the Lyceum Theater but the theater is included with the properties of this defendant in an operating agreement.

Gallup, New Mexico—El Morro Theater.

Hobbs, New Mexico—Roosevelt Theater.

Roswell, New Mexico—El Capitan Theater.

That concludes the R. E. Griffith Theaters, Inc.

ANSWERS TO INTERROGATORIES OF WESTEX THEATERS, INC.

Mr. KIMB. The next answer I desire to read is paragraph 2 of Westex Theaters, which is as follows:

The principal executive office has been at Dallas, Texas, in the Tower Petroleum Building, since organization of the corporation. No branch offices other than theater
790 offices have been maintained. Mr. R. E. Griffith, President of the Corporation, was and is General Manager, negotiating and approving all major contracts and deals, leases, acquisitions and sales, counseling with all department heads as to general operations such as booking of pictures and policies of operation of the various theaters.

The next is the answer to interrogatory No. 3:

Incorporating Directors: R. E. Griffith, Dallas, Texas, B. J. McKenna and G. M. Bond of Oklahoma City, Oklahoma, Foster McSwain, Ada, Oklahoma and H. J. Griffith, Kansas City, Missouri. (McSwain and H. J. Griffith resigned May 4, 1936). R. I. Payne and F. L. Stocker of Dallas, Texas were elected to the Board of Directors to

replace McSwain and H. J. Griffith, May 4, 1936. For the other years involved the officers and directors except as above set out held office continuously.

The next is the answer to interrogatory No. 4.

By its charter the authorized capital was 15,000 shares without par value.

On March 1, 1939, the charter was amended so as to provide for 25,000 shares without par value.

On April 28, 1939, there were 17,376 shares of stock outstanding.

The answer to interrogatory No. 7 is as follows:

The amount of stock held by the nine stockholders is listed below. All such stock was acquired between the
791 date of incorporation and April 28, 1939. No transfers have taken place and the amount stated opposite each name, therefore, gives the amount of stock held by each person on April 28, 1939

Name of stockholders	Number of shares held
R. E. Griffith, Dallas, Texas	50
R. I. Payne, Dallas, Texas	1,596
F. L. Stocker, Dallas, Texas	10
B. J. McKenna, Oklahoma City, Oklahoma	10
G. M. Bond, Oklahoma City, Oklahoma	10
R. E. Griffith Theaters, Inc., Dallas, Texas	12,900
H. H. Cluck, Belton, Texas	200
Dorothy V. Payne, Dallas, Texas	100
Griffith Employees Investment Co., Dallas, Texas	2,500

The next is the answer to interrogatory No. 17, the dates of acquisition of the various theaters owned on April 28, 1939:

Town	Name	Date acquired	Int. owned	Associates	Int. owned
Burkburnett, Tex.	Palace	2/ 1/36	100%		
	Tex	2/ 1/36	100%		
Hereford, Texas	Star	4/24/35	50%	Hardwick Bros.	50%
792					
Plainview, Texas	Texas	7/ 1/33	33 1/3%	C. C. Lindsey & Foster	33 1/3%
				McSwain	33 1/3%
	Granada	6/30/33	33 1/3%	C. C. Lindsey & Foster	33 1/3%
				McSwain	33 1/3%
	Palace	6/30/33	33 1/3%	C. C. Lindsey & Foster	33 1/3%
				McSwain	33 1/3%
	Fair	11/ 1/36	33 1/3%	C. C. Lindsey & Foster	33 1/3%
				McSwain	
Portales, N. Mex.	Portala	1932	100%		
	Kiva	4/ 2/37	100%		
San Saba, Texas	Palace	12/ 1/36	33 1/3%	W. C. Doffelmyer	66 2/3%
Spur, Texas	Palace	4/ 1/36	50%	Hardwick Bros.	50%
	Spur	7/15/37	50%	Hardwick Bros.	50%
Belton, Texas	Beltonian	6/30/35	25%	Cluck & Walker	75%
	Beltex	6/30/35	25%	Cluck & Walker	75%
Clarkesville, Tex.	State	6/30/35	25%	O. A. Engelbrecht & F. L. Wolf	75%
	Colonial	"	"	" "	75%
	Avalon	2/10/38	"	" "	75%

Town	Name	Date acquired	Int. owned	Associates	Int. owned
Georgetown, Tex.	Palace	6/30/35	25%	O. A. Engelbrecht	.5%
	Ritz	6/30/35	25%	O. A. Engelbrecht	75%
Lampasas, Texas	Leroy	6/30/35	25%	Walker & Donnell	75%
	Rio	"		" "	
793					
Ballinger, Tex.	Texas	8/ 1/36	25%	W. D. Scales	50%
				H. T. Hodge	25%
	Palace	8/ 1/36	25%	W. D. Scales	50%
				H. T. Hodge	25%
Merkel, Texas	Queen	8/ 1/36	25%	H. T. Hodge	75%
Odessa, Texas	Lyric	8/ 1/36	25%	H. T. Hodge	75%
	Texas	7/ 1/37	25%	H. T. Hodge	75%
Stamford, Texas	Grand	8/ 1/36	25%	H. T. Hodge	75%
	Ritz	8/ 1/36	25%	H. T. Hodge	75%
Winters, Texas	Queen	8/ 1/36	25%	H. T. Hodge	75%
	Lyric	8/ 1/36	25%	H. T. Hodge	75%
	State		25%	H. T. Hodge	75%
Alvin, Texas	Alvin	2/27/38	25%	H. G. Long	50%
				Consol. Thea. Inc.	25%
Bay City, Texas	Franklin	2/27/38	25%	J. G. Long	50%
				Consol. Thea. Inc.	25%
	Colonial	2/27/38	25%	J. G. Long	50%
				Consol. Thea. Inc.	25%
El Campo, Texas	Floyd's	2/27/38	25%	J. H. Long	50%
				Consol. Thea. Inc.	25%
	Liberty	2/27/38	25%	J. G. Long	50%
				Consol. Thea. Inc.	25%
Texas City, Tex.	Texas	2/27/38	25%	J. G. Long & Consol. Thea. Inc.	50% 25%
	Jewel	2/27/38	25%	J. G. Long & Consol. Thea. Inc.	50% 25%
794					
Victoria, Texas	Rita	2/27/38	25%	J. G. Long & Consol. Thea. Inc.	50% 25%
	Queen	2/27/38	25%	J. G. Long & Consol. Thea. Inc.	50% 25%
Wharton, Tex.	Queen	2/27/38	25%	J. G. Long & Consol. Thea. Inc.	50% 25%
Brady, Texas[1]	Palace	6/30/35	10%	Chas. Baker & R. H. Roark of Brady, Tex. H. H. Cluck, Belton, Tex. Mrs. W. F. Walker & S. T. Donnell, Lampasas	
	Brady	6/30/35	25%	" " "	
Gonzales, Tex.	Crystal	12/30/36	25%	Lynne Smith, Gonzales and H. G. Stein, Luling, Texas	
Lockhart, Texas	Baker	12/30/36	25%	Mrs. Selma Schwarz, Mrs. Eddie P. Baker, Mrs. Clair Baker & L. J. Piwetz of Lock-Hart, Texas	
Luling, Texas	Princes	12/30/36	25%	H. G. Stein, Luling, Tex., Lynne Smith, Gonzales, Tex.	

[1] In the last four situations mentioned there are various small stockholders inactive in the business and not known to this defendant. The above are the only active stockholders in each case.

The next is the answer to interrogatory No. 22, which is as follows:

BURKBURNETT, TEXAS
PORTALES, NEW MEXICO
HEREFORD, TEXAS
SAN SABA, TEXAS
795 SPUR, TEXAS
BELTON, TEXAS
CLARKESVILLE, TEXAS
LAMPASAS, TEXAS
WINTERS, TEXAS
BRADY, TEXAS
GONZALES, TEXAS
LULING, TEXAS.

This answer is prepared largely from the recollection of officers and agents of the defendant. It may be that errors occur in it due to imperfect recollection.

The next is the answer to interrogatory No. 23.

PLAINVIEW, TEXAS

Ritz Theater operated during most of 1937. Dates of operation not known.

GEORGETOWN, TEXAS

Aztec Theater opened for a time unknown before this defendant acquired interest in the situation.

BALLINGER, TEXAS

Ritz Theater opened in 1935, Texas Theater opened January 29, 1939.

MERKEL, TEXAS

In 1938 a small theater opened and ran for sometime. Name and details not known.

ODESSA, TEXAS

Rio Theater opened in 1936. Details not known.

STAMFORD, TEXAS

Palace Theater.

BRADY, TEXAS

Ritz Theater opened until sometime in 1937,
796 date not known.

The COURT. What is the interrogatory to which these are the answers?

Mr. KIME. That is the one on opposition, I assume. The interrogatory is: "State the name and address of each theater operated at any time since April 28, 1935, in the towns in which the complaint alleges the defendant operates one or more theaters in which the defendants have not

owned a financial interest at any time since that date. If such theaters were not operated during the entire period from April 28, 1934, to the present, state the approximate dates of their operation."

The COURT. This is what you call the independent theaters in operation in the towns where the Griffith interests have theaters?

Mr. KIMR. That's right, your Honor.

LOCKHART, TEXAS

Square Theater operated in 1938. Details not known.

This answer is prepared from recollection as in the case of the answer to Interrogatory #22.

This was sworn to by R. I. Payne on the 20th day of August, 1943.

The next are the answers of the individual defendants, and I only care to read the answer to Interrogatory
797 No. 5 in each case.

Interrogatory No. 5 is as follows: "Describe any financial interests, including any interest in theater properties owned by the defendants in any motion picture enterprise other than the ownership of securities issued by any of the corporate defendants and with respect to such interests, state the nature of the interest, the date when it was acquired, the name and address of the person from whom it was acquired, and the consideration paid therefor."

Mr. H. J. Griffith's answer to this is: Ardmore, Oklahoma.

H. J. Griffith acquired joint venture interest in theaters in Ardmore, Oklahoma, in July, 1932. He paid $2,988.36 to H. M. Lowenstein, Ardmore, Oklahoma, for 6% interest.

Chickasha, Oklahoma

On September 4, 1934, H. J. Griffith acquired 76 shares of stock in Chickasha Amusement Company, Oklahoma City, Oklahoma, from Texas-Oklahoma Enterprises, Inc., for the consideration of $10,000.00. On September 5, 1934 this corporation was dissolved and on September 6, 1934, H. J. Griffith acquired from the dissolved corporation one-half interest in the Sugg Theater lease, one-half interest in the Rialto Theater, lease, and one-half interest in the Kozy Lease; and one-half interest in the Ritz Build-
798 ing and equipment lease. On April 2, 1936, H. J. Griffith acquired from the Sheriff of Grady County one-half interest in title to Ritz real property for $4,000.00.

H. J. Griffith acquired from Glen W. Dickinson, Kansas City, Missouri, 625 shares of stock in Glen W. Dickinson Theaters, Inc., and certain real estate for the total consideration of $116,474.61.

The next is the answer of L. C. Griffith to Interrogatory No. 5, and the answer is as follows:

L. C. Griffith acquired joint venture interest in theaters in Ardmore, Oklahoma, in July, 1932. He paid $14,623.99 to H. M. Lowenstein, Ardmore, Oklahoma, for 28% interest.

This likewise was sworn to by L. C. Griffith on the 5th day of August, 1943.

799 The answer of R. E. Griffith to Interrogatory 5 is as follows:

Prior to the year ending January 2, 1937 the books of this corporation were imperfectly kept. It is therefore not possible to detail from the records available the indebtedness inquired about. Attached are schedules of such indebtedness as of January 2, 1937, January 1, 1938, December 31, 1938 and December 30, 1939. For the year 1938 some records are missing and the statement for that year is therefore not complete. However, all such indebtedness was incurred on account of the acquisition of property or the financing or improvement of such acquisitions.

That was signed and sworn to by R. E. Griffith on the 25th day of August, 1943.

Mr. WRIGHT. At this point we will resume with oral testimony.

MALCOLM GEIGER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. WRIGHT.

Q. State your name and address.

A. 152 Beechwood Drive, Wichita, Kansas.

Q. What is your occupation?

A. At the present time I am working for the Beach Aircraft Company as radio technician.

800 Q. At Wichita?

A. Yes, sir.

Q. You were formerly connected with the Bays Theater at Blackwell, Oklahoma?

A. Yes, sir.

Q. When was that?

A. I first went to work for them as projectionist in August, 1937.

Q. You later became manager of the theater?

A. Yes, sir, it was just about a year later.

Q. That was the theater owned by George Lahan?

A. Yes, sir.

Q. Of Lahan Theaters, Inc.?

A. Lahan.

Q. That theater you say opened in 1937?

A. Well, I am not positive of that. I believe it opened in 1937.

Q. At the time it opened then you were the projectionist there?

A. No, it was already running when I went to work there.

Q. You went to work in 1937 after it opened. Is that right?

A. Yes, sir.

Q. When you went to work can you tell us what other theaters were operating there then?

801 A. The Griffith Amusement Company was operating the Rivoli and Midwest Theaters.

Q. Well, there were then only those three theaters operating, the Rivoli, Midwest and Bays?

A. Yes, the Rivoli, Midwest and Bays.

Q. How large a town was Blackwell then?

A. To the best of my knowledge it was 10,000 population. That is the way we always considered it.

Q. About 10,000?

A. Yes.

Q. Can you give us a general description of those three theaters with respect to seating capacity and general characteristics?

A. Well, to the best of my knowledge the Rivoli seats about——

Mr. COCHRAN. I think he should say whether he knows or not. He says to the best of his knowledge. I don't know what knowledge he has. He should show what his acquaintance with those theaters is.

Mr. WRIGHT. You know the approximate seating capacity of the three theaters there, or what it was at that time?

A. Yes, I think so.

Q. What was it?

A. The Rivoli was 700 seats; the Midwest was 400

802 and the Bays was 1200.

Q. How about the equipment in those theaters. Were you generally familiar with the character of that equipment?

A. Well, I was familiar with the Bays. We had one of the finest sound systems and projecting machines that money could buy, and I was in the Rivoli booth once or twice and also the Midwest when I was working there at the Bays as an operator. I got acquainted with the boys there and to my belief we had the best sound system and projection equipment.

Q. You mean the best of the three theaters?

A. Yes, sir.

Q. Do you know what the relative ages of those theaters were?

A. Sir.

Q. Do you know what the ages of the three theaters were, which was the oldest?

A. Well, I don't know. I was not in Blackwell at the time any of them were built. I think I remember somebody saying——

Mr. COCHRAN. We object to that.

The COURT. Yes, unless you know of your own knowledge, don't answer.

Mr. WRIGHT. If you don't know, don't answer.

By Mr. WRIGHT:

Q. How did they compare in appearance at that time?

803 A. Well, the Bays had a stucco front to it, and the Rivoli is brick. All the other fronts were brick, that is, the Midwest and the Rivoli were brick and the Bays was stucco on top of brick.

Q. You became manager of the Bays you say in 1938?

A. Yes, sir.

Q. At the time you became manager there, what major product, if any, was the Bays using?

A. Well, the only major product we were using was a few second runs, that we were using.

Q. From what company?

A. Well, there was a few second run from Universal——

Mr. COCHRAN. I think his statement in regard to the product of the major companies is too indefinite, and vague, and also calling for a conclusion. It does not show what product they were using, and also what contracts were used. In other words, we have no idea what they were running from this general statement of his, and also as I have said before, these general statements about product they were using proved to be rather indefinite.

The COURT. Well, if he knows what they were using he can state.

A. We were using Monogram. That was the first run. We were using Republic, first run; Grand National, first run; some Universal, second run, and some Gaumont

804 British, first run. That is all I definitely know anything about.

Q. Do you know whether you had any other second run product from any of the major companies other than Universal at that time, in 1938, when you became manager?

A. No.

Mr. COCHRAN. We object because it calls for a conclusion of the witness.

The COURT. He said "No."

By Mr. COCHRAN:

Q. What did you say?

A. No.

Mr. COCHRAN. We move to strike that as being a conclusion and also not identifying the companies he is talking about.

The COURT. Overruled. He ought to know.

By Mr. WRIGHT:

Q. Did you make any efforts to buy any other second runs from the other major companies?

A. Yes, I did.

Q. From what companies?

A. Well, Fox was one.

Q. What others? Just name the ones you tried to get second run from.

A. Fox, Paramount, Warner Brothers, Columbia and Metro-Goldwyn-Mayer. Did I mention Paramount?

Q. You said Fox, Paramount, Warner, Columbia and Metro. Was the Rivoli or Midwest playing any second runs of those companies?

805 Mr. COCHRAN. We object to that; there is nothing to show that he knows what was playing.

The COURT. If he knows. You may state of your own knowledge, but not what anybody told you.

A. I don't believe the Rivoli was playing any second runs; I am not positive about Midwest.

By Mr. WRIGHT:

Q. Do you know what, in general, kind of program policies the Rivoli and the Midwest were then operating under?

A. Well, it was a first run policy.

Q. For what companies?

A. All of them, all of the major companies.

Mr. COCHRAN. We object to that, as too indefinite and calling for a conclusion.

By Mr. WRIGHT:

Q. By the major companies, you refer to what companies?

A. Well, I am referring to Fox, Paramount, Metro-Goldwyn-Mayer, Universal, Warner Bros. Columbia, did I mention RKO?

Q. I don't think so.

A. RKO.

Q. Now, you say you played Universal second run. That was after a first run at one of the Griffith houses?

A. Yes, sir.

Q. You attempted to secure a second run from
806 Fox, Paramount, Warner, Columbia, MGM, is that right?

Mr. COCHRAN. Objected to as repetition. He has already covered that.

The COURT. Overruled, but he has stated that.

By Mr. WRIGHT:

Q. Did you get a second run with any of those companies, Fox, Paramount, Warner, Columbia, or MGM?

A. Not right at that time, no, sir.

Q. And was any reason given to you by any of these companies as to why you could not have a second run?

Mr. COCHRAN. We object to that as hearsay.

The COURT. Sustained and exception allowed.

By Mr. WRIGHT:

Q. At the time you were refused these second runs by these companies, did you observe whether or not the Griffith houses were playing their product on second run?

Mr. COCHRAN. We object to the form of the question, because he is assuming that they were refused. He says at the time they were refused.

The COURT. Sustained. I think the question is hardly fairly stated.

Mr. WRIGHT. It already appears, if the Court please, that he tried to get the second runs and didn't get them at that time.

The COURT. There may be some other reason for it, but I think the word "refused" is not proper.

807 By Mr. WRIGHT:

Q. Can you tell us just what, if any, negotiations you had with these companies?

Mr. COCHRAN. We object to any statements that were made between them.

The COURT. Yes, just state what you did.

A. I went into Fox and talked to the manager. He told me that they were not selling——

Mr. COCHRAN (interrupting): We object to the statement.

The COURT. Yes.

By Mr. WRIGHT:

Q. Say what you did.

A. I asked for product, for second run product for Blackwell, the Bays Theater.

Q. And did he take an application from you?

A. The first time, no.

Q. When was that?

A. Well, I believe that was in—I can't recollect the exact date, I believe it was the latter part of '38 or the first part of '39.

Q. And did the Fox man later take an application?

A. Well, he told me—is this right?

The COURT. Don't say what he said. Just state what you did.

A. No, he didn't take an application for the first two times that I asked him. The third time I asked him
808 for the product the second run product was at Blackwell, and he said he would have to take it up——

Mr. COCHRAN (interrupting): We object to the statement.

The COURT. Don't say what was said.

The WITNESS. All right.

Mr. COCHRAN. The question was whether he took an application.

By Mr. WRIGHT:

Q. When was it he took an application from you?

A. It was in '39, I believe.

Q. Do you remember when in '39?

A. I don't recall if it was in September or not.

Q. I didn't hear the answer. You will have to speak louder.

A. I do not know whether it was in September or not.

Q. What is your best recollection; sometime in the summer or fall of '39?

A. Yes, sir.

Q. Now, calling your attention to the spring of 1939, did another theater open there then?

A. Yes, sir.

Q. What was the name of it?

A. The Palace Theater.

Q. And who operated it?

809 A. Griffith Amusement Company.

Q. Can you describe that theater?

A. Well, it had 600 seats, was the seating capacity.

Q. Was it a new theater or was it converted or what?

A. No, it was an old theater building, that the equipment had been taken out sometime before, and the building had been setting idle, and the Griffith Amusement Company leased it and re-equipped it and opened it up.

Q. Do you remember about when it was they opened it?

A. Well, it was in '39.

Q. Do you remember what part of '39?

A. Well, I would say it was in the early summer of 1939.

Q. When it opened, what kind of program policy did it have?

A. It was a second run house.
Q. Of what product?
A. Well, of all the major product.
Mr. COCHRAN. We again object on the ground that that is a conclusion.
The COURT. I didn't get his answer.
A. I said all major product, but I would say——
Mr. COCHRAN (interrupting): If he knows.
A. (Continuing). I will say Fox, Metro, Warner's Paramount, Columbia—let's see—I forget which ones—
810 MGM.

By Mr. COCHRAN:

Q. That's the same as Metro, isn't it?
A. Well, that's right.

By Mr. WRIGHT:

Q. What, if any, second run did you finally get for the Bays?
A. We had a few cut backs on the Universal contract that the Griffith Amusement Company didn't take. It was their cut backs.
Mr. COCHRAN. We object to that statement and move to strike it, as that is not the best evidence of whether Griffith had those pictures or not.
The COURT. Well, you said you had some cut backs?
A. Yes, sir.
Mr. COCHRAN. He got some pictures.
The COURT. Eliminate that portion of the answer where he says Griffith didn't take them. I think that is a conclusion.
Mr. COCHRAN. Yes, but as to the statement, cut backs, you recall the witness Scaling was talking about cut backs and it finally developed he was applying that to pictures not licensed to the other parties. Cut backs as the Government will contend and as commonly known to the trade refers to pictures which have been licensed and which are eliminated under some provision of the contract. Now, that goes into the terms of the contract.
811 The COURT. Do you know that any of the pictures that you got had been under contract with Griffith?
A. No, I do not know that.

By the COURT:

Q. Then you got some pictures from Universal?
A. Yes, sir. I might state in connection with that that in my dealings with the film companies, where Griffith had the first run, that I was told——
The COURT (interrupting): No.

Mr. COCHRAN. We object to what he was told.

A. All right. I was able to pick up a few pictures which they did not use. I didn't understand the Government's ruling on that, or what they were supposed to do.

By the COURT:

Q. Do you know that they had these pictures under contract?

A. Yes.

Q. Did you see the contract?

A. Just how do you mean that, your Honor?

Q. I mean did you learn—now, I don't mean from information from the Universal, but did you know your own knowledge that these were pictures which had been under contract to the Griffith Company?

A. Well, I don't know whether they had been under contract or not, but they didn't use them.

Q. Well, they were not used by anybody but you, were they?

812 A. That's right, these ones.

The COURT. Proceed.

By Mr. WRIGHT:

Q. I show you these exhibits that have been marked for identification here, the first one is Plaintiff's Exhibit 197 for identification, and ask you if you recognize that as the first run contract you had with RKO for the Bays Theater for the '38-39 season?

A. Yes, sir.

Q. And Plaintiff's Exhibit 198 for identification, is that the second run deal with RKO for the same season (handing)?

A. Yes, sir.

Q. And these contracts were signed by you on or about the dates, that appear on there, November 28, 1938?

A. Yes, sir.

Q. Now, in addition to this RKO second run that you bought with the first run, you also finally made a deal for some second run Metro, did you not?

A. Yes, sir.

Q. By the way were you able to locate any of the contracts or records that were called for in the subpoena served upon you?

A. No, sir, I wasn't.

Mr. WRIGHT. We subpoenaed the contracts from Loew's, the contracts in question, but they were not

813 produced when the material was identified Saturday, and perhaps Mr. Nickerson will tell us if they have arrived.

Mr. NICKERSON. They have not arrived yet.

Mr. COCHRAN. When you refer to Loew's, that's the same as Metro, isn't it, Mr. Wright?

Mr. WRIGHT. Yes, sir.

Q. That Metro, do you remember the seasons——

Mr. COCHRAN (interrupting): Let's get the record straight on that. The pictures which are distributed by Loew's are the pictures produced by Metro-Goldwyn-Mayer, is that correct?

Mr. WRIGHT. Correct.

Mr. COCHRAN. Sometimes referred to as MGM.

Mr. KIMR. And Metro.

Mr. COCHRAN. And Metro.

By Mr. WRIGHT:

Q. Do you remember the seasons covered by the Metro deal which you finally made?

A. Well, I had to buy two different season's product.

Q. What seasons were they?

A. The '37–38 and the '38–39, second run.

814 Q. And then you were playing the 1937–38, second run in the summer of 1939?

A. Yes. That is the order that I had to play them, was the 1937—'38 contract first.

Q. So that in the summer of 1939 then you were not playing any Metro current second run, second run of the current season?

A. No, sir.

Q. How long did the operation continue there of the Bays Theater?

A. Well, it was sold in October, 1939.

Q. Then what was done with the theater?

A. It was locked up.

Q. It was sold to Griffith, was it?

A. Yes, it was sold to Griffith.

Q. That is the year the theater was closed?

A. Yes, sir.

Q. Do you know how long after that it remained closed?

A. Well, it is still closed to this date.

Q. Now, you played the RKO pictures there at the theater under these Exhibits 197 and 198?

A. Yes, sir.

Q. At the Bays?

A. Yes, sir.

Q. For the 1938–39 season?

815 A. Yes.

Q. Then did RKO offer you any opportunity to negotiate for a continuance of those runs for the 1939–40 season?

Mr. COCHRAN. We object to that. Let him state what was done, if anything.

The COURT. Sustained.

By Mr. WRIGHT:

Q. Well, what did you do, if anything, about getting RKO for the '39–40 season?

A. Well, I believe the theater was—we didn't attempt it at that time, prior to the time the theater closed.

By the COURT:

Q. When was the theater sold?

A. It was in October, 1939.

By Mr. WRIGHT:

Q. October, 1939. Wasn't the selling season early in the summer of each year and the early fall?

Mr. COCHRAN. Object to leading the witness, if the Court please.

The COURT. Yes, I think it is leading.

Mr. COCHRAN. It has been testified here that the selling season extended over a considerable period of time.

The COURT. Overruled.

Mr. COCHRAN. Exception.

A. I don't recall offhand about that.

By the COURT:

Q. Did you make any effort to get contracts for the 1939–40 season?

A. With RKO?

816 Q. Yes.

A. I am a little mixed up on my dates. I have the first run for '38 and '39. Now the next year—what are you wanting to know about?

By Mr. WRIGHT:

Q. 1939 and '40.

A. I do not recall negotiating or trying to.

Q. You remember whether anybody from RKO came to see you about the '39–40 product?

A. No, I do not.

Q. You don't know whether they did or not?

A. Well, I am sure they didn't—they did not.

Q. There was no offer made to you with respect to the 1939–40 product, is that right?

A. That is right.

Q. Now, with respect to the Fox, Paramount, Warner and Columbia second run that you say the Griffith Theaters had that you did not get, do you know why it was they would not license those pictures to the Bays for second run but did license them to Griffith?

Mr. COCHRAN. We object to that. That should be restricted to what he did.

The COURT. Sustained. That would be calling for a conclusion. You can state anything you did.

A. Am I allowed to say what they told me?

Mr. WRIGHT. I think that is part of our case. It
817 is perfectly proper for us to show when he tried to buy second run from these companies and they told him the town was too small for second run, a perfectly spacious reason.

The COURT. You can put some of them on the stand and show that, but this is hearsay, so far as this witness is concerned.

Mr. WRIGHT. It is no more hearsay than if we put somebody on the stand from the company to testify to the fact they told him that than if he testified they told him that. As far as the hearsay rule is concerned the situation is exactly the same.

The COURT. I do not agree with you.

Mr. WRIGHT. A conversation is being testified to——

The COURT. He can let him state what they did. You can ask him, "Did you sell him?"

Mr. WRIGHT. He establishes the fact they did not sell him.

The COURT. You can ask him if they refused to sell him but you can't prove by this witness what somebody else said.

Mr. COCHRAN. Also the reasons for it.

Mr. WRIGHT. If the Court please, let's understand ourselves on this now. As I understand your ruling, the exclusion of conversations between this witness and RKO would apply equally whether we call the RKO man
818 to testify to the conversation or whether we call this man. Isn't that right?

The COURT. That is true so far as the conversations are concerned, but if you wanted to prove that the exhibitor refused to sell this man you should prove it by a witness from the distributor. He can say, "I refused to sell him and my reasons for refusing to sell him are so and so," but for this man to state what someone else said to him is pure hearsay.

Mr. WRIGHT. I think I am entitled to show what the reasons given to him were for not dealing with them. We have in evidence here the contracts which show the method of doing business that was pursued between these defendants and these distributors, and it is our claim that method of doing business prevented the independent competitors

of Griffith from having an opportunity to negotiate on a competitive basis for product Griffith might want to use. I don't see how that can be done without going into the negotiations.

The COURT. Show it by the distributor.

Mr. WRIGHT. The distributors are not more competent than he is to testify to any conversation between him and the distributors.

The COURT. You can ask the distributor "Did you sell this independent theater?" and he can say "No."

819 Then you can ask him "What were your reasons for not selling him?" You can show that by them.

Mr. WRIGHT. I would not accept his answer as to what his reasons were.

The COURT. That is unfortunate.

Mr. WRIGHT. We say under our theory of the case that the distributors gave completely specious reasons for refusing to sell him and he would say so from the stand today. We do not propose to call them here to give that kind of testimony.

The COURT. They are the ones that made the contract with Griffith and they are the ones you say refuse to make the contracts with this man.

Mr. WRIGHT. We are entitled to show the effect of these contracts by the testimony of Griffith's competitors, what they did, what they tried to do, and their negotiations with these distributors. I want to call your Honor's attention to one more aspect of the Crescent decision before we leave this matter because I think it squarely controls the precise issue here. In this case, as in that case your Honor may not have noticed, we have not pressed the argument before, but there are two charges involved here, a charge of restraint of trade in violation of Section 1, and a charge of Monopolization in violation of Section 2. Now, in that case,

820 and you have the same in this one, where they said, assumming that there isn't any showing of conspiracy between these distributors and these defendants, and for that reason the inter-office correspondence passing among the representatives of the distributors is not admissible in evidence, assuming that, that the evidence was competent, the evidence of negotiations between the independents and the distributors is perfectly competent to show what the relations were between the independents and the distributors and what the effects of this monopolization that was charged solely against the defendants were.

The COURT. The distributors were parties to that action, weren't they?

Mr. WRIGHT. Three were parties. Two were dismissed out and one was finally found guilty, but it should be borne in mind by that that the court's discussion of it related to inter-office correspondence passing between the distributors who were not defendants to the action and in disposing of that question the court said we do not have to decide whether or not the court's finding those non-defendant distributors were actually co-conspirators was correct or not, because in any event there was ample evidence in the record to show what the relations of the distributors were with this combination of defendant exhibitor corporations; what their relations were with the theaters involved in the suit.

821 That is, the theaters of the defendants and theaters of the complaining witnesses, that there was evidence they referred to which they said would sustain the judgment of what the dealings were between the witness and the distributors, and also evidence of what the dealings were between the defendant exhibitors and the same distributors. That is the evidence on which the court rested its judgment in that case, and assuming that there was no proof of conspiracy which would connect any particular distributor with the charge, and I don't see how your Honor could exclude

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The COURT. It is a fundamental principle that hearsay evidence is incompetent. This is hearsay. Exception is allowed.

Mr. WRIGHT. There are numerous exceptions to the hearsay rule. In addition to the conspiracy exception theory, I merely want to call your Honor's attention to the other exception. That is, whenever proof is made of the effect of a certain charge of monopolization, much of the evidence that goes in any anti-trust suit to show those effects necessarily concerns matters which occurred outside of the presence of the defendants who are charged with monopolization——

The COURT. Is it your contention that the exhibitors in this case or in any other case, would not have the right to make a purchase of all of the pictures which they

822 deemed were necessary to operate their theaters from the distributors?

Mr. WRIGHT. Well, the charge of monopolization goes much further than that. The claim is here that there has been an actual monopolization of theater operating, the operation of theaters in this area; that it has been accomplished by controlling the film supply through these contracts we have put in evidence.

The COURT. That is the contention, but the Court must rely on the evidence which is introduced. Now the sub-

stance of the evidence which you have introduced so far is this: That these defendants made contracts with the various distributors and they apparently were able to make contracts with distributors for any of the products they desired. Now, was that an illegal contract on its face? Your contention is that those contracts were made for the purpose of preventing any other theater from getting that product. I assume from the pleadings and from the statement of counsel that those contracts were made in good faith in order to have sufficient pictures to meet their requirements and that they tried to get all the good pictures they could. Now if they contracted those pictures, the mere fact that they were able to contract them, and that someone else could not contract for them, to say that constitutes a conspiracy, I think is a conclusion. I see your theory of the case all right, but of course, we must decide
823 cases not on theories but on evidence introduced.

This witness testified he made a contract for 1937–38 with RKO, and he made a contract for 1938–39 and that he made no effort to get a contract for 1939–40. That is his testimony. Now, you ask him the question, "What reason did they give you for not furnishing you a contract in 1939–40?" He said he didn't have any talk with them at all. He didn't ask for any contract for 1939–40.

Mr. WRIGHT. I think I am also entitled to show what the negotiations were with reference to the second run product. What happened here is, if we are permitted to produce the evidence to show it, is that here was a town in which a second run operation on major product was a perfectly legitimate and feasible operation. The independent comes along and attempts to set up that kind of operations. He cannot do it because these distributors just simply refuse to negotiate with him. Then Griffith comes along and opens up another old house and he puts the same policy in there. Now the independent sells out; his house is closed and Griffith continues with the other three houses. Now, if the court please, I think an essential part of any understanding of what happens in that situation is the actual negotiations that the independent had for the second run product. In the absence of that, I don't see how your Hon-
or can properly evaluate at all what the legal effect
824 is of this course of dealing between these defendants.

The COURT. I am not questioning the importance of that testimony if it were offered by a competent witness, but you cannot prove it by hearsay. This witness can say they didn't do so and so, but certainly what these parties who are not defendants said would not be binding on these defendants.

Mr. WRIGHT. If the Court pleases, it would be equally hearsay if the distributor representative testified to the conversations. There is no difference as far as the hearsay rule is concerned.

The COURT. As to the conversations, but he could state whether or not he sold and why he didn't sell. He could make that statement.

Mr. WRIGHT. I don't see why he is any more competent to draw a conclusion than the witness here.

The COURT. Because he is telling what he did and you are asking this witness for what somebody else said to him.

Mr. WRIGHT. He knows what the distributors have done with reference to his theater. He is certainly competent to tell that.

The COURT. You can prove that by the distributors. They are available I assume. You could put them on the stand and ask if they sold him and if they did not, why.

825 If they want to say "We didn't sell him because we had an arrangement with these defendants", and you contend——

Mr. WRIGHT. As far as I am concerned they won't say anything of the kind. I would not vouch for any of the distributor representatives negotiating and dealing with them because, as far as we are concerned, our charge is they were part of this combination and cooperating with Griffith in suppressing his independent competition. Under those circumstances, I don't think your Honor could say to us the only way we can prove an unlawful combination is by calling the parties to the combination. In any of these cases we have to rely for our proof on the unlawful intent, based largely on circumstantial evidence. We show what the circumstances were and what happened by outside testimony. We do not prove it by the testimony of the people who are charged as conspirators.

The COURT. If these distributors were party defendants in this case your testimony would be competent.

Mr. COCHRAN. They also have not proved any conspiracy or combination of any distributors.

The COURT. I see no occasion to change my ruling, Mr. Wright. Objection sustained. Exception allowed.

826 Mr. WRIGHT. I will go ahead and make my record on these conversations anyway, if your Honor please.

The COURT. Very well. The plaintiff is permitted to ask the questions objected to and sustained, in order to make the record complete.

By Mr. WRIGHT:

Q. Now, with respect to Fox, do you recall what was said—by the way, who did you deal with at Fox, if you remember?

A. Mr. Clark, I believe. The manager.

Q. The Oklahoma City manager?

A. Yes, sir.

Q. Can you tell us what, if any, reason he gave to you for not negotiating with you for a second run deal there?

A. Well, there were two times that I talked to him about it, two different times. The first time, he said that they were not selling any second run product at Blackwell; that it would hurt their first runs. The second time that I approached him on the subject, he stated that Blackwell was too small a town to have second runs.

Q. Now, do you remember who you dealt with at Paramount?

A. Oh (hesitating), I forgot whether it was Mr. Brunk or not.

Q. Was it the manager there or booker, or who?

A. A booker, I believe.

827 Q. Do you remember what he told you?

A. Well, he stated that the town was too small.

Q. How about Warner?

A. Well, they were not selling any second runs.

Q. That's what they told you?

A. Yes, sir.

Q. And Columbia.

A. They were not selling second runs.

Q. Now, with respect to Universal, I believe you said you had second run with Universal in '38?

A. Yes, sir.

Q. How about '39; what, if any, efforts did you make to continue the Universal second run?

Mr. COCHRAN. Is this still on the offer? The trouble about it is, he is getting off of the questions that he offered, that was made in connection with that. Now, he is asking about efforts. We are objecting to the testimony that has been offered up to this time in connection with Fox, Paramount, Warner and Columbia, I think we should dispose of that.

The COURT. Objection sustained.

Mr. COCHRAN. He said Warner said they were not selling second runs.

The COURT. Objection sustained.

Mr. COCHRAN. On Universal, he is asking him a

828 question about what attempts he made to obtain

Universal, as I understand it, and we are not objecting to that, if he limits it to what he did.

By Mr. WRIGHT:

Q. Just say what, if anything, you did to try to keep the Universal second run that you had in '38.

Mr. COCHRAN. We object to the form of the question, "trying to keep."

By the COURT:

Q. What did you do with reference to securing the Universal contract for the season of 1939–40?

Mr. WRIGHT. If the Court please, this should be, I think—he had it for '37–38, and it would be the '38–39, isn't that right?

Mr. COCHRAN. Your question said you had it for '38. I don't know.

By Mr. WRIGHT:

Q. What season was that; was that the '37–38 season product?

A. Yes, sir, it was the '37–38.

By the COURT:

Q. Did you have the '38–39?

A. That I had first.

By Mr. WRIGHT:

Q. That you had second run on?

A. Yes, sir.

By the COURT:

Q. Did you have a contract with Universal for '38–39?

A. Well, it reverts back to what I would call cutbacks, those pictures that Griffith didn't play, didn't accept.

829 By the COURT:

Q. You said a while ago, as I understood you, that you had a two-year contract with Universal, '37–38 and '38–39.

Mr. WRIGHT. That was RKO, your Honor.

The COURT. RKO; oh, I beg pardon.

The WITNESS. Yes, sir.

Mr. WRIGHT. The two seasons he testified to, I believe, was the Metro contract.

Mr. COCHRAN. That was second runs, made in '39.

By the COURT:

Q. What effort did you make yourself to securing the contract for '39–40?

A. Well, one of them was with Universal. I was told——

Mr. COCHRAN (interrupting): "We object to what he was told.

By Mr. WRIGHT:

Q. Just say what you did first.

A. Well, I asked them for the '39–40 product, second run, and their cutbacks.

By Mr. COCHRAN:

Q. Is this '38–39 or '39–40?

A. This is '39–40, I believe.

By Mr. WRIGHT:

Q. Did you get a second run contract from them then?

A. No, because, they wouldn't know what was or would be available until later in the season.

Q. Now, as I understood your testimony, you had a second run, a regular second run Universal for the '37–38 season, is that right?

830 A. That's right.

Q. But you didn't have the second run Universal for the '38–39 season?

A. No, sir.

Q. The last year you were there?

A. That's right.

Q. Now, what, if any efforts did you make to get the second run for the '38–39 season?

A. Well, I asked for it.

Q. Who did you ask?

A. Well, I can't recall whether it was the manager or the booker.

Q. At the Oklahoma City exchange?

A. At the exchange, yes, sir.

Q. And did you get it?

A. No, sir.

Q. Were you told why you couldn't get it?

A. Yes, sir.

Q. What was the reason they gave you?

Mr. COCHRAN. We object to that question, your Honor.

The COURT. Sustained; but you may be permitted to answer it on the request of the Government to show what the testimony would be in order that the record may be complete.

A. Well, sir, maybe somebody could explain to me
831 what this Government ruling was, that this cutback business means; then, maybe I can explain myself a little better.

The COURT. Well, just state what was said.

By Mr. WRIGHT:

Q. Just state what was said. I think you may have been confused.

Mr. COCHRAN. This, as I understand, is merely an offer.

The COURT. This is the offer.

A. The Griffith Amusement Company had not decided on what pictures they were going to buy.

By the COURT:

Q. Just state what was said.

By Mr. WRIGHT:

Q. Is that what they told you?

A. Yes, sir.

Q. Just say what was said to you?

By the COURT:

Q. Who told you that?

A. Well, I am not positive if it was the booker or the manager.

By Mr. WRIGHT:

Q. One or the other?

A. One or the other, yes, sir.

Q. Was that all that was said?

A. That was all.

Q. And did you see them again about it?

A. I, I did. Yes. And I was able at that time to buy some of the pictures that had been cutback.

Q. That is picture that had not been used in the
832 Griffith houses?

A. That's right.

Q. That's what you mean when you say cutbacks?

A. Yes, sir.

Mr. COCHRAN. We object to that offered testimony in regard to statements which were made by any representative of the Universal to this witness.

The COURT. Objection sustained and exception allowed.

Mr. WRIGHT. You may cross-examine.

Cross-examination by Mr. COCHRAN:

Q. When did you first go to Blackwell to live?

A. In 1937.

Q. What month?

A. Well, it was in August, I believe.

Q. Had you ever been to Blackwell before?

A. I had been through there several times.

Q. But you had never lived there?

A. No, sir.

Q. You were not familiar with the theater situation in Blackwell until you went there in August 1937, were you?

A. Well, not fully familiar with it, no, sir.

Q. You were not sufficiently familiar with it to
833 know what the history of the Bays Theater was, and its numerous, and the numerous changes of ownership and management of that theater over the period from 1919 until you went there in August of 1937?

A. Just what I had heard is all.

Q. You didn't know about the operations, you were not familiar with who, you didn't know who operated it say in 1919?

A. Well, I presume Mr. Bays.

Q. I am not asking you that; I am asking you if you know?

A. Well, now, I wouldn't know.

Q. You knew nothing about its operation under Dudley Tucker?

A. No, sir.

Q. Did you know anything about——

Mr. WRIGHT (interrupting). If the Court please, I don't see how this is cross-examination.

The COURT. Well, he said he didn't know anything about it except what was told him.

By Mr. COCHRAN:

Q. Did you know anything about it? As I understand your testimony, Mr. George Layham was the owner of that theater when you went there in August 1937?

A. That's right.

Q. Of your own knowledge you do not know how
834 long he had operated, had been operating the theater?

A. Not definitely, no.

Q. Your first connection with that theater was as an operator of the projection machine?

A. That's right.

Q. In August of 1937, Mr. Johnson or Johnston was the manager of the theater?

A. That's right.

Q. Mr. Alvin Johnson?

A. Yes, sir.

Q. Is that correct?

A. That's right.

Q. How long did he continue to be manager of that theater?

A. Well, it was a year, because I took his place the next August, in '38.

Q. Wasn't it December of 1938 when you took his place?

A. No, sir.

Q. Are you sure it was in August?
A. I am sure it was August.
Q. During the period from August 1937 to August 1938, where was Mr. George Layham living?
A. At Wichita.
Q. Do you know what business he was engaged in at that place?
A. Well, he was in the shoe repair business.
835 Q. Also he was engaged in the shoe repair business in Oklahoma City, was he not?
A. That's right.
Q. Do you know whether he had had any experience in the operation of motion picture theaters?
A. No, I don't.
Q. Did you know a man by the name of Royston or Royster?
A. Yes, sir.
Q. He was connected with Columbia pictures, wasn't he?
A. I believe he was.
Q. Do you know in what capacity?
A. I believe as a film salesman.
Q. He had some kind of an interest with Mr. Layham in that Bays Theater at Blackwell during the year 1938, did he not?
A. Well, some kind of an interest.
Q. Do you know that during 1938 that he licensed pictures for the Bays Theater?
A. Well, what do you mean 1938, sir?
Q. Well, I will say during the period from August 1937 until the time Mr. Royster was killed.
A. Yes.
Q. He licensed product that was used in the Bays Theater?
A. Well, he was, I take it he done the buying and booking.
836 Q. When you say buying, that means licensing of the picture?
A. Yes, sir.
Q. When you speak of buying pictures, they are not in fact bought, are they; they are just licensed?
A. That is right.
Q. But in the language of the trade they speak of licensing and buying.
A. Yes, sir.
Q. And he also booked those pictures into that theater, did he?
A. Yes, sir.
Q. He was living at Oklahoma City, wasn't he?

A. Well, I don't know where he was living.

Q. Living at Kansas City?

A. Well, I wouldn't know that.

Q. He was not living in Blackwell, was he?

A. No, sir.

Q. Now, that plan of licensing and booking of pictures by Royster, the salesman for Columbia, continued until Royster was killed, is that true?

A. Well, it seems to me that was discontinued before he was killed.

Q. Do you remember about the time of his death?

A. No, I don't, exactly.

837 Q. He was killed in an automobile accident?

A. I remember that, yes.

Q. Do you know the approximate time?

A. No, I wouldn't say the approximate time.

Q. Was it in '38 or '39?

A. Well, I couldn't, I wouldn't be positive of it.

Q. Well, now, can you definitely say that the buying and the booking of pictures for the Bays Theater by Royster was discontinued before Royster's death?

A. To the best of my knowledge, it was.

Q. Do you know when that was?

A. It was during sometime while Mr. Johnson was there, before I took over the management of it.

Q. Let's answer this question first. Did Mr. Royster's death occur before you became manager or after?

A. Well, I couldn't be positive of that, because I don't remember just what the date was on that.

Q. Do you know anything that would fix in your mind the reason why Royster had discontinued the licensing and booking of those pictures prior to the time of his death?

A. No, I do not.

Q. Now, after Royster discontinued the licensing and booking of pictures, did Mr. Layham come to Blackwell and make some changes in the set up; was there any change made at that time?

838 A. Yes, there was some changes made. Mr. Johnson took over the licensing of the product.

Q. Did he also book it?

A. Yes.

Q. Can you give us the approximate time he commenced to license and book pictures?

A. Well, I would say two months.

Q. Two months before you became manager?

A. Yes, sir; possibly longer than that, I don't know for sure.

Q. Shortly after Mr. Johnson became manager Mr. Layham came up there and found, or rather charged Mr. Johnson with having some kind of an affair up there with some woman, and also stealing from the theater, did he not?

Mr. WRIGHT. If the Court please, that is wholly objectionable. I don't see how it is proper cross-examination or what it has to do with the case.

The COURT. It would only go to the reputation or standing of the theater.

Mr. COCHRAN. That is what it is offered for.

Mr. WRIGHT. If the Court please, if we are going to go into the question of reputation or standing on the basis of who might have had an affair with whom, or what the morals or conduct of any of these people on either side were, it seems to me we are away outside of the
839 issues of the pleadings.

The COURT. Overruled. Here is a theater changing managers every year, and changing ownership, and it might be a basis. I don't know the basis of it, or the purpose of it, but overruled.

Mr. WRIGHT. I don't suppose it would be any more proper for him to go into any internal difficulties with the theater's conduct than for us to do the same thing for the film companies or the defendants. It is clearly improper.

The COURT. This is cross-examination. Overruled and exception allowed. I don't think it is material.

By Mr. COCHRAN:

Q. What was your answer?

A. I don't know anything about that at all.

Q. You know that he was fired?

A. No, I don't know that.

Q. You know that he ceased to be manager and that you became manager, is that right?

A. That's right.

Q. Now, during the time, or at the time you became manager you had no experience whatever in licensing and booking of pictures or the operation of the theater, had you?

A. Yes, I had.

Q. What experience?

840 A. I used to work for the Griffith Amusement Company.

Q. Where?

A. At Yale, Oklahoma.

Q. In what capacity?

A. First, I was projectionist.

Q. Then what other capacity?
A. I was appointed manager.
Q. How long did you manage the theater there?
A. Well, I do not recall; it was for a period of four or five months, I believe.
841 Q. Then where did you go?
A. I terminated and went to the opposition, Mr. Weaver across the street.
Q. When was that?
A. Well, it was sometime in 1926 or '27, I believe.
Q. Now, is it not a fact that the Griffith Amusement Company never operated in the town of Yale?
A. No, sir.
Q. But it was one of the Griffith Brothers before the Griffith Amusement Company was ever organized. Do you know that to be a fact?
A. Well, R. E. Griffith is the one I had my dealings with.
Q. Is he the one that owned and operated in the town of Yale during the time you were there?
A. The way I understand it, Mr. Hornbeck was interested too.
Q. So far as you know, it was R. E. Griffith and Adam Hornbeck?
A. Our receipts and everything was sent to the Griffith Amusement Company in Oklahoma City.
Q. Don't you know at the time you worked up there, there was no Griffith Amusement Company?
A. Well, maybe it was Griffith Theaters. I don't remember for sure.
842 Q. What other experience did you have? How long did you continue to operate for Mr. Weaver?
A. Until he bought the Rex out.
Q. How long was that?
A. I would say six months.
Q. In what capacity?
A. I was manager.
Q. Then what did you do?
A. Well, it seems to me I went to Cushing about that time. I don't know. I worked at Cushing as an operator.
Q. And up until the time you went to Blackwell your connection with theaters was entirely in operating machines other than the experiences you have already given us?
A. Well, that is the general policy of a lot of theaters, where they get their managers.
Q. I am not asking you that. I asked you if you had any other managerial experience?
A. No, sir.

Q. At the time you took over the management of the Bays Theater, it was operating on a policy of three changes a week, was it not?

A. I believe it was, yes.

Q. That is, you had a program which extended over Sunday, Monday, Tuesday, and then a change on Wednesday which continued through Thursday and a change on Friday that continued through Saturday. Is that correct?

843 A. I believe that is right.

Q. Then at that time the theater was operating on a policy of playing double films; that is, two feature pictures on two of the changes each week. Is that correct?

A. That is right. Two on two changes.

Q. With two changes, on two of the three changes; two double bills during the week and one single bill.

A. Well, as far as I remember I run a double bill, three changes, I am not positive.

Q. In other words, your recollection is you were using six pictures a week, feature pictures.

A. I couldn't swear to it——

Q. That is your recollection?

A. That is my recollection.

Q. You know that you were using as many as five feature pictures a week, don't you?

A. Yes.

Q. On occasion you used three pictures on a program, did you not, what you call a triple bill?

A. I don't recall that.

Q. You don't recall they were operating a triple bill?

A. No, sir.

Q. The policy of operating those two double bills and one single bill each week continued right up until the time that theater was taken over or was sold to Griffith Amusement Company?

844 A. Yes.

Q. And you were able to obtain sufficient pictures to fill the bill every play date during that period?

A. Yes.

Q. Now, there was a part of that time when you were playing Metro pictures, that you played Metro pictures, second run, that you played those pictures on a single bill. Do you recall that?

A. I don't recall. I might recall the name of the picture if I heard it.

Q. The point I am making is, don't you know that you didn't obtain any Metro pictures second run, until you dis-

continued exhibiting, or rather until you adopted the policy of exhibiting Metro pictures on second bills?

A. I don't recall.

Q. You don't recall that?

A. No, I don't.

Q. You stated that the Bays Theater after it was acquired by the Griffith Amusement Company was immediately closed. Do you recall that they operated that theater for a time after it was acquired?

A. No, I don't.

Q. How long did you stay in Blackwell after that theater was sold?

A. Well, I was in and out of Blackwell up until
845 the time I went in the service.

Q. When did you first leave?

A. These things before I went in the service are kind of hazy. I was working out of the jurisdiction of the Arkansas City local, and I was dividing my time between Arkansas City and Winfield. I was living in Blackwell and driving up there to work.

Q. On October 14, 1939, were you still in Blackwell? That was the date the theater was sold?

A. Yes, I was still there.

846 Mr. COCHRAN. Is there an unanswered question?

(Last question and answer read by the reporter.)

By Mr. COCHRAN:

Q. You immediately took a job which carried you out of town a good part of the time, did you not?

A. No, sir.

Q. What did you go into immediately after ceasing to be manager of the Bays Theater?

A. I do not recall immediately, right after, just what.

Q. Do you know, will you say then, that immediately after it was acquired by Griffith, that theater was not opened up and operated for a time?

A. To my knowledge, no.

Q. Do you say it has not been operated since that time?

A. I wouldn't say that.

Q. You wouldn't say that?

A. No.

Q. You don't know whether or not it has been opened and operated at various times since the date of its acquisition?

A. It has been leased; I presume that is the way it has been worked.

Q. Will you say it has not been operated at various times during that period?

A. No, I wouldn't say that.

Mr. COCHRAN. That's all at this time.

847 Mr. WRIGHT. I don't believe I offered in evidence these two exhibits that were identified as Plaintiff's Exhibits Nos. 197 and 198 for identification, the RKO contract.

Mr. COCHRAN. May I see them, please.

Mr. WRIGHT. Yes, sir (handing). Your Honor, we also offer at this time the agreement made between Griffith Amusement Company, George S. Layham and Layham Theaters, Inc. at the time the theater was sold, which has been marked for identification as Plaintiff's Exhibit 13.

The COURT. This Exhibit 197 is the contract between Bays and Universal?

Mr. KIMB. RKO, your Honor.

Mr. WRIGHT. RKO.

The COURT. 198 is the same? And 197, the date is what, what season?

Mr. WRIGHT. The application is dated November 28, 1938, to cover the 1938–39 season, and they were approved December 16, 1938.

The COURT. And Plaintiff's Exhibit 198 is the next year?

Mr. KIMB. No, sir.

The COURT. The same year?

Mr. KIMB. The same year.

Mr. WRIGHT. One is first run and the other is second run. They are both the same year. Exhibit 197 is the

848 first run contract and 198 is the second run contract.

Mr. COCHRAN. No objection to 197. I want to call your Honor's attention to the fact that on the face of this contract it says: "Preview privilege on all product. No extra charge will be made for any short subjects playing a fourth day with an RKO feature."

The COURT. It will be admitted.

Mr. COCHRAN. We have no objection to Exhibit 198. I call your Honor's attention to the fact that it is for 32 features, second run, with stamped clause which reads: "The exhibitor agrees to play and pay for 32 feature pictures generally released by the RKO Radio Pictures, Inc. during the 1938–39 season, and further agrees that he shall be entitled to a selection only from such pictures as are identified by production numbers running from 901 to 948. It is further agreed that the exhibitor's rate of rejection shall be limited to one picture out of each four released, and the exhibitor further agrees that the acceptance or rejection of a feature shall be given to the distributor within twenty-one days after its date of availability in the exchange territory. Any picture not rejected in writing

within such twenty-one day period shall be deemed conclusively to have been accepted by the exhibitor. Also it says, "second run, preview privilege."

The COURT. Exhibit 198 is admitted.

849 Mr. COCHRAN. No objection to Exhibit No. 13.

Mr WRIGHT. I might add that we will offer the Metro contract that was referred to when and if it is produced, also.

The COURT. That is what number?

Mr. WRIGHT. That is No. 13.

The COURT. That is the contract to sell to Griffith of this run?

Mr. WRIGHT. That is an agreement not to compete, and so forth, signed by the Layham Theater.

Mr. COCHRAN. In that connection, your Honor, in this contract, clause 4, is the agreement that: "That the first parties agree that they will not engage in the theater business in Blackwell, or Kay County, Oklahoma, for a period of ten years, either directly or indirectly as an individual, corporation, member of a co-partnership, or a stockholder in any corporation or as agent, manager or otherwise, or so long as the second party or any person deriving title to said good will from it, carries on a like business therein." We are not objecting to the introduction of that clause. We contend that that is a perfectly legal contract and yet under some of the decisions it has been held they are entitled to put it in, but that there must be a showing that the arrangement was used for some unlawful purpose.

850 The agreement itself is lawful. We have had in this court a number of times that kind of arrangement. So I am not objecting to that clause. Also, while on that, we will say in connection with the Plainview, Texas, where an agreement not to compete was objected to by Mr. Rice for some reason, and we objected to it, not on the ground that it should not be admitted, but we objected, and we are withdrawing our objection. Do you withdraw your objection?

Mr. RICE. We will withdraw our objection, and it is in the record for other purposes. We are sure the Court will control the effect of it.

The COURT. Very well.

Mr. COCHRAN. We will supply that number. The agreement is dated October 15, 1936, Tower Theaters, Inc., executed by Dennis Scaling and R. Q. Silverthorne, identified as Exhibit 8, I think.

Mr. WRIGHT. No, it is Exhibit 3.

Mr. COCHRAN. Exhibit 3?

Mr. WRIGHT. For identification. We are through with the documents now.

Re-direct examination by Mr. WRIGHT:

Q. Now, Mr. Geiger, why was it that you ran these double feature programs at the Bays Theater?

A. Well, the reason for doing that was we had to,
851 we didn't have any major product first run, and to build the bill up and make it stand up, we ran a second run of one of the major products. That was what we were endeavoring to do.

Q. I didn't quite understand your answer there. Do you mean you are talking about second run or a second feature?

A. Well, a second feature.

Q. Now, you say the independent product that you had; by that you refer to what companies?

A. Well, Monogram, Grand National, and Republic.

Q. You say that wouldn't stand up at times, it wouldn't attract customers by itself?

A. The majority of it, yes.

Q. And in order to attract people to the theater you then ran double bills?

A. Yes, sir.

Q. As I understand it, when you had a good major feature, you were able to play that as a single bill?

A. Yes.

Q. Did the opposition theaters there double bill at all?

A. I am not positive of the Midwest. The Rivoli did not, but I am not positive about the Midwest, but after the Palace opened up, they did.

852 Q. And they double billed what kind of product?

A. Well, it was the second run of the major product.

Q. The major product?

A. Yes, sir.

Q. They were running, were they, at the same admission prices as you?

A. I do not recall; I presume that's what they were doing.

Q. You don't remember their prices?

A. I don't remember their prices.

Mr. WRIGHT. That's all.

Re-cross-examination by Mr. COCHRAN:

Q. Mr. Geiger, will you say all through 1938 and '39 you were not running RKO product, first run, double bill, at any time?

A. No, I didn't say that.

Q. So you did run the first run pictures at times on a double bill?

A. Yes.
Q. Of the major product?
A. Yes, sir. All major——
Mr. COCHRAN. Do you have, Mr. Wright, your Exhibit No. 199 and 200, which you identified for Blackwell?
853 Mr. WRIGHT. I gave them to the reporter. No, we can get them for you. You want 199 and 200?
Mr. COCHRAN. 199 and 200, yes. Judge Kime has gone for them.
Mr. WRIGHT. All right.
The COURT. Gentlemen, we will continue until twelve-thirty this week, as we announced last Friday.
Mr. COCHRAN. I am through with this witness, except I want to see those exhibits as to Blackwell, and I don't know what they were.
Mr. WRIGHT. We have them and we are bringing them up.
The COURT. Do you have the originals?
Mr. WRIGHT. Yes, sir, we have the exhibits he is referring to and we will have them up here in a minute. You say there is nothing more, and we may go ahead with some of this documentary material?
Mr. COCHRAN. You may go ahead. I don't know whether these two exhibits have any relation to him or not. I just wanted to see what they are.
Mr. WRIGHT. That should appear in the transcript.
Mr. COCHRAN. Don't take this.
(Proceedings off the record, then the following proceedings were had and recorded:)
Mr. COCHRAN. That's all right; go ahead.
854 There is just one question I want to ask.
By Mr. COCHRAN:
Q. Mr. George Layham, who was the owner of that theater was here with you in the office of the attorneys for the Government last night, was he not?
A. I wasn't there last night.
Q. Well, the night before?
A. No, sir.
Q. Has he been here with you?
A. He came down with me, yes, sir.
Q. When was that?
A. Saturday afternoon.
Q. Saturday afternoon?
A. Yes, sir.
Q. And you and he were in the Government's office together, were you?
A. Yes, sir.
Mr. COCHRAN. That's all.
Mr. WRIGHT. That's all.

(Witness excused.)

Mr. WRIGHT. We had planned following this witness to use Mr. Bearden, but I understand that Mr. Bearden has gone to lunch, apparently thinking we were going to adjourn at twelve. I think we can use this time by offering some documents, however, so we won't waste it.

855 The COURT. My reason for continuing to twelve-thirty was in order to give you full time this week.

Mr. WRIGHT. We appreciate that, your Honor.

Mr. COCHRAN. Are these documents that we have photostatic copies or other copies of?

Mr. WRIGHT. Yes, sir.

Mr. COCHRAN. What companies?

Mr. WRIGHT. I will begin with those produced by your companies. I think they are marked for identification as Plaintiff's Exhibits 5 through 49-A inclusive. The first one I think that we would want to offer would be the one identified as No. 8. That is the agreement between——

Mr. COCHRAN (interrupting): Just a minute. The Government has both sets of photostats.

Mr. WRIGHT. Both sets?

Mr. COCHRAN. Yes, sir.

Mr. WRIGHT. I think you can identify it from this description. No. 8 is the agreement between J. G. Long, Consolidated Theaters, Inc., and Westex Theaters, Inc., providing for the joint operation of the number of theaters in Texas and it is dated February 26th, 1938, at Victoria, El Campo, and Wharton, Bay City, Alvin and Texas City, Texas.

The COURT. It is twelve-fifteen, if you gentlemen want to check up on your records.

856 Mr. COCHRAN. We are willing to proceed. Go ahead.

The COURT. Very well.

Mr. WRIGHT. We will offer in evidence Plaintiff's Exhibit No. 8 for identification, under the same number.

Mr. RICE. You also subpoenaed that from me and it has been given a number.

The COURT. What number do you give it here?

Mr. WRIGHT. We have been giving them the same numbers as they carry for identification, without change, so this would be Exhibit 8, if received.

The COURT. Exhibit 8?

Mr. WRIGHT. Exhibit 8, yes, sir.

The COURT. You don't have a duplicate number for the Plaintiff's Exhibits, do you?

Mr. WRIGHT. No, that is the only Plaintiff's Exhibit No. 8.

Mr. COCHRAN. No objection.

Mr. WRIGHT. We will also offer the contract identified as Plaintiff's Exhibit No. 10 for identification, between Griffith Amusement Company, Griffith Consolidated Theaters, Inc., and W. T. Sears at Altus, Oklahoma, dated June 1, 1942, reducing to writing the terms under which the Griffith Amusement Company has been rendering certain auditing and bookkeeping service in the licen-
857 sing and booking of films and so forth. We had subpoenaed the agreements of this character made between January 1, 1934, and January 1, 1940, but I take it this agreement dated June 1, 1942, was produced in response to that subpoena, and it purports to reduce to writing an agreement under which the parties had been operating during the prior period covered by the subpoenas, is that correct?

Mr. GRIFFING. That was the contract between the defendants, no limitation on the dates.

Mr. WRIGHT. In any event, the extent to which it represents a prior agreement appears on the exhibit itself.

The COURT. You are offering Exhibit No. 10?

Mr. WRIGHT. Yes.

Mr. COCHRAN. No objection.

Mr. WRIGHT. We are also offering Plaintiff's Exhibit No. 11, which is a contract of a similar nature dated August 15, 1942, between Griffith Amusement Company three Lowensteins, Frank Herzmark, and the three Griffith Brothers relating to theaters at Ardmore, Oklahoma.

The COURT. That is Exhibit 11?

Mr. WRIGHT. Yes, sir.

Mr. COCHRAN. No objection.

Mr. WRIGHT. And we are offering Plaintiff's Exhibit No. 12, an agreement between W. L. Berryman and
858 J. S. Berryman of Bartlesville and the Griffith Amusement Company, dated December 30, 1939, which relates to the Rex Theater at Bartlesville, and provides that the Berrymans will not engage in or become interested in any motion picture or vaudeville enterprise for a period of twenty-five years in Bartlesville or Washington County or so long as the second party, that is the Griffith Amusement Company, or any person deriving title to said good will from it, carries on a like business therein.

The COURT. That is Exhibit No. 12?

Mr. WRIGHT. Yes, sir.

Mr. COCHRAN. I want to check that (referring to exhibit). No objection.

Mr. WRIGHT. No. 13 was the one, the agreement we just introduced while the witness was on the stand, relating to Blackwell.

Plaintiff's Exhibit No. 15 we will offer, which is a contract dated November 30, 1942, between Griffith Amusement Company, Griffith Consolidated Theaters, Inc., and W. J. Moore, of Claremore, Oklahoma, relating to the operation of the Yale and Palace Theaters there, and for the booking and licensing of films of Griffith Amusement Company for a percentage of the gross receipts.

Mr. COCHRAN. No objection.

Mr. WRIGHT. Plaintiff's Exhibit No. 16, we
859 will offer, which is a similar agreement between Griffith Amusement Company, Griffith Consolidated Theaters, Inc., Mrs. H. J. Griffith, Jr., Helen Lowenstein, and Wilma Bethurum, formerly Wilma Roberts, H. J. Griffith, and the First National Bank & Trust Company of Oklahoma City, Oklahoma, trustee, dated August 8, 1944, relating to the operation of the Rialto and Del Rio at Clinton, Oklahoma, and provides a similar booking arrangement.

860 Mr. COCHRAN. What is the date of that contract?

Mr. WRIGHT. That is dated August 8, 1944. We will offer Exhibit No. 18, which is a similar contract between the Griffith Amusement Company, Griffith Consolidated, Mrs. H. J. Griffith, Jr., Helen Lowenstein and F. G. Roberts, dated September 30, 1942, relating, I believe, to two theaters in Clinton, Oklahoma. Both 16 and 18, I believe relate to Clinton.

We offer in evidence No. 19, which is a bill of sale from Mrs. B. Tessin, to Consolidated Theaters, Inc., transferring the Rex and Strand Theaters at Drumright to that company, whereby she agrees not to engage in the theater business there for a period of ten years.

The COURT. That is dated when?

Mr. WRIGHT. That is September 2, 1936.

No. 20, which we will also offer, is the bill of sale of the same date signed by J. G. Bennett, transferring his interest in the same theaters, whereby he makes a similar agreement.

We offer in evidence Exhibit No. 23, which is an agreement between E. R. Slocum of El Reno, and the Consolidated Theaters, Inc., dated June 29, 1939, which provides for certain transfers of interests in theaters at El Reno, Oklahoma, and film buying and booking by the Consolidated Theaters for a percentage of the gross recepits.

861 We offer Exhibit No. 24, which is an agreement between the Griffith Amusement Company, Griffith Consolidated and E. R. Slocum, dated May 29, 1942, reduc-

ing to writing a prior booking agreement under which Griffith Amusement Company gets a percentage of the gross receipts.

The COURT. What town is that?

Mr. WRIGHT. That relates to El Reno also.

We offer Exhibit No. 25, which also relates to the El Reno situation, and is an agreement to which the Consolidated Theaters, Inc., the defendant, was a party, and the other parties are F. E. Loomis, O. E. Enloe, of El Reno, which contains an agreement not to engage in the motion picture or vaudeville business in El Reno or Canadian County for ten years, or so long as the second party, which is the Consolidated Theaters, or any person deriving title to such goodwill from it carries on a like business therein.

We also offer in evidence No. 30, which is an agreement between the Griffith Amusement Company and Texas-Oklahoma Enterprises, Inc., dated April 22, 1938. That relates to theaters at Enid, Oklahoma, and provides for the transfer of interest and booking by the Griffith Amusement Company for a percentage of the gross.

We also offer Plaintiff's Exhibit No. 31 for identification, which is a contract between the same parties on the same date, modifying No. 30 and containing provis-
862 ions not to compete for a period of 10 years in the event of a sale by either party to the other.

No. 32, which we will offer in evidence, is an agreement between the Griffith Amusement Company, Griffith Consolidated and Foster McSwain dated November 17, 1942, reducing to writing an agreement for the operation of theaters at Holdenville, Oklahoma, whereby the Griffith Amusement Company books the films for a percentage of the gross.

We offer Exhibit 33, a similar agreement between the Griffith Amusement Company, Griffith Consolidated and Josephine B. Falls, dated December 30, 1942, relating to the operation of the theaters at Hominy, Oklahoma, whereby the Griffith Amusement Company buy the films for a percentage of the gross.

We also offer Plaintiff's Exhibit No. 34 for identification, which is an agreement between the Consolidated, Josephine Falls, Lindsey Theaters, Inc., and R. E. Griffith Theaters, Inc., dated October 1, 1938, providing for joint operation of the theaters at Hominy with Consolidated Theaters buying and booking the films for a percentage of the gross and the various parties agree to a transfer of goodwill for a ten year period from date of sale in the event of a sale by either party.

(Hereupon Court adjourned until 2:00 o'clock p. m. this day.)

863 AFTERNOON SESSION

2:00 o'clock p. m.

WINDELL BEARDEN, called as a witness by and on behalf of the plaintiff, and having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct examination by Mr. WRIGHT:

Q. Will you state your name and address.
A. Windell Bearden. I am living in Lubbock, Texas.
Q. What is your occupation?
A. I am in the theater business.
Q. What theater?
A. The Arcadia in Lubbock, and the Sunshine in Clovis, New Mexico.
Q. How long have you been engaged in the theater business in Lubbock?
A. Since June 2, 1936.
Q. You were formerly associated with the operation of the Tech Theater there?
A. I was at that time, that's when I started.
Q. With whom?
A. With P. E. Smith.
Q. You and Smith built the Tech, did you?
A. We built the Tech in 1936, when we opened it,
864 by remodeling the building. The building was already there, it was a laundry building.
Q. Where was that in Lubbock?
A. That was out by the Tech College, about a mile and a half from downtown, adjoining the campus.
Q. The campus at the Texas Tech?
A. That's right.
Q. At the time you built that, were there any other theaters in that neighborhood?
A. No, there wasn't.
Q. The other theaters were in downtown Lubbock?
A. They were all downtown.
Q. What were those theaters?
A. We had the Lindsey Theater, the Palace Theater, the Broadway Theater, the Lyric and the Texian.
Q. The Lindsey, Palace, Lyric, Broadway and Texian?
A. Yes, sir.
Q. Those were the only other theaters in Lubbock?
A. Those were the only other ones.

Q. How big was Lubbock at that time?

A. About 30,000.

865 Q. And at the university there are about how many students?

A. The enrollment ranged from about 3000 to 5000.

Q. Do you know who operated those downtown theaters?

A. W. A. Maulden operated the Broadway and Lyric and Griffith Amusement Company the Lindsey, Palace and Texan.

Q. When was it you and Smith opened the Tech?

A. June 2, 1936.

Q. What sort of program policy were you able to establish there?

A. We started out with running four run pictures from Metro and third run from Universal.

Q. When you say "third and fourth run" you are referring to in the city?

A. That is right. It was first run out by the college.

Q. Then later you got some other major product, didn't you?

A. The first year we secured United Artists product, which was third and fourth run, whichever was available to us.

Q. Any others?

A. Not of that year.

Q. That was the year 1936–37 you are talking about?

A. That is right.

Q. How about '37–38?

866 A. '37–38 we had some product and the latter part of that year we secured some Columbia. That was third run.

Q. Calling your attention to the fall of 1938, did you notice any activity in your neighborhood with respect to the construction of another theater?

A. Ever since we had opened our theater at the college, we had heard rumors of another one going in out by the college, but in 1938 we noticed a sign posted on a lot around the corner from us which read: "Home of the new Campus Theater."

Q. Did it say who was going to build it?

A. It was rumored that Griffith Amusement Company——

The Court. Don't say "it was rumored."

By Mr. Wright:

Q. Just answer the question. What did the sign say?

A. I misunderstood the question. "Home of the new Campus Theater."

Q. Did the sign say who was going to own or operate it?
A. No, it didn't.
Q. Then after you saw that sign did you receive a call from anybody as to the other theater?
A. On the evening of June 6, Arlie Crites called me and told me he would like to come out and talk to me——
Mr. COCHRAN. We object. There is no testimony showing this connection with these defendants or either of them.
867 Q. Did you know Arlie Crites?
A. Arlie Crites was the local manager of Griffith Theaters in Lubbock.
Mr. COCHRAN. We object to any statement that Mr. Crites made, for the reason there is no showing of any authority on his part to represent either or any of these defendants. Those theaters out there were not being operated by Griffith Amusement Company; they were being operated by Lindsey Theaters, Inc. There is no showing as to whose employment this man was in or what authority he may have had.
The COURT. Who was actually operating the Griffith Theaters then, do you know?
A. Arlie Crites was the general manager.
Mr. COCHRAN. May I ask the witness a question?
The COURT. Yes.

Cross-examination by Mr. COCHRAN:

Q. Don't you know that those theaters out there were being operated by Lindsey Theaters, Incorporated, don't you know that Lindsey Theaters, Incorporated, was the corporation owning and operating those theaters?
A. I don't know that.
Q. Why do you say that Griffith Amusement Company was operating them?
A. I only say that because that is what was com-
868 monly known in Lubbock.
Q. So you have no knowledge as to who was operating them, of your own knowledge?
A. All I know is that Arlie Crites was the general manager of the theaters and he seemed to be in charge there.
Q. You don't know of your own knowledge by whom he was employed, whether by Consolidated Theaters, Griffith Amusement Company theaters, Lindsey Theaters, or the Lindsey estate, or what not?
A. No, that's true.
Mr. COCHRAN. We object to the testimony, the witness stating what Mr. Crites said, until it is shown what connection he had with some of these defendants in this case.

The COURT: Yes, unless you can show that Crites—is it Crites?

The WITNESS. Crites. C-r-i-t-e-s.

The COURT. Unless you show that Crites was employed by one of the defendants in this case, the testimony would not be competent.

Mr. WRIGHT. If the Court please, there is no dispute, I believe, in the record as to the fact that these particular groups of theaters were operated by Lindsey Theaters, Inc.; however, Griffith Amusement Company or Consolidated Amusement, I don't remember which, had a 50 per
869 cent interest in them and bought and booked the films for those theaters. That appears from the contract already in evidence and the interrogatory answers.

Mr. COCHRAN. They had a 50 per cent stock interest in another corporation, which operated the theaters. In other words, Consolidated had a 50 per cent stock interest in Lindsey Theaters Corporation.

Mr. WRIGHT. That is what I said.

Mr. COCHRAN. And did not operate the theaters. The Lindsey Theaters Corporation operated the theaters.

Mr. WRIGHT. It also appears from the material in evidence that the Griffith Amusement Company bought and booked the films for those theaters. It also appears they covered those theaters in contracts made with the major distributors; they were not made by Lindsey Theaters but by Griffith on behalf of those theaters.

Mr. COCHRAN. This conversation he is asking about is not a conversation in regard to booking and buying.

The COURT. Let me understand you. Your record so far shows that Consolidated owned a 50 per cent interest.

Mr. COCHRAN. In Lindsey Theaters.

The COURT. In Lindsey Theaters.

Mr. WRIGHT. And that they bought and booked the pictures for it from the major distributors.

The COURT. But the theaters were operated by
870 Lindsey Theaters.

Mr. COCHRAN. Operated by the Lindsey Corporation.

Mr. WRIGHT. With the exception of the film buying and booking, and the bookkeeping I believe was also done by the Griffith Amusement Company. It is a local partnership operation.

The COURT. What does the record show as to the officers or the range of the corporation?

Mr. COCHRAN. I don't know.

Mr. WRIGHT. The Lindsey Theaters is not a defendant. I don't believe its officers are shown in the interrogatory answers.

Mr. COCHRAN. That is a separate corporation, and had nothing to do with acquisitions, and Griffith Consolidated and Griffith Amusement had nothing to do with the acquisition.

Mr. WRIGHT. Let's find out just what they did have to do with it. We cannot find out until we have the conversation.

The COURT. You cannot have the conversation until you lay the proper foundation. Is it admitted that Mr. Crites was employed by the Lindsey Corporation?

Mr. WRIGHT. I don't know whether he was employed by the Lindsey Corporation or by Griffith. The only thing the witness apparently knows is that he was managing
871 the theaters there, which, according to the records Griffith Amusement Company or the Griffith Companies had a half interest in. They bought the films and booked them, the record shows that.

Mr. COCHRAN. The record does not show that Griffith had an interest in those theaters. It had a half interest in the Lindsey Corporation, which is a separate corporation.

Mr. WRIGHT. You don't deny the fact that the record shows that Griffith bought and booked films for those theaters, is that right?

Mr. COCHRAN. That's correct.

Mr. WRIGHT. And had an interest in the profits of those theaters?

Mr. COCHRAN. Had an interest in the profits of the Lindsey Theaters Corporation.

Mr. WRIGHT. I take it there is no dispute but what the business of the Lindsey Theaters Corporation was operating those theaters in Lubbock.

Mr. COCHRAN. The record shows who operated them.

The COURT. And Mr. Crites was in the employ of Lindsey. Lindsey was a corporation. Does the record show so far who owned the theaters, these particular theaters?

Mr. WRIGHT. Well, the record shows, I believe, that they were operated by Lindsey Theaters.

872 The COURT. I know, but who owned them?

Mr. WRIGHT. Lindsey Theaters.

The COURT. 100 per cent.

Mr. COCHRAN. Yes.

Mr. KIME. No, 50.

Mr. COCHRAN. There is an agreement in there, I think, which covers the various interests.

Mr. WRIGHT. Here is the answer: "These theaters are owned by Lindsey Theaters, Inc. That refers to the Lindsey, Palace, and Texan at Lubbock, Texas. Griffith Consolidated Theaters own 50 per cent of the stock of this corporation and Mrs. Betty Lindsey owns 50 per cent of the corporation."

The COURT. Overruled and exception allowed. I question very seriously the materiality of this, but later it may be excluded if the Court decides it is not competent. You may answer.

The WITNESS. Will you repeat the question, please?

Mr. WRIGHT. I will repeat it.

Mr. COCHRAN. He was answering your question when I objected and said he had received a call on June 6, 1938, for Arlie Crites, local manager of the theaters.

A. I received a phone call on the evening of October 6, 1938.

Direct examination resumed by Mr. WRIGHT:

Q. October 6?

873 A. October 6, 1938, from Mr. Crites, wanting to come out and talk to me. He came out and came into my office and had another fellow with him, whom he introduced as Mr. Akers.

Q. Mr. Akers with what company?

A. With Griffith, or "with our company" he said; "Mr. Akers, with our company."

By Mr. COCHRAN:

Q. Did he say with what company he was, or just said "Our company"?

A. He said, "our company".

By Mr. WRIGHT:

Q. What was the conversation you had with him?

A. Mr. Akers commented on the theater we had there, about it being nice, and what good sound system we had, and first one thing and another of that nature; then he mentioned the fact about them planning to build a theater out by the campus and asked me if I had heard of it. I told him yes, I had heard of it, and I had also noticed the sign posted on the lot around the corner, and he asked me if I thought there was enough business out by the college to furnish or supply two theaters. I told him I didn't know, but I doubted it. And he says, "Well, we have intended to have a theater out here for a long time, and we feel like this part of town really belongs to us because we have been in the theater business a long time." And he

says, "We plan to control the theater business here,
874 if we have to put them here as thick as service stations.

By the COURT:

Q. If we have to what?

A. If we have to put them here as thick as service stations. So I told him it was a free country, and that I could do nothing about it. He then asked me if I would be interested in selling. I told him yes, that I would. And he asked me what I would take for it. I told him I would take $20,000. He said, "That's unreasonable; we can pay only about $10,000." And I told him we couldn't accept that, that wasn't enough; that we had more money in it than that." That was about the extent of the conversation until he got ready to go. And he stated he would give me until Monday morning, which was the 10th, to call him up and accept the offer that he made, else they would start immediately to construct a theater on the lot that they had the sign on. So I told him that he already had my answer, that I couldn't take $10,000; that sometime he might have the theater, but I wouldn't give it to him. So he shook hands with me and said he would be going, and that's the last time that I saw Mr. Akers.

Q. Now, did construction start on the new theater there?

A. No, it didn't.

Q. At that time?

A. It did not.

875 Q. Did it later start there?

A. It didn't start on that particular location.

Q. A theater was built at a later time on another location?

A. That's right.

Q. And when and where was that?

A. The location that the theater was built on is two blocks north of the Tech Theater, on College Avenue, which is beyond the business district, the little business district by the college, right north of it.

Q. And when was that theater built?

A. I don't remember just exactly when the construction started, but it opened on August 22, 1940.

Q. Now, the name of that theater was what?

A. The Tower Theater.

Q. Do you know who operated that?

A. I beg pardon?

Q. Do you know who operated it?

A. Well, I presume the same company operated it.

Q. It was operated with the——

A. (Interrupting) With the other theaters.
Q. The other downtown theaters?
A. The Palace, Lindsey, and Texan.
Q. By the time that theater was built was Mauldin still operating the Lyric and Broadway?
876 A. No, Mauldin had sold out previous to that time. Mauldin sold out in June 1939.
Q. To whom?
A. To Griffith.
Mr. COCHRAN. We object, as that is not the best evidence.
The COURT. Well, if he knows of his own knowledge.
Mr. COCHRAN. The record shows it was not sold.
The WITNESS. I might answer that in this way, to that same company who was operating there.
Mr. COCHRAN. That's all right.

By Mr. WRIGHT:

Q. That was operating what theaters there?
A. The Palace, Lindsey and Texan, and had then secured the Broadway and Lyric.
Q. The Broadway and Lyric. And had they also secured the Cactus Theater from another independent?
A. They had purchased the Cactus Theater from Tate Sanders in May just previous in that year, May before June of that year.
Q. May 1939?
A. That's right, in May of 1939.
Q. That Cactus Theater, was that a downtown theater?
A. The Cactus Theater is about a mile south on Avenue H, which is a rough part of town; it is not in a
877 desirable, I mean the better part of town; it is in the part of town where there are junk yards out more or less at the edge of town.
Q. How far was that from the theaters which you operated out there on Tower Avenue?
A. It is about two miles.
Q. As to the product that you played at the Tech, what did you have for the '38-39 season?
A. It was the third year of our operation. We secured in addition to Metro, Universal, United Artists, and Columbia, we secured RKO and Warner Bros. RKO was third run and Warner Bros. was fourth run.
Q. At that conversation you had with Mr. Crites and Mr. Akers in the fall of '38, was anything said as to what kind of pictures would be put into the new theater?
A. Yes, sir.
Mr. COCHRAN. The same objection as previously made.
The COURT. Overruled and exception allowed. He may answer.

A. Yes, Mr. Akers told me that, when he said they were going to control the theater business if they had to build them as thick as service stations, he said: "Besides, we are going to put first and second run pictures in our theater that we build out here."

878 Q. Now, after you had that conversation did you make any efforts to improve or advance the runs on which you played this major product at your Tech Theater?

A. Yes, we did.

Q. What did you do in that connection?

A. From the time we opened we had complained to the film companies we needed earlier pictures, due to the fact our patrons were college trade, and higher class people, and they demanded newer pictures and when we learned they were opening the new theater our demands increased, because we then had to have them, and we wrote letters to every individual film company asking that——

Mr. COCHRAN. Wait just a minute——

Mr. WRIGHT. Don't attempt to say what the letter was. Just tell us what you did. You wrote letters?

A. Wrote letters to the film companies.

By Mr. WRIGHT:

Q. Did you also make contact with the exchanges personally?

A. Yes, we did, on visits to Dallas, to their offices in Dallas, and with the salesmen of each company. The salesmen called on us and we discussed it.

Q. Called on you at Lubbock?

A. That is right.

Q. Then you went into Dallas to see the exchange managers?

879 A. That is right.

Q. Did any of them give you a better run?

A. No, they didn't.

Q. Did any of them offer to take an application for a better run?

A. No, they didn't.

Q. When the Tower opened in 1940, what kind of a policy did it operate under?

A. It opened with second run pictures in Lubbock.

Q. From what company?

A. From Universal was the opening picture, Universal Pictures.

Q. Well, in the succeeding months, that would be on the '40-41?

A. That would have been the '40-41 season, the current season.

Q. What else was played on second run?

A. They played second run——

Mr. COCHRAN. We object to this testimony. Up to this time there has been no testimony offered beyond the 1938-39 season. They are now going into matters beyond that period and that is not within the scope of the pleadings in this case.

Mr. WRIGHT. The purpose of this is to simply follow through on the conversation. Of course, it did occur during that period. That is in October, 1938.

880 Mr. COCHRAN. We have no objection if that is the purpose. In other words, I simply do not want, by not objecting, to waive the point that the pleadings do not cover any period after 1938. So with that understanding I have no objection.

Mr. WRIGHT. I think the pleadings do charge a continuing violation, and of course, to that extent I think it is proper.

The COURT. Overruled. Exception allowed.

By Mr. WRIGHT:

Q. What else did they play on second run?

A. They played Warner Brothers pictures second run; Paramount second run; Columbia second run; and United Artists second run. They played six major companies second run and two of the major companies they didn't play second run.

Q. You have named Warner, Paramount, Columbia and United Artists. Do you know what the other two were?

A. Universal.

Q. What was the sixth one?

A. Did I mention Paramount?

Q. Warner, Paramount, Columbia, United Artists, Universal and would the other one be Fox?

A. Fox. That is the other major company.

Q. And those pictures that played second run, it was ahead of the date that they played in your Tech?

881 A. They played 100 to 120 days ahead of the Tech.

Q. Did you play the product of those companies then?

A. I think we did with the exception of Universal.

Q. When the Tower began showing these pictures ahead of you did you make any protest to any of the film companies involved?

A. Yes, we did. We wrote them letters to that effect, and when we learned they were opening with a picture second run, we called Universal up on the phone and asked them to cancel our contract, that we couldn't run pictures——

Mr. COCHRAN. We object to his conversation with Universal.

Mr. WRIGHT. Don't give the conversation. Just tell what you did as near as you can remember.

A. We wrote them letters objecting to them showing second run pictures in the Tower ahead of us.

Mr. COCHRAN. We move to strike the contents of the letter and his conclusion as to the contents of it.

By the COURT:

Q. Did you cancel the contract with them?

A. We cancelled the Universal contract.

By Mr. WRIGHT:

Q. Did you get some major product clear of Tower?

A. We did, Metro-Goldwyn-Mayer.

882 Mr. COCHRAN. Did you say clear of the Tower?

Mr. WRIGHT. Yes.

Mr. COCHRAN. What do you mean?

Mr. WRIGHT. That had not been played in the Tower first.

A. We did. Metro-Goldwyn-Mayer gave us our run ahead of the Tower, prior to the Tower; also RKO did the same thing.

Q. With the exception of Metro and RKO, did any of these other major companies you have mentioned give you any opportunity to negotiate for a run ahead of or with the Tower?

Mr. COCHRAN. Object to that as a conclusion of the witness.

The COURT. If he knows, he can answer.

A. No, they didn't.

By Mr. WRIGHT:

Q. With respect to admission prices, what prices were charged at the Tech during the period you and Smith were operating it?

A. We opened the Tech with an admission of 10 and 20 cents. That is, 10 cents for children and 20 cents for adults, both matinee and evening. About two years later we raised our prices to nine and 25 cents. We lowered the price to nine cents for children and raised the price for adults to 25 cents, including the tax.

883 Q. That was when you remodeled the theater?

A. That was about the time we remodeled it.

Q. When you remodeled what, if anything, did you do to the theater?

A. We remodeled the theater twice. The first remodeling was, we tore the front of it out and built a new front and put in a new marquee. Then the second time we remodeled we enlarged the theater to twice its original size; put on a new front, increased the seating capacity to about twice the size and decorated it in general.

Q. How many seats did you have after it was remodeled?
A. After it was remodeled, 550.
Q. That was as of what date?
A. I believe, I am not sure of that, I could give you the approximate date, in the summer of 1938.
Q. You kept on charging the prices you charged them for the '38–39 season, which were 9 and 25 cents, is that right?
A. That is right.
Q. Was the same true for 1939–40 season?
A. '39–40 season the same.
Q. Do you know what the prices that were being charged by the downtown runs ahead of you were?
A. At the Texan it was 9 and 20 cents; at the Palace, 9 and 25 cents. I beg your pardon, that is the Lindsey, 9 and
25 cents. The Palace charged 9 and 40 cents until
884 the Lindsey was remodeled, and I can't give you the price of the Lindsey after it was remodeled but they reversed. In other words, they made an A house our of the Lindsey and a B house out of the Palace.
Q. During that year the Texan was what?
A. 9 and 20 cents.
Q. I mean with reference to class of house.
A. That is the '39–40 season, during that time?
Q. Yes.
A. I don't get your question.
Q. You said the Lindsey was made into the A house and the Palace was the B house. What would the Texan be?
A. The Texan was the lower class house of the three.
Q. During that season did the Texan play pictures ahead of your Tech?
A. That is right.
Q. Was that also true for the 1938–39 and preceding seasons?
A. Yes, sir, that is true for all the seasons; ever since we opened they played ahead of us.
Q. Generally, were they charging the same or lower admission prices than you were?
Mr. COCHRAN. We object. Let him state what the facts were at the various times.
The COURT. Which one are you asking about now?
885 Mr. COCHRAN. Texan. He wants to know if at all times they were charging the same or a lower price.
Mr. WRIGHT. I said generally.
The COURT. If you know.
A. Yes, they did. They charged 9 and 20 cents.

By the COURT:

Q. What did they charge at the Tower?
A. The Tower was 9 and 30 cents.

By Mr. WRIGHT:

Q. That was five cents more than your adult price at the Tech?

A. That is right.

Q. After the Tower began playing these major pictures you operated on College Avenue, what did that do to the business at the Tech?

A. For about six months it didn't seem to affect it, but after that time it began to fall off and has continued to do so, or did continue to do so as long as I was there.

Q. That was about when?

A. That was about September of 1941.

Q. And you sold out your interests in the Tech to Mr. Smith?

A. Smith and I had four theaters. We dissolved our partnership. He took two and I took two.

Q. And you have had nothing to do with the operation of the Tech since the summer of 1941?

886 A. Nothing whatever.

Mr. WRIGHT. You may cross examine.

Mr. COCHRAN. Your Honor, I would like to wait until tomorrow morning to cross examine this witness, if we could proceed to something else, or I can go ahead with part of my examination and conclude tomorrow morning, because there is a lot of material that I must go through before I can examine him, and I did not know until this morning they were going to put him on the stand.

Mr. WRIGHT. We had put Lubbock on for this date in the notice we gave you 10 days ago, and we also told you we were going to put Lubbock on.

Mr. COCHRAN. Regardless of that, I would like to do that.

The COURT. Have you any objection?

Mr. WRIGHT. It is just a matter of the witness' convenience. I suppose he could stay over. I assumed that his testimony would take the rest of the day and I haven't got another witness to proceed with. I assumed when we put a witness on the stand he would be cross examined and then we go to another witness.

Mr. COCHRAN. I can examine for a time. Then he has some documentary evidence he can use.

Mr. WRIGHT. We can probably go ahead with Mr. Jones. I suggest you go ahead and cross examine as far as
887 you can now and we will see what we can do to fill out the schedule.

Cross-examination by Mr. COCHRAN:

Q. Where are you living?

A. Where am I living now?

Q. Yes, sir.

A. In Lubbock, Texas.

Q. Where are the theaters you are now operating?

A. The Arcadia in Lubbock and the Sunshine in Clovis, New Mexico.

Q. And Mr. Smith is operating the Tech?

A. That is right.

Q. He also operates some other theater?

A. No, he doesn't. He closed up.

Q. Where was the other theater?

A. In Phillips, Texas.

Q. You stated you and Mr. Smith were partners until sometime in 1941 when the partnership was dissolved and he took two theaters and you took two?

A. That is right.

Q. Now that dissolution of partnership was the result of disagreement between you and Mr. Smith, was it not?

A. Not necessarily, no; not that I know of.

Q. Well, you decided you didn't want to continue
888 to operate?

A. We agreed to dissolve the partnership.

Q. And at the present time in Lubbock there is the theater that is operated by you, to-wit, the Arcadia and the Tech which is being operated by Mr. Smith, which are in opposition to the Lindsey Theaters. Is that correct?

A. I didn't get all your question.

Q. You and Mr. Smith now separately operate two theaters against the Lindsey Theaters?

A. That is right.

Q. And there is also another theater that is operating in competition to the Lindsey Theaters, and to you and Mr. Bearden, operated by Joe Bryan?

A. That is right.

Q. Known as the Midway?

A. That is right.

Q. The Tech Theater has been continuously operated in Lubbock since it was originally opened in 1936. Was that the date?

A. That is right, June 2, 1936.

Q. And the Arcadia was being operated by Bearden prior to that time, wasn't it?

A. No, it wasn't.

Q. When was that opened?

A. About March 15, 1939.

889 Q. Then it has been operating continuously since that time?

A. That is right.

Q. You said something about the Tech at one time having a first run product. You know, as a matter of fact that

you never received a contract from any distributor at any time which licensed first run pictures in the Tech Theater, do you not?

A. I didn't say we had any product first run.

Q. I asked you if you ever received any contract from any distributor which licensed product for first run exhibition?

A. In the Tech?

Q. In the Tech?

A. In the Tech, first run, Lubbock, Texas?

Q. First run, Lubbock, Texas.

A. That is right.

Q. You did not?

A. We did.

Q. You mean it was licensed to you first run?

A. It was licensed to us first run.

Q. Don't you know the contract called for at least third run?

A. No, sir.

Q. In Lubbock, and that there is not a contract
890 which licensed a product to you for first run exhibition.

A. We had a number of pictures we bought first run, Lubbock, licensed to us first run.

Q. And those were pictures which are commonly referred to as cutbacks, weren't they?

A. That is right.

Q. I mean on a regular contract for a run in which a number of pictures were licensed.

A. That is true. We never did more than three or four on one contract, first run pictures, those pictures we bought first run; British production or something that the previous shows didn't want to run ahead of us.

Q. During the entire time of your operation did you ever have a contract with any of the distributors for a season's product, or have any substantial amount of a season's product for a run earlier than third run?

A. That is right. No product as much as a season's product earlier than third run.

Q. So your run in 1936–37 when you opened, was third run in Lubbock from such companies as you could license product from?

A. That is right.

Q. And at that time when the Lindsey Theaters were using the product, first run, is that correct?

A. That is right.

891 Q. And some second product?

A. And some second run.

Q. And Mr. Maulden's theater at that time was using the product, some second run and some third run?

A. That is right.

Q. And your run was subsequent to the Maulden theater?

A. Following Maulden.

Q. That condition continued right on down to the time when you and Mr. Smith dissolved your partnership, didn't it?

A. No, sir. It continued until Mr. Sanders and Mr. Maulden sold out. I mean by that that we were not following Maulden then. We still had the same run.

Q. My question was misleading. You still continued on down until the time you and Smith dissolved partnership to enjoy the same run in Lubbock that you had at the time you opened?

A. We had the same run in Lubbock, yes.

Q. When the Tower Theater opened up, the fact that he played second run pictures did not cause you to have any later run in the town of Lubbock than you had had before?

Mr. WRIGHT. It is purely a matter of argument. The facts are perfectly clear, that he ran in the same sequence insofar as Lubbock was concerned, but he was behind in the other theater.

(Question read.)

892 The COURT. You may answer.

A. No, it did not.

By Mr. COCHRAN:

Q. You know that there was an occasion while the Cactus was being operated by Mr. Sanders that it had a run ahead of you for some of the product?

A. One company, yes.

Q. What company was that?

A. Twentieth Century Fox.

Q. At that time had Fox licensed any product to you at all?

A. We had been trying to buy Fox ever since we opened the Tech.

Q. I asked you if you were using any Fox product?

A. We were not when the Cactus started to run Fox.

Q. That is right. In other words, the Cactus was opened by a man by the name of Sanders and was operating in competition with you, and Lindsey Theaters, and you had been attempting to obtain Fox product, and you had obtained none on any run, and then Sanders commenced to use Fox product, subsequent to the Griffith and Maulden operation?

A. That is right.

Q. And you still didn't have Fox product.

A. When they started running, that is true.

Q. You spoke of your admission price. When was it that you first started to exhibiting pictures on a policy of "give aways" or admissions two for one, or policies of that kind?

893 A. May I ask this? What do you term "give-aways"?

Q. Well, are you familiar with the term "give-away"?

A. The term "give-away" as I see it, as I understand it, is something in the form of some tangible present you give a person to attend that theater or chances he might have when he attends the theater——

Q. With that definition of it did you have a policy of that kind at any time?

A. We had no give-aways.

Q. Did you have any policy in the nature of admissions for a second person attending along with the first person paying full admission for one cent, or something of that kind?

A. A little while after we opened our theater we learned that two or three of the other theaters down in town——

Q. I didn't ask you the reason. Did you have such a policy?

A. I started to say we gave the students special arrangements on their student identification cards.

Q. What kind of a rate was that?

A. 15 cents.

Q. When was that?

894 A. I don't recall the exact date. It wasn't very long after we opened that we started that and we continued it, if I recall correctly, until we dissolved our partnership.

Q. Are you familiar with the term "pal days"?

A. That is right.

Q. Is that the same thing you have been telling us about?

A. No, it isn't.

Q. You advertised "pal days" in your theater, didn't you?

A. I had forgotten that one. On one day a week, I forget the day, anyway one day a week we had what is called pal day. It was in the middle of the week sometime, I believe. You buy a ticket and another person was admitted as a pal, free, in other words.

Q. When did you start that practice?

A. Well, I can't say positively about that; about 1937.

Q. And that was continued until the time you gave up the Tech and dissolved your partnership with Smith?

A. No, it wasn't. We discontinued that.

Q. When did you discontinue that?

A. I don't remember the exact date, about one year before we dissolved our partnership.

Q. What was the date of your dissolution?

A. September, 1941.

895 Q. Will you say that on May 24, 1941 you were not advertising that policy?

A. May 21, when?

Q. The week of May 18, 1941, to May 24, 1941.

A. Well, no, that isn't here. As I said, however, I don't recall the exact date. I said something like a year. I don't remember that but I do remember that we did not continue our policy. It was stopped before we dissolved our partnership.

Q. Do you say that in May of that year you were not advertising two for one to attend the Tech Theater, two shows for one admission price?

A. I didn't say that. I said I wasn't positive of the date, but I do recall that we stopped that before I dissolved my partnership.

Q. Are you familiar with the term "freeview"?

A. Well, I don't remember whether that is what we called the one we used or not. I think there was another show possibly that used the freeview.

Q. Don't you know that you were advertising in the Tech in the week I have mentioned a free view? That is, those attending the last show on Saturday night might remain over and see the pre-view?

A. That is true. We did that.

896 Q. You spoke of making a demand on distributors after the Tower Theater had opened for a better run, than you had been enjoying. Is that correct?

A. Yes, we did.

Q. And you said you wrote letters. Is that correct?

A. We wrote letters in May, 1940, which is just previous to the time the Tower Theater opened, and I don't recall any letters, however, that we wrote after 1940. We just talked about it in person.

Q. In saying you talked to them in person, you mean you went to an exchange and talked to someone in that particular exchange about your product?

A. That is true.

Q. You had no conversation where you had several representatives of several distributors together?

A. I didn't get your question.

Q. You had no conversations with representatives of distributors when you had several of these distributors together.

A. Not these distributors. We had no conversations with representatives of different companies.

Q. In other words, your dealings with each distributor was separate and independent from other distributors.

A. As far as I know that is true.

897 Q. That is true in regard to the letters which you wrote?

A. That is true.

Q. What did you say about the seating capacity of your Campus Theater when it was opened; not the Campus, but the Tech?

A. When it was first opened, about 360.

Q. When was it the seating capacity was changed?

A. As I said awhile ago, I don't recall exactly when we enlarged it. I think it was in the summer of 1938, and it was enlarged then to approximately 550 seats.

Q. Could you tell us the seating capacity of the Tower?

A. No, I couldn't. It would be purely an estimate.

Q. Do you have any of the contracts for pictures which were entered into with any distributor for exhibition in the Tech Theater?

A. Yes, I do.

Q. Where are they?

Mr. WRIGHT. We have some that were produced by the defendants. Did you give the others to us?

A. They are down on the desk.

Mr. COCHRAN. For the present I think this will answer the question. Do you have all of the contracts that were entered into during the period from the time you

898 opened the Tech?

A. I don't have all of them with me.

Q. Do you have all of the contracts which you made with any company, any distributor?

A. From the time we opened?

Q. Until April, 1939.

A. Well, I couldn't answer that. I don't know.

899 Q. Do you recall whether, at the time you were playing pictures after Mr. Mauldin, there was any clearance between his theaters and yours, that is, was there anything in your contracts specifying the length of time that would intervene before pictures would be played at your theater after they were played in the Mauldin theaters?

A. I don't remember any. Most of our contracts were written so many days after first run. I couldn't say that there wasn't, however, because I don't know.

Q. You know it to be true after the Tower Theater opened, your contracts read so many days after first run?

A. Up until the time we dissolved our partnership, that's true, with the exception of Metro and RKO.

Q. Yes. When you said that your run was 100 to 120 days after the Tower, you mean 100 to 120 days after first run, didn't you?

A. No, I meant after the Tower. That wasn't written in the contract, 100 to 120 days after the Tower, but it was written in in the contract 150 days after the Tower.

Q. After the Tower?

A. I beg pardon, after the Lindsey or first run.

Q. After the first run?

A. After the first run.

Q. In other words, the clearance which was written into the contract after the Tower opened was, so far as
900 the runs which you had, was the same as had existed back at the time prior to the Tower, is that correct?

A. That's correct.

Q. And at the time Mauldin was playing ahead of you?

A. That's true.

Q. You know it to be a fact that Griffith in one of its theaters plays pictures ninth run, don't you, in the town of Lubbock?

A. No, I didn't know that.

Q. Do you know that it plays Metro in one of its theaters seventh run?

A. I didn't know that.

Q. And also Paramount and RKO seventh run?

A. Do you mean on regular contracts?

Q. Yes.

A. Season's contracts?

Q. Yes.

A. Or just an occasional picture?

Q. No, I mean on regular contracts.

A. Well, I didn't know that. I never had noticed it that way.

Q. Do you know how many runs the various distributors are selling in the town of Lubbock now?

A. How many runs?

Q. Yes.

901 A. Some of them are selling as many as six, as far as my knowledge is concerned.

Q. You don't know it is a fact that RKO, Paramount, and Metro are selling seven?

A. I didn't know that, on a full contract. I knew that they did repeat on some pictures after sixth run.

Q. United Artists only sell four runs, is that right, in the town?

A. United Artists sells five, I believe.

Q. Do they? How many does Universal sell?
A. That I don't know.
Q. Do you know how many Warner sells?
Mr. WRIGHT. If the Court please——
A. Beyond what I buy, I don't know what the runs are.
Mr. WRIGHT. I don't see the relevancy of this or how it is cross-examination, in any event, as to what these runs are now.
The COURT. Read the question.
(Last question read by the reporter.)

By the COURT:

Q. Do you know?
A. No, I don't beyond what I buy.
Mr. COCHRAN. He said he only knows what he ran.
The COURT. I don't see how it is material.
Mr. COCHRAN. I will desist from further questioning. That is as far as I can go with this witness
902 now. I would like to resume his cross-examination tomorrow morning.
The COURT. You may be excused until tomorrow morning.
Mr. WRIGHT. If you want to get any particular contracts together, I suggest that you have him go through what he has now.
Mr. COCHRAN. I thought perhaps you were going to offer some contracts.
Mr. WRIGHT. We are not offering any of these that he has, but they are available for your inspection. If there is any particular one that you want him to pull, ask him to do it now and we can save some time.
Mr. COCHRAN. I don't know of any that I want.

(Witness excused.)

The COURT. Can you indicate the next town you are taking up after you get through with this witness.
Mr. WRIGHT. We have already indicated the schedule of witnesses to counsel. I have told them we would follow this witness with the Shawnee situation again. He wanted Mr. Jones to come back, but he won't be here until tomorrow, because I had expected the cross-examination of this witness to occupy the rest of the afternoon. We have another witness who is anxious to get out of town tomorrow and he is here and he is with the War Production Board,
903 Mr. Vincent. I told him I would try to dispose of him tomorrow and I might be able to get him over here this afternoon.
The COURT. He is here now, I understand.
Mr. WRIGHT. If you are ready, we can go ahead with him.

Mr. COCHRAN. I am not ready to cross-examine him, but you may put him on. You may put on Mr. Jones.

Mr. KIMB. Mr. Jones is not here.

Mr. COCHRAN. Johnnie was here a minute ago, Johnnie Jones was here a minute ago.

Mr. WRIGHT. I don't see any point in putting him on the stand and then reserving the cross-examination to some future date, I don't see that that is going to help the witness at all.

The COURT. I think we can cross-examine him later.

Mr. COCHRAN. I understood you had a lot of documents that you were putting in.

Mr. WRIGHT. We can, of course, put in some documents. I would like to accommodate Mr. Vincent, however, by putting him on now or tomorrow.

The COURT. When do you have to get away?

Mr. VINCENT. I would like to get away in the morning.

904 Mr. COCHRAN. We can be ready to proceed with him in the first thing tomorrow morning, or you can go as far as you can with him this afternoon. If the Court please, this confusion is occasioned by reason of the fact that counsel furnished us a list. They didn't have to do it but they did, giving us the order in which they were going to produce the witnesses. This morning they told me that instead of doing that they were going to put Mr. Geiger on, and then call Mr. Bearden and so forth. I told them that was their privilege but inasmuch as it was out of the order, and that I had been working every minute, I had to get together my material for the witnesses in that order, and it was throwing me off balance a little bit and I would have to ask for indulgence.

Mr. WRIGHT. We cannot maintain any regular order. We gave them the names of the people we were going to call, but we have to work them in as available.

Mr. COCHRAN. I am not criticizing you; I am trying to excuse myself.

The COURT. I have observed for a long time that lawyers will go further to accommodate lawyers than any other class of people that I know. Well, we will go ahead. If you want to, you may put Mr. Vincent on. We will take a few minutes recess at this time.

(At the conclusion of a short recess court resumed and the following proceedings were had and recorded.)

905 WENDELL BEARDEN, a witness on behalf of the plaintiff, was recalled and testified as follows:

Re-direct examination by Mr. WRIGHT:

Q. Mr. Bearden, did you see Mr. Akers in the court room here while you were testifying?

A. I didn't notice him in the court room while I was testifying. I saw him just a few minutes ago while I was here.

Q. Do you see him here now?

A. No, I do not.

Mr. WRIGHT. That's all.

Mr. COCHRAN. That's all.

(Witness excused.)

FRED G. VINCENT, called as a witness by and on behalf of the plaintiff, and being first duly sworn, to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct examination by Mr. WRIGHT:

Q. Will you state your name and address, please?

A. Fred G. Vincent, business address, 420 Key Building.

Q. What is your occupation?

A. Assistant state salvage manager, Conservation
906 Salvage Division, WPB.

The COURT. Let me get that first name.

A. Fred G.

Q. Fred?

A. Yes.

By Mr. WRIGHT:

Q. That's the War Production Board, is it?

A. Yes, sir.

Q. How long have you been so employed?

A. Since February 7, 1942.

Q. You were formerly in the theater business at Hominy, Oklahoma, were you?

A. Yes, sir.

Q. In connection with what theater?

A. The Pettit.

Q. You managed the theater there, did you?

A. Yes, sir.

Q. Then that theater was sold to Griffths in 1940, was it?

A. It was leased.

Q. Or leased?

A. Yes, sir.

Q. Did you bring with you a copy of the lease and the other documents which were made then?

A. Yes, sir (handing).

907 (Plaintiff's Exhibits Nos. 262, 263, and 264 for identification, were marked by the reporters.)

Q. This document marked Plaintiff's Exhibit 262 for identification, dated February 8, 1940, that's the lease that was made that you just referred to, is that right?

A. Yes, sir.

Q. And this Plaintiff's Exhibit 263 for identification, bearing the same date, that's signed by you and who were the other signers?

A. Amarillis D. Pettit, and Harris B. Pettit.

Q. Those were the owners of the Pettit Theater there, were they?

A. Yes, sir.

Q. Before you made this sale to the Griffiths, how long were you operating that Pettit Theater?

A. From about January 15, 1933, up until the time that the lease was made.

Q. How large a town is that, Hominy?

A. I think the 1930 census gave it as 3880 population, and I think the 1940 census was about 3200 or 3400, a slight reduction, somewhat of a reduction.

Q. So the population during the period you operated then was about 3500, or somewhere around that?

A. Yes, sir, approximately that.

Q. Then in 1933 that was the only theater in the

908 town, was it?

A. Yes, sir.

Q. How big a theater is it?

A. It was originally about a 1250 seat house, but we had removed some seats out of the balcony, and at the time the lease was made it was 995 seats.

Q. That is what it is now or at the time you leased it to Griffith?

A. Yes, sir.

Q. When was it that you cut it down to 1000 seats?

A. From the time that I went in there, in approximately January 15th, for the next three or four months, I removed some seats out of the balcony.

Q. That was in 1933 then?

A. Yes, sir.

Q. It was made into the number of seats it has now?

A. Yes, sir.

Q. Was there another theater opened there later?

A. Yes, there was the Ritz Theater; it was opened—may I refresh my memory on the dates?

Q. Yes.

A. (Referring to paper.)

Q. Just the year is enough.

A. The year of 1934–35, which was in the latter part of '34. I think they originally intended for it to open
909 in July, but I believe, as I recall it, it was some two or three months later on account of overhauling the building.

Q. Who operated the Ritz?

A. Mr. McClain.

Q. What kind of theater was that new theater he built, was it a new one or old one?

A. No, it was formerly a store building that had been converted, the building had been lengthened and converted into a theater.

Q. How big was it?

A. Approximately a 25-foot building. I think the original length of the building was something like 75 or 80 feet, and it was lengthened out, I believe, to 120 feet.

Q. Then in 1934 or '35, what, if any, major film product had you been playing at the Pettit?

Mr. COCHRAN. If the Court please, we would like to have that date to be fixed more definitely. He says 1934 or '35.

By Mr. WRIGHT:

Q. All right, let's take the 1935?

A. In 1934 and '35 we had practically all of the so-called majors and virtually the smaller films, with the exception of the Fox product. We had not purchased the Fox product that year.

Q. Then, when the Ritz opened, it played the Fox, and then did it get any other major product later?

910 A. The year they opened they also had Metro-Goldwyn-Mayer and Warner Bros. and Fox, and I think they had some other additional pictures, not necessarily of any particular companies, but some westerns and so forth, that they filled in with their product.

Q. You played the other major product at the Pettit?

A. Yes, sir.

Mr. COCHRAN. We object to the statement as a conclusion. I think, at least, he should deal with each company, because it is entirely too indefinite.

By the COURT:

Q. Did you play all you had been playing except those that were playing at the Ritz Theater after the Ritz opened?

A. Do you mean for the year?

Q. Yes.

A. Of 1934 or '35?

Q. Yes.

A. We, at that time, at the time I went there, we had Metro-Goldwyn-Mayer, we had Warner Bros., we had Para-

mount, we had Universal, we had Columbia, we had part of United Artists' pictures bought that we were playing.

Q. After the Ritz opened, what did you have the next year?

A. The next year we had Paramount, Universal, RKO, United Artists, and Columbia.

911 By Mr. WRIGHT:

Q. Then, do you recall what was the name of the operator of the Ritz?

A. I have forgotten his initials, sir, it was Mr. McClain, formerly of Tryon, Oklahoma. He had operated a theater there.

Q. Do you recall when he sold out to Griffith?

Mr. COCHRAN. If the Court please, we object to the witness referring to the written statement.

Mr. WRIGHT. I think the date is already in the record, as far as that goes.

The COURT. I think he can refresh his memory, if he has some memoranda which he made himself for that purpose.

Mr. COCHRAN. I think it is not permissible for the witness to prepare a written statement ahead of time and then testify from it.

Mr. WRIGHT. On this particular date, it cannot be controversial, it is already in the record in the form of the answer to the interrogatories.

A. I think it was in June, about June 15th in 1936.

By the COURT:

Q. What year?

A. In 1936.

By Mr. WRIGHT:

Q. Then, after Griffith took over the theater, did you have any conversations with any members of the Griffith organization with reference to a sale of your theater

912 to them, that is, the Pettit?

A. Not until sometime later.

Q. Well, when was the first time?

A. It was, I would say in late '37.

Q. Late in '37?

A. Yes, sir.

Q. Who did you talk to then?

A. I talked the first time, I think I talked to Mr. H. J. Griffith.

Q. And whereabouts was that?

A. At Hominy.

Q. Do you remember what was said then?

A. No, nothing any more than just general conversation relative to the volume of business, and whether we would

be interested in working out a deal, and the equipment that we had, along the general lines of negotiation, I would say.

Q. Did you discuss the terms of the deal?

A. There was nothing specific. There was some figures, I believe I submitted some figures on a rental basis and also for the amount that would be acceptable for the equipment.

Q. And then what happened?

A. The thing was allowed to drag along, and later I talked to Mr. Griffith again at the convention here in Oklahoma City.

913 Q. That was in what year?

A. That was in about '38, at the national convention that was being held here.

Q. Of what?

A. Do you mean the month?

Q. No, what was the convention, of theater owners or what; who was holding the convention?

A. It was a combined convention, as I recall it now, of the National Theaters Owners Association and also I believe the State Theaters Owners Association held a meeting at the same time.

Q. That was here in Oklahoma City?

A. Yes, sir.

Q. You say you saw Mr. Griffith here; which Mr. Griffith was that?

A. Mr. H. J.

Q. That was when in '38?

A. I don't recall the month exactly. I know it was midsummer or fall, possibly July or August, as I recall it. It has been sometime ago.

Q. What was said then?

A. I think, as I recall the conversation, I told him that we would accept the figures that had been given us; and I was to meet them the next day at the office.

Q. Was that all the conversation you had then?

914 A. Yes, sir; it was very short, because he was busy, and he said he would meet me the next morning.

Q. Did you see him the next day?

A. I don't think it was the next day; I believe it was about the second day afterwards, that I went down to the office and talked to Mr. Griffith there.

Q. That was H. J. Griffith?

A. That was H. J. Griffith, and I believe Mr. McKenna, and I think later also we talked to the other Mr. Griffith, Mr. R. E., is it?

Mr. COCHRAN. Just a minute, I think he must be mistaken about R. E. R. E. wasn't there.

By Mr. COCHRAN:

Q. This man here (indicating)?

A. Yes, sir.

Mr. COCHRAN. That is L. C.

The WITNESS. I beg pardon.

By Mr. WRIGHT:

Q. What was said at that time about it?

A. That was with further reference to negotiating the deal.

Q. Was there anything said about the product situation there?

A. Yes, that time I was considerably concerned for fear we were not going to have sufficient product, and I talked to Mr. Griffith relative to that, and as I recall
915 the conversation, he assured me that we would have ample product. And he said he would talk to Mr. Falls to see that we did have it. Later I talked to Mr. Falls, and as I recall the conversation, I asked him how that product would be set aside for us, if they would release some particular one company's product, or if it would be simply cutbacks from other companies' products. And I believe he asked me if I would be satisfied with Columbia, I believe, and United Artists, and I said yes, with the other product that I had, that that would take care of us.

Q. What was the other product you then had?

A. RKO and Universal.

Q. That was for '37–38?

A. Yes, sir—that was in the '36–37 season we had Columbia, Universal, United Artists; in '37–38 we had RKO, Columbia, and Universal.

Q. And then were you offered Universal for '38–39?

A. There was a certain group of pictures that were released to us; as I recall it, there was something like about fifteen or possibly twenty pictures that were released from Universal to us.

Q. When you say released, what do you mean, released by the Griffith house?

A. Yes.

Q. You were not offered a regular season's first
916 run deals then for the '38–39 season, is that right?

A. No, sir.

(Plaintiff's Exhibits No. 265 for identification and 266 for identification were marked by the reporter.)

Q. By the way, after you had these talks in '38 with Mr. Griffith in the office there, was there any deal made then, or what happened?

A. No, there was no deal made until in, just a short time before the lease was drawn in '40.

Q. There was no further conversation with them about a deal between '38 and '40?

A. Yes, sir, there was one or two, I made one or two calls at the office, and talked to them before we got together on the deal.

Q. I show you this letter of February 14, 1939, from Universal, marked Plaintiff's Exhibit 265 for identification, and ask you if you received that shortly after that date?

A. Yes.

Q. I show you a letter from the same company dated February 20, 1939, marked Plaintiff's Exhibit 266 for identification, and ask you if you received that shortly after that date?

A. Yes, sir.

Mr. WRIGHT. I will offer in evidence Plaintiff's Exhibits 265 and 266.

917 Mr. COCHRAN. These are letters addressed to Pettit Theater by Universal Film Exchanges, and we object to the introduction of those documents because they are incompetent and hearsay testimony; the same situation as statements made by somebody other than the distributor.

918 The COURT. Wouldn't this come under the same head as the other testimony?

Mr. WRIGHT. I think so, in general, yes. Of course, we regard all of that we offered before as admissible as we do this.

The COURT. Objection will be sustained and exception allowed. The letters will go into the record.

By Mr. WRIGHT:

Q. Now, at the time you finally made the deal with the Griffiths for the theater in 1940, that was when in 1940?

The COURT. February 8.

By Mr. WRIGHT:

Q. Can you tell us what, if any, major product you had been playing first run there for the '39-40 season? That is, in the season in which you sold out?

A. RKO, and Columbia, approximately 15 or 20 pictures from Universal and United Artists.

Q. The Universal were the so-called cutbacks you referred to?

A. Yes, sir.

Q. Had any particular improvement been made in the Ritz there at that time? Or how did the Ritz compare with the Pettit as a theater in 1939?

A. Well, naturally it was a much smaller house
919 than ours but it had been newly modernized and it was a nice theater.

Q. How many seats did it have?

A. I would say approximately, oh, 375; 375 to 390.

Q. Then after you sold the Pettit Theater to Griffith, do you know what was done with reference to the Pettit and Ritz Theaters? Did they continue to operate them both?

A. It was operated for a short period afterward and then later was closed.

Q. Which one?

A. The Ritz was closed.

Q. The Pettit was operated then as the only theater in the town?

A. Yes, sir.

Q. Is that true today?

A. So far as my knowledge goes. I am quite sure it is because I was there thirty days ago.

Mr. WRIGHT. You may cross examine.

By the COURT:

Q. During the 1939-40 season, did you have sufficient pictures to accommodate your theater?

A. Yes, such as they were.

Mr. WRIGHT. If the Court please, of course, there is no claim here at any time that anybody couldn't get enough pictures to actually throw on the screen, but the ability to survive always depended on the quality of the
920 pictures one house had as compared to the other house. We will not claim in any situation that anybody was unable to get some film that he could fill in his playing time with.

Cross-examination by Mr. COCHRAN:

Q. Mr. Vincent, the Pettit Theater was constructed and owned by Mr. Pettit, was it not?

A. Yes, sir.

Q. What was his name?

A. Charles Pettit.

Q. And Mrs. Amarrillos Pettit was his wife.

A. Yes, sir.

Q. When did Mr. Pettit die?

A. In November, 1931, I think. I am pretty sure it was.

Q. Had he personally been operating that theater up until the time of his death?

A. From the time it was built.

Q. Until the time of his death?

A. Yes, sir.

Q. You were his son-in-law?

A. Yes, sir.

Q. Upon his death did you take over the management of the theater?

A. No, not until approximately January 15, 1933.

921 Q. About two years after his death?

A. Yes, sir.

Q. Who took over the management of the Pettit Theater immediately after Mr. Pettit's death?

A. A man that had been formerly employed by Mr. Pettit as manager, a Mr. Murphy.

Q. Why didn't he continue as manager of the theater?

A. Well, the family had several other interests there, town property. They had a large ranch and a couple of farms and he knew nothing about that.

Q. You mean he knew nothing about the other operations?

A. No, sir, knew nothing about the other property, and his showing in the operation of the theater was not satisfactory to the family.

Q. In other words, during the years 1931 and '32, the operation of the theater under Mr. Murphy was not satisfactory to the members of the Pettit family?

A. No, sir.

Q. And so they released him?

A. That is right.

Q. And you took charge as manager?

A. Yes, sir.

Q. During the time that Mr. Murphy was operating that theater for the Pettit estate you lost a considerable amount of the product he had been using prior to that time,

922 didn't you?

A. No, sir. He had all the product up until the time I came there. In fact, he was over-bought at the time.

Q. Was there any competition in the town of Hominy from the time that the Pettit Theater was constructed until you took over as manager?

A. Yes, a number of years ago but I am not familiar with the people who operated the theater or how long they operated it.

Q. Could you tell us the year the Pettit was built? If not, please state.

A. Approximately 1923.

Q. 1923?

A. Yes, sir. I think it was completed in the year of 1923.

Q. At that time do you know whether there was another theater in the town?

A. I am not sure whether there was a theater in operation at the time that theater was completed because Mr. Pettit had another theater there, a smaller house.

Q. What time was that?

A. Well, that was in 1923. At one time he had three theaters there.

Q. At the time of his death how many theaters did he have?

923 A. Just the one in operation.

Q. Was there any theater operating in opposition to his theater at that time?

A. At the time of his death you mean?

Q. Yes, sir.

A. No, sir, there was no other theater in operation at that time.

Q. Do you remember a son of Mr. Pettit attempting to operate that theater for a time after his death?

A. No. Harris P. Pettit never did attempt to operate it as manager after that.

Q. Did he have anything to do with the management of it at any time?

A. Yes. As far as that is concerned, he had been brought up in the theater business and I possibly counseled with him to a certain extent.

Q. Did he manage or book or buy?

A. No, sir.

Q. At the time Mr. Murphy took over the management and during the time he was manager was there any opposition theater in town?

A. No, sir.

Q. So at the time you took over the operation of the Pettit Theater there was no opposition?

A. No, sir.

924 Q. And had not been for years?

A. I don't know just how many years but at least five or six years. I don't know how far previous to that time.

Q. What was the first competing theater that was erected in the town after you became manager?

A. The Ritz.

Q. That was opened in what year?

A. In 1934; in the fall of 1934.

Q. Do you recall that for the 1934-35 season you had not been able to make a deal with certain of the major distributors for their product?

A. That I had not, you say?

Q. Yes, sir.

A. Yes, sir, that is right.

Q. That was prior to the time this opposition theater was opened up by Mr. McClain.

A. No. We finished the season of 1934 and had Metro-Goldwyn-Mayer product. We also had Warner Brothers product and then the following year or that fall on the renewal of the contracts in anticipation of this other theater being opened we were not able to buy the product.

Q. In other words, just prior to the Ritz being opened by McClain you were not able to buy certain product?

A. That is right.

925 Q. And don't you know that before McClain came in there, before it was announced that there was going to be any opposition, that you had had difficulty in negotiating a contract with several of the major distributors and were not able to make a deal with them?

A. No particular difficulty. The usual procedure was trade and barter that was peculiar to that industry. They called on us several times and had their prices set two much and I wouldn't agree and we were still in the process of negotiation.

Q. The licensing of motion pictures was a bargaining proposition, wasn't it?

A. Very much so.

Q. A horse trading proposition?

A. Chiseling.

Q. Horse trading in its nature, the way they go about it?

A. Yes, sir.

Q. You had been negotiating with several of these major distributors in the fall of 1934, and had not been able to make a deal?

A. Yes, sir.

Q. Which of these distributors was it you had not been able to make a deal with when the Ritz was opened up?

A. Metro-Goldwyn-Mayer and Warner Brothers.

926 Q. Paramount?

A. No, we had Paramount the first year following the opening of that house.

Q. Fox?

A. Fox, no, we could not negotiate with them.

Q. So there was Metro-Goldwyn-Mayer, Warner and Fox? A. Yes, sir.

Q. Were you able to negotiate a deal that fall with Columbia?

A. We did, yes, sir.

Q. Are you certain of Columbia for that fall?

A. 19——

Q. For the season of 1934-35. Don't you know Mr. McClain licensed the Columbia product for that season?

A. You are right; 1935-36.

Q. No, I am talking about '34-35. You said it was in the fall of 1934 the Ritz was opened up. Isn't it a fact the '34-35 season McClain had that product and you did not have Columbia product?

A. I did not have any. In '35-36 we had Columbia.

Q. But you didn't have it in '34-35?

A. No, I don't believe we did, as I recall it.

Q. And after '34-35 you did have Columbia product until the time you sold out to Griffith, didn't you?

A. Yes, sir through '38-39.

Q. Their complete product?

927 A. Yes, sir.

Q. Every year?

A. Yes, sir.

Q. But did not have it in the '34-35 season?

A. No, I did not.

Q. We have mentioned the Metro, Warner Fox and Columbia. You did have RKO, didn't you, in '34-35?

A. We had Paramount, Universal, RKO or United Artists and I did show some Columbia pictures. It may have been some westerns or something we may have bought. While we did not buy the entire contract we may have bought a group of western pictures, but this is from memory you must bear in mind.

Q. We are talking about the time when Mr. McClain was operating the opposition theater.

A. Yes, sir.

Q. So he started off with Metro, Warner, Fox and Columbia?

A. Yes, as I recall it.

Q. And possibly some other product. How long did Mr. McClain continue to operate that theater?

A. Well, from the fall of 1934 until, I think about June 15, 1936.

Q. So he licensed the product for the '35-36 season also, didn't he?

928 A. I assume that he did, yes, sir.

Q. In other words, he was operating the theater in the fall of 1935?

A. Yes, sir.

Q. When the time came for you to negotiate for product in the fall of 1935, you were able to negotiate a contract with RKO, weren't you?

A. Yes, sir.
Q. Did you have a franchise at any time with RKO?
A. Always had one.
Q. I mean a contract for more than one year's product?
A. No, only from year to year.
Q. Year to year dealing?
A. Yes, sir.
Q. But RKO during the entire time you were operating the Pettit Theater licensed you its product each and every year?
A. Yes, sir.
Q. Up until the time you sold out?
A. Yes, sir.
929 Q. In the fall of 1935, did you have any negotiations with Warner Bros. for its product?
A. May I refer to some documents?
The COURT. Yes.
A. As I recall it, I went to see Warner Bros. Now, this was for one year?
Mr. COCHRAN. This is for the fall of 1935.
A. As I recall it, I went to their manager and also their field representative, Mr. Blackstone, I believe was his name and he called on me.

By Mr. COCHRAN:

Q. Relative to the '35–36 product?
A. No, on the '34–35 product.
Q. I am talking about '35–36, in the fall of 1935.
A. I couldn't say positive on that because it has been so long ago. It seems to me it was the year following that, the opening of the other theater that we contacted Warner Bros. for their product.
Q. Can you tell me this: Did you license any of the Warner Bros.' product?
A. No, sir.
Q. For the season of 1935–36?
A. No, sir.
Q. And you did not license their product, season's product from Warner Bros. during any of the time that you were operating that theater until the time you
930 sold out, any Warner Bros.' product?
A. No, sir; not from that time on.
Q. And you did not license any for the season of 1934-35 when opposition first came in until the time you sold out?
A. That is right.
Q. Now, in regard to Fox. Did you have any negotiations with Fox for the 1935–36 product in the fall of 1935?
A. No, sir, not any more than with this exception that

I think that we did. At that time they were re-playing or re-issuing some of the *Will Rogers pictures*, and I think we did negotiate with them to see if it was possible to play some of the pictures that had previously been played.

Q. Did you play any of their re-issue, second-run?

A. No, sir, we did not.

Q. So from the time that opposition came into the town against you until the time you sold out, you did not license the Fox product for use in the Pettit Theater?

A. Yes, sir, that is right.

Q. That is correct?

A. Yes.

Q. The Metro product in the fall of 1935, did you have any negotiations with Loew's or Metro-Goldwyn-Mayer in regard to licensing product for the '35-36 season?

A. I think we had some negotiations with them
931 to this extent, that they advised us there would be a possibility of there being some pictures that would not be played by the opposition house, and that could be released to us, and we could agree upon a price at which we might buy them. However, none——

Q. Did you have any negotiations with them for the season's product for the 1935-36 season?

A. No, sir, not that I recall.

932 Q. Did you make any request of them after '35-36 season?

A. We made the usual informal request and inquiry as to whether or not there was any possibility of the product being available. Their field man always called on us, and had for years.

Q. And in the '35-36 season they didn't license you any of their product? A. Not in the '35-36 season.

Q. And didn't license you any of their product, the season's product for any season from the time opposition came in 1944?

A. That's right.

Q. Until you sold out?

A. Yes, sir.

Q. Your difficulty with Metro, Warner, Fox and Columbia, in the fall of 1934 related to the fact, or was with reference to the fact, that you were not willing to pay the amount for the product that those representatives of those companies were insisting that you pay?

A. Yes, I guess you would say——

Q. (Interrupting.) Is that right?

A. That was the case.

Q. Can you tell us the place where you negotiated or where you executed a contract that you made with Griffith, with Griffith Consolidated or Consolidated Theaters,
933 Inc. in 1940 when you leased the Pettit Theater to Consolidated?

A. Why, the negotiations were at their office, and then the final papers were drawn up, I think in Mr. Griffing's office.

Q. In Mr. Henry Griffing's office?

A. Yes, sir.

Q. At that time he interrogated you in regard to the fact as to why you were selling out, did he?

A. Yes, sir.

Q. And whether you had sufficient product to operate with and so forth, did he?

A. I don't recall that there was anything said relative to sufficient product. That wasn't the question at all, because the deal had been arranged and settled and it was satisfactory and it was accepted.

Q. At that time your wife had died, had she not?

A. Yes, sir.

Q. And you had decided that you wanted to leave Hominy?

A. Yes, sir.

Q. And you so advised the representative of Consolidated, that that was the reason why you wanted to dispose of the theater?

A. Yes, sir.

Q. You further told Mr. Griffing on that occasion that you were not selling your theater because of any
934 threats or intimidations by any of the Griffiths, or anybody else, didn't you?

Mr. WRIGHT. If the Court please, we didn't go into this conversation on threatening, or make any claim about it. In his direct testimony he didn't say he was threatened at the time he made the sale in 1940.

The COURT. I think it is proper cross-examination, showing all the facts.

Mr. WRIGHT. This is counsel's attorney in there after the suit is pending, and obviously attempting to create a self-serving record here. I don't see how that could possibly be significant, as to what Mr. Griffing was asking, except as it indicates he was then——

The COURT. (interrupting): I think it is proper cross-examination. Overruled and exception allowed.

By Mr. COCHRAN:

Q. It is a fact, is it not, that none of those gentlemen had made any threats against you or your theater?

A. No, surely not.

Mr. WRIGHT. If the Court please, that calls for a conclusion. Just let him say what was said and what was not said.

By the COURT:

Q. Was this sale, so far as you were concerned absolutely voluntary and at your suggestion?

Mr. WRIGHT. If the Court please, I think the ques-
935 tion calls for a conclusion.

The COURT. I don't know of anybody on earth that would know that better than this witness.

Mr. WRIGHT. I think we ought to have the testimony limited to what was actually said, and I suppose your Honor can draw the conclusion as to whether or not it was free, and voluntary.

The COURT. Read the question.

(The last question by the Court read by the reporter.)

The COURT. You may answer the question.

A. It was voluntary on our part, and it was the best deal that could be negotiated at that time.

By Mr. COCHRAN:

Q. It was also made after you had decided that you wanted to get out of the theater business because you were preparing to, or wanting to leave Hominy?

A. Yes, and also taking into consideration that we were handicapped by a larger house, and overhead expense, with not much choice left on product, and those things were taken into consideration, and the fact that the size of the town was not suitable for sufficient volume of business for two houses, and I didn't feel that I wanted to spend the rest of my life there working for nothing.

Q. The Pettit estate owned the Pettit Theater, did it not?

936 A. Yes, sir.

Q. And continues to own it?

A. Yes, sir.

Q. You say in your opinion that the town was not sufficiently large to support two theaters?

A. It is not large enough to support two theaters, no.

Q. You considered that the town was over-seated, did you?

A. It was over-seated with one house.

Q. It was over-seated when the Ritz was put in against it?

A. Yes, sir; in fact, it was over-seated before the Ritz came in.

Q. In other words, when the Pettit was built, with the number of seats it had, it was over-seated then, was it?

A. At the time the Pettit was built, of course, you must bear in mind there was a boom condition, so to speak.

Q. Hominy is in the Osage Nation, is it?

A. Yes, sir.

Q. And conditions changed very radically from the time the Pettit was originally constructed?

A. That's right.

Q. Until the time you sold out?

A. Yes, sir.

937 Q. And the conditions were changing for the worse; in other words, back in those early days you had those headright payments from time to time, and there was considerable money being spent up there at Hominy that was not spent after those headright payments were decreased, is that right?

A. Yes, sir.

Q. I will have a few more questions. Would it inconvenience you very much to come back for a little while in the morning?

A. No, sir.

Mr. COCHRAN. I can complete in a very short time in the morning, I think.

Mr. WRIGHT. I want to offer these documents identified here as Plaintiff's Exhibits 262, 263 and 264.

Mr. COCHRAN. No objection.

The COURT. Admitted. Court will recess at this time until ten o'clock tomorrow morning.

(Whereupon court recessed until May 15, 1945, at ten o'clock a. m.)

938 PROCEEDINGS

May 15, 1945, 10 o'clock a. m.

FRED G. VINCENT, was thereupon recalled and further testified as follows:

Re-cross-examination by Mr. COCHRAN:

Q. Mr. McClain, who operated the Ritz Theater during the seasons of 1934–35 and 1935–36, operated only one theater so far as you know?

A. Why, I think he has another theater at Tryon, Oklahoma.

Q. In Tryon, Oklahoma?

A. Yes, sir. I am not sure whether it was Tryon or Agra.

Q. You think he possibly had one other theater?

A. Well, as I recall it, he either had operated the theater there before coming to Hominy or he still retained the house on part time at this town and then opened the Ritz in Hominy.

Q. You knew of no other theater with which he was connected?

A. No, sir.

Q. You have stated that you licensed the Paramount product, some of it, for the season of 1934–35. That is true, isn't it?

939 A. I believe it is. I will have to refresh my memory on that. We had the Paramount.

Q. And for the season of 1935–36, Mr. McClain licensed the Paramount product for the Ritz Theater?

A. Yes, sir.

Q. Mr. McClain had the Columbia product for the '34–35 season at the Ritz. That is true, isn't it?

A. I think he may have had the major product. I believe we played some westerns or we had a few pictures, I am not positive about that.

Q. With just a few exceptions he had Columbia product for '34–35?

A. I believe that is correct.

Q. You licensed Columbia product for the '35–36 season?

A. Yes, sir.

Q. That is all.

Mr. WRIGHT. That is all.

(Witness excused.)

940 The COURT. Do you want to finish now with Lubbock?

Mr. COCHRAN. Lubbock, yes, sir. Mr. Bearden.

WENDELL BEARDEN, a witness on behalf of the plaintiffs, having been previously duly sworn, was recalled and was examined and testified as follows:

Further Cross-examination by Mr. COCHRAN:

Q. On yesterday you stated that the Tower opened with a Universal picture second run. That was on what date in 1940?

A. That was August 22, 1940.

Q. You stated that that picture was a picture of the current season. You didn't mean to say that the picture with which the Tower opened was a picture of the '40–41 season, did you?

A. No, I don't recall what picture it was; all I recall is the fact that it was a second run Lubbock.

Q. Yes, but the statement which I am calling to your attention for correction is that you said it was for the current season. If the theater opened on August 22, 1940, and you said the current season's product, it would ordinarilly be understood that you were talking about the '40-41 season, wouldn't it?

A. Well, that's true. I don't know what——

941 Q. (Interrupting.) You know that that picture on August 22, 1940, would not have been played second run out of '40-'41 product, don't you?

A. Well, I don't—that is probably true, but I don't know that.

Q. Well, you know that about August 22, 1940——

A. (Interrupting.) I know that is a little early for '40-41 product, yes, sir.

Q. Do you know whether there had been any Universal picture released for the '40-41 season at that time?

A. No, I do not.

Q. You would not be surprised to know that the earliest release of Universal for the season of 1940-41 was on September 6, 1940, would you?

A. That's about right, yes, sir.

Q. About right?

A. Yes.

Q. The Tech Theater which you operated in Lubbock commenced operation in a building which had previously been used as a laundry building, is that right?

A. That's true.

942 Q. To what extent did you remodel that building at the time you first opened?

A. When we first opened, of course the first thing we had to do was to remove the heavy machinery from it, and of course, the walls had to be decorated, touched up, being that type of building, it was scuffed and scarred up. We had to plaster places and fill in the windows on one side. There was a solid side of windows on the south side. We had to block those in. We had to excavate the dirt out and put in a slanting floor; built a front for the theater. At that time the building was a 50 foot building; 50 feet wide. We put a partition wall and tile through the center, making a 25 foot building and we had to plaster that. We had to put in a ceiling, plaster and ceilotex beneath that, which is a city ordinance.

Q. Do I understand when you completed your remodeling the width of your building which was occupied by the theater was 25 feet?

A. That is true.

Q. And a depth of what?

A. I don't recall, 110 feet, I believe.

Q. At any time between the opening of that theater and the time you ceased to have an interest in it, was it
943 enlarged?

A. Yes, it was.

Q. The floor space was enlarged?

A. To twice the size.

Q. You mean you took out the partition?

A. Took out the partition, and remodeled the building entirely; built a new front on it. In other words, made the theater twice as large as it was.

Q. So it became 50 by 110 foot building?

A. Yes, sir.

Q. When did that change take place?

A. As I said yesterday, I am not exactly sure about the date but I think it was in the summer of 1938.

Q. The summer of 1938; about what month?

A. That was in June or July. It was either in the summer of '37 or '38. I think it was in '38, however, in June or July.

Q. You told us that sometime about June of 1938 you noticed a sign on a lot there a short distance from your theater; that that was the site of a new theater?

A. No, I didn't say that.

Q. Your statement was: that on a lot not far distant from yours, in about June of 1938 you saw this sign which had on it: "Home of the New Campus Theater"?

944 A. No, sir, I said in October, 1938.

Q. All right. Was that before or after you had the conversation with Mr. Arlie Crites and Mr. Akers?

A. That I saw the sign?

Q. Yes, sir.

A. I saw the sign within two weeks before I had the talk with Mr. Akers.

Q. On page 674 of your testimony you said, "On the evening of June 6, Arlie Crites called me and told me he would like to come out and talk to me"——

A. No, sir, I corrected you yesterday when you repeated that statement, that it was on the evening of October 6, 1938.

945 Q. All right, I just wanted to have it straight.

A. Yes, sir, I understand.

Q. You stated that a theater was never built on that site, that's correct, is it?

A. That's right.

Q. Was that lot in a residential area?

A. That's what I understand, yes, sir.

Q. Did you know that after that sign was erected, that a movement was started among the residents in that area, to protest the building of the theater on that residential site, which was followed by an ordinance which prohibited the building of the theater?

A. That's what I heard, yes, sir.

Q. Did you participate in any way in that movement?

A. No, sir.

Q. But that's your understanding, is it?

A. That's my understanding, yes.

Q. And no theater was constructed until sometime, some two years later?

A. That's true.

Q. For the season 1939–40 you had Universal pictures, some of the Universal's pictures licensed, didn't you?

A. That's true.

Q. And after this theater was constructed, or sometime during 1940, you attempted to obtain from Universal
946 the privilege of playing its pictures which you had under contract for fourth run?

A. I believe it was third run that we had.

Q. Well, either third or fourth run?

A. Yes, sir.

Q. Whichever it was, you attempted to get them to permit you to play those pictures ahead of the Tower Theater?

A. We asked them to not——

Q. (Interrupting.) Now, don't state your conversation. Did you attempt to do that?

A. Will you repeat the question, please?

Mr. COCHRAN. Read it.

(Last two or three questions read by the reporter.)

By Mr. COCHRAN:

Q. Just answer that yes or no.

A. Well, I will have to answer that I don't know.

Q. All right. You canceled your contract for the unplayed Universal product, didn't you?

A. That is true.

Q. That you had for the 1939–40 season?

A. That's right.

Q. You were playing at that time the Universal product, or had been playing it, either in the Tech, which was out near the campus, or the Arcadia, which was a downtown theater?

A. I don't think we played Universal that way. I
947 am not positive, but I don't think we did.

Q. Do you remember the opening of a theater called the Dixie in Lubbock?

A. The Dixie?

Q. The Dixie.

A. No, I do not.

Q. Don't you know that sometime after, sometime about 1939 or '40, that about the same time that the Midway was opened, that there was another theater opened in Lubbock, operated under the name of Dixie?

A. Operated under the name of Dixie?

Q. Yes, sir.

A. No, I didn't know that.

Q. This Midway Theater was first opened by a man by the name of Mauldin, wasn't it?

A. That's right, yes, sir.

Q. And operated by the same W. A. Mauldin who had operated theaters in downtown Lubbock, which were sold to Lindsey Theaters in 1939?

A. Well, I was under the impression that it was operated by Joe Mauldin.

Q. Well, you know that W. A. Mauldin did the booking and buying for it, don't you?

A. Well, I didn't know that.

Q. Did you see him around that theater?

A. I have never seen him there.

948 Q. Were you ever in the theater?

A. Yes, I have been.

Q. Joe Maulden was a brother of W. A. Maulden?

A. Joe Maulden was a brother of W. A. Maulden.

Q. That theater opened when?

A. Either the latter part of 1939 or the first part of 1940. I am not positive.

Q. And continued to be operated to this date?

A. That is right, yes, sir.

Q. At present by Mr. Bryant?

A. Yes, sir.

Q. Do you recall that along in the fall of 1940, about November 25, 1940, you cancelled all of your bookings, all shorts, features and news for the Tech and Arcadia with Twentieth Century Fox?

A. I remember one year, I don't remember what date. I believe that is right, however.

Q. Was it not immediately after the Tower Theater opened?

A. I couldn't say that. I was under the impression it was before. In fact, I am positive it was before.

Q. Did you have a letter which you wrote, which Smith and Bearden wrote to Twentieth Century Fox dated November 25, 1940?

A. I am not positive that I do. I probably do
949 have, however.

Q. The letter which I refer to appears to be signed by Mr. Smith. I beg your pardon. I understand Mr. Smith will be on the stand.

You know there was a time when you cancelled all the bookings which you had with Fox?

A. That is true.

Q. For both the Tech and Arcadia?

A. That is right.

Q. After that time did you make any contracts with Fox and others?

A. Yes, we did. We made a contract the same day we cancelled that one.

Q. Do you know the date of that contract?

A. No, I do not.

950 Q. Do you recall in January of 1941 a visit to you, or your partner, by Mr. Beiersdorff, the Dallas manager for Fox?

A. I recall a visit that he made, but I don't remember the date.

Q. At that time do you recall that you were delinquent in the liquidation of your product for the 1939–40 product?

A. At the time that he made the visit?

Q. Yes.

A. No, I couldn't say that we were.

Q. Did you have any conversation with Mr. Beiersdorff on that occasion, or was it your partner?

A. If I remember correctly, the time that you are speaking of is the time that he and his salesman, who was at that time Mr. Miller, I believe, called on us, and we cancelled the contract. One other time he was there, and we bought a newsreel from him. I believe those were the only two times that he called on us.

Q. Do you remember the occasion in January of 1941 where the product was offered to you on the same run that you had previously had, and you refused to pay the price that they desired for the product, that Fox desired for the product, and no deal was made?

A. I don't remember exactly that. I do remember that whenever we attempted to buy Fox pictures, we
951 would try to bargain with them and get them cheaper than what they offered.

Q. Yes, and you know that on several occasions you were unable to get together on the price?

A. That's true.

Q. And that occurred after——

A. (Interrupting.) Pardon me, I might add, however, to that, that that, in no way kept us from buying pictures after we once started, however. In other words, it would postpone a deal maybe for two or three or four or even six months, but if I am not mistaken, we bought Fox pictures every year after we once started buying them.

Q. But there was considerable negotiations between you and the representatives of Fox in regard to the product?

A. Yes, sir, very much more so than with any other company.

Q. Don't you remember that on this occasion in January 1941 that you made no deal at that time, and did not make a deal for the run for which you were then negotiating at any time during that season?

A. I don't recall that. It is possible that Mr. Beiersdorff called on Mr. Smith when I wasn't there.

952 Q. Who did the buying of pictures for these theaters prior to the time your partnership was dissolved?

A. As a rule both of us were together, but if someone called when the other one was out, of course, the one there would attend to the business, but whenever we went to Dallas, almost invariably we would go together.

Q. Do you recall that in the season of '39–40, Smith and Bearden licensed for the two theaters which it was then operating a total of 337 pictures?

A. Well, I don't remember how many we had licensed.

Q. You have no way of telling how many pictures you had to license for that year?

A. Yes, I could but it would take a little time to do so. I can check up.

Q. Do you have any record here with you?

A. I do not, all of it.

Mr. WRIGHT. I don't see what difference it makes what number he had under license. The entire examination was directed to the position in which he had to play them and not to the quantity of the pictures.

The COURT. Well, it might be competent to show he was able to get all the pictures that he wanted.

Mr. WRIGHT. As far as the Griffith houses are concerned, there is no suggestion he could not get the pictures he wanted.

953 Mr. COCHRAN. He has already testified that he retained the same run in Lubbock which he had previous to the construction of the Tower except as to Metro and one other——

A. No, we retained the same run with Metro.

Q. Except for that Metro and one other, retained the same run in Lubbock that the Tower could not play ahead

of the Tech. That is his testimony. Now, we want to show how many pictures he had with that kind of position.

The COURT. You may answer. I think it might be competent.

Mr. COCHRAN. Would the number 387 sound about right for the season of 1939–40?

A. I expect that is about right, yes.

Q. And for the season of 1940–41, 395 feature pictures?

A. That is about right I guess, yes, sir.

By the COURT:

Q. Did you ever try to buy first run pictures for your theater?

A. We constantly from the time we started buying tried to get earlier run of pictures, first run or whatever they had to offer as long as they were earlier than what we were getting. Our patrons were complaining about it, that our pictures were too old at that time.

By Mr. COCHRAN:

Q. At no time from the beginning of your operations of the Tech Theater and prior to the opening Arcadia,
954 did you ever have a first run of any product?

A. Not any full year's product, no.

Q. And you explained yesterday, the Lindsey Theaters and Maulden Theaters, from the very beginning played ahead of your Tech Theater until in 1940 you were able to get the Metro and RKO to hold the Tower back of your Tech Theater?

A. The Lindsey Theaters and the previous Maulden Theaters continued to play ahead of us.

Q. And had been playing ahead of you before then?

A. That is true.

Q. And after the Tower was built you demanded of each of the distributors that they give you a better run in the town than you had previously enjoyed, didn't you?

A. We demanded that we have a run ahead of the
955 Tower.

Q. Yes. And two of the companies yielded to that demand, and the others declined to do so?

A. That's right.

By the COURT:

Q. Had all of the pictures which you ran in your theater been theretofore run in Lubbock?

A. I beg pardon; I didn't get the question.

Q. Had all of the pictures which you ran in your theater been run prior thereto in Lubbock?

A. That's true, as many as two and three times, most of them three times.

BY MR. COCHRAN:

Q. As you explained yesterday, there are a number of different runs in Lubbock, some of the theaters playing runs which have been played theretofore as many as five times?

A. That's right. I buy for my theaters sixth run with some companies.

Q. Don't you know that Griffith buys as late as seventh run for some of its houses, do you know that to be a fact?

A. Well, you stated yesterday that they bought as many as nine runs, and I stated I didn't know just where they put them. I do know they run some pictures after I run them in the Arcadia, which with some companies, one or two companies, that is sixth run. Whether they run pictures with those companies that I have the sixth run, I couldn't say, but I do know they run some few pic-
956 tures after I run them, but not in the Tower, however.

Q. The Texan Theater plays, at this time, and has for many years played, behind both the Tech and the Arcadia, does it not? I mean behind both the Tech and the Arcadia?

A. The Texan?

Q. Yes, sir.

A. The Texan, ever since I have been in Lubbock, has played both ahead of the Tech and Arcadia Theaters.

Q. The Cactus plays behind your Tech, doesn't it?

A. No, sir, it plays some few pictures behind the Tech, but the majority of them or a large percentage of them I shall say, is ahead of the Tech and Arcadia.

Q. Do you know where Griffith plays its—you have third run for Columbia, don't you?

A. Well, you see I am now not interested in the Tech.

Q. Well, the Tech had third run in Columbia?

A. At one time, that's true.

Q. When you dissolved your partnership?

A. I believe that's right.

Q. Do you know where Griffith plays fourth run Columbia?

A. Well, the Arcadia ordinarily followed the Tech, which would have been fourth run.

Q. The Griffith doesn't have the Arcadia?

A. No; I say I have the Arcadia.

Q. Don't you know that Griffith plays Columbia
957 fourth run now?

A. Well, as I have stated, I have been in the army, and have been away, in the army for nearly three years. I don't know whether I stated that or not, but that is true. I had a manager there, and there were quite

a few things that happened at the Arcadia that I don't know anything about.

Q. So you are not familiar with conditions at the present time?

A. I am back there now, and have been there about four months, but as I say, a number of things happened when I was away that I was not familiar with, even though I was back there occasionally.

Q. Do you know where Griffith plays Metro seventh run?

Mr. WRIGHT. If the Court please, I don't see how that is proper cross-examination.

The COURT. If he knows.

Mr. WRIGHT. Assuming he knows, as to what is happening there today. That period covered on his direct examination did not concern anything happening there today.

The COURT. Well, I understood you to say this was a continuing conspiracy or monopoly. If you want to cut out everything after '39——

Mr. WRIGHT (interrupting): As far as the witness goes, I took him up through the period 1941.

The COURT. I think on cross-examination he has
958 the right to go into that entire period.

By Mr. COCHRAN.

Q. If you know, state.

A. Well, I didn't know that Griffith was running seventh run Metro.

Q. The last time you knew anything about runs down there in Lubbock, what was the last run that Griffith was using of Metro?

A. Third run.

The COURT. It seems to me that we are going into some of these details unnecessarily.

Mr. COCHRAN. Very well, your Honor.

By the COURT:

Q. What determined whether or not you would run first run or second run or third run? Did the price of the picture have anything to do with it?

A. None whatsoever; that is it didn't have—it might have if we had gotten to the point where they were ever offered to us, but they were never offered to us at any price. In other words, they refused to negotiate a first or second run deal with us at all.

Q. Is that determined by the character of the picture?

A. It was determined, as they put it to us, they practiced a policy there of what they called an established house or established run basis for the town, and that the other theaters were ahead of us and the runs were there ahead of us, therefore, we should have runs following them.

959 Q. Did you consider that out of the ordinary in the theater business?

A. Well, it seemed to me that it was not exactly fair. As the Tech Theater was a better house than one or two of the houses they were running their second runs in or third runs, we felt though we should have some consideration.

Q. Was it necessary then for the distributor to depart from the custom which was established before your theater was opened in order to do that?

A. Yes, it would be.

By Mr. COCHRAN:

Q. The Paramount Company never licensed you any product on any run prior to October 28, 1939, did it?

A. I don't recall the exact date, but it was about two years before we bought the pictures after we opened, which was June 2, 1936; probably a little longer—and what date was that you gave?

960 Q. October 28, 1939? A. No, I believe we bought pictures before then from Paramount.

Q. Do you have any contract with you for the period prior to that time?

A. Let's see. I don't recall.

(After examining his files the witness answers.)

No, I do not have one with me. However, I secured these contracts from Mr. Smith's office and there were some probably that I didn't get.

Q. I am not talking about a season prior to 1938-39 season, but I mean a contract which bears date prior to October 28, 1939.

A. I can't answer that exactly because, as I said, I thought it was about two years. It was fully two years before we bought the pictures. However, it could have been a little longer.

Q. After the Tower had been opened, is it not a fact that Paramount took an application from you for product, fourth and fifth run in Lubbock in either the Tech or Arcadia?

A. They took an application from us?

Q. Yes.

A. Yes, that is true. Now let me get this straight. For fourth or fifth run, the Tech or Arcadia?

961 Q. The Tech or Arcadia in Lubbock, and with clearance over the Tower.

A. don't recall of ever signing any contract with Paramount where it said fourth or fifth run for the Tech or Arcadia.

Q. I didn't ask you about the contract. I asked you about the application.

A. That is what I mean.

Q. Isn't it a fact you finally cancelled that application because Paramount was insisting on rentals which you would not pay?

A. Yes, sir, that is true, prohibitive rentals that we thought.

Q. That application provided for clearance of the Tech? That is, the Tech would play the product over the Tower?

A. That is true.

Q. And after that Paramount made a deal with the Lindsey Theaters for playing the product at the Tower, second run?

Mr. WRIGHT. He doesn't know whether they made a deal with Lindsey. The evidence shows that Griffith bought the product for the houses.

The COURT. If you don't know you don't need to answer.

Mr. COCHRAN. That is all.

962 Re-direct examination by Mr. WRIGHT:

Q. Mr. Bearden, with reference to this run you had from Loew and RKO, that was fourth run in Lubbock?

A. That is true; fourth run, Metro, and third run RKO.

Q. That was during the '39-40 and '40-41 seasons?

A. That is true.

Q. And those pictures that you played out there at the Tech from RKO and Metro, did the Tower play those after you?

A. No, they never played them at all.

Q. The only product the Tower played out there, Metro product, was that which was played ahead of you. Is that right?

A. That is true.

Q. And negotiating or in connection with this Paramount application that was taken, you say the application was signed by you and Mr. Smith which provided for the run ahead of the Tower at certain prices.

A. That is true.

Q. And then that application was rejected by Paramount, was it?

A. Well, the way the rejection came around, we signed the contract with Paramount, even though the prices, we thought, were prohibitive. They raised the prices considerably above the previous years, knowing the Tower was going in there, and after we had the privilege of

963 running some few pictures following the Tower why

we learned immediately that they were not worth as much to us or we could not gross as much money on them as we did before the Tower went in. Now, let me have that question——

Q. This application he was referring to, was that made before the Tower was built or after?

A. The application he spoke of, that was turned down or that failed to go through, was before the Tower.

Q. That was before the Tower was built?

A. That was before the Tower.

Q. The application was rejected by Paramount?

A. That is true. I don't remember whether it was rejected before the Tower went in or after the Tower went in.

Q. The application was signed before the Tower was built and then the application was rejected by Paramount. Is that right?

A. That is right.

Q. Now, apart from that Paramount application, did any of these other companies, that is, besides RKO or Metro ever take an application taken on the basis of a run ahead of the Tower?

A. No, they didn't.

Q. In the Tech Theater you had an established first run in that area at the time the Tower was built, did you not?

964 Mr. COCHRAN. We object to counsel leading the witness. We went over that yesterday and he attempted to talk about first run.

The COURT. The question is leading. I think you can reframe your question and eliminate the objection.

Mr. COCHRAN. That matter was covered fully yesterday.

A. Yes, we——

The COURT. Just a moment. I suggest you reframe your question so it will not be leading.

By Mr. WRIGHT:

Q. Prior to the time the Tower Theater was built, what theatre played the first run in the area serving the Texas Tech College there?

A. The Tech Theater.

Q. In these negotiations you had with the distributors attempting to secure the privilege of playing at the Tech ahead of the Tower, what, if anything, was said about the so-called established run policy?

Mr. COCHRAN. We object to what was said.

By Mr. WRIGHT:

Q. Well, was it discussed?

A. It was discussed. Each time we would buy a picture, of course, to begin with—as I said yesterday, there were rumors ever since we opened the Tech out at the college of other theaters going in in opposition to us and each time we would negotiate for pictures, even though we
965 asked them to put first run on College Avenue, they didn't want to do that because the salesman gave as a reason for that——

Mr. COCHRAN. We object to this witness stating why the distributor did not want to do it.

Mr. WRIGHT. I think counsel clearly opened the matter up on cross examination. He went into these various moves the witness has made to improve the run of the theater. I don't think he can shut him off at this point and not let him say what those statements were.

Mr. COCHRAN. I didn't ask him for any statement made by any distributor at all or any statement made by him.

The COURT. Don't state what any distributor said. State what they did.

A. They refused to put in the contract first run on College Avenue.

By Mr. WRIGHT:

Q. And was there any discussion at all with them of prices based on such a run?

A. They would not discuss first run on College Avenue.

Q. On any terms?

A. On any terms.

Q. Now, with reference to these admission price policies you were asked about on cross examination, "Pal nights" or "Free views." Were those practices peculiar to your Tech Theater in Lubbock?

966 A. We did have the practice, we had pal night. At the same time another theater or two, the Cactus, had "buddy night", which was in opposition to us, and the Midway had the free view, which I believe was mentioned yesterday. I couldn't recall just at that time what theater that was in but I believe it was in the Midway.

Q. All these practices that have been referred to were used by other theaters in Lubbock at the same time?

A. That is true.

Re-cross-examination by Mr. COCHRAN:

Q. The Cactus at the time it was operating on a policy of "buddy night" was operated by Sanders, wasn't it?

A. I think Sanders did operate "buddy night" or it was "two for one" night or something of the kind. I forget what they called it after he sold out.

Q. During what period?

A. Well, immediately following the period he sold out. I don't remember how long it was continued, however.

Q. The Midway was operated by Maulden at the time you speak of that practice?

A. No, by Joe Bryant.

Q. Getting back to this first run on College Avenue, you know that there never has been a contract made with you or anybody else in Lubbock that you know anything
967 about for any first run on College Avenue, don't you?

Mr. WRIGHT. That is what he said.

A. That is true.

By Mr. COCHRAN:

Q. You said you had first run on College Avenue.

A. I was running first run on College Avenue.

Q. You mean there wasn't at the time you were operating, any other theater there and therefore you received the picture the first time in that vicinity?

A. That is true.

Q. But the distributors were insisting that was a part of Lubbock and they were licensing runs in Lubbock and not on College Avenue.

A. The only answer we could get out of them was the fact they could not get our contract approved on that basis.

Q. You know this, that they did not, either before or after that time, license any product for any particular part of Lubbock, but licensed for a certain run in the town of Lubbock. You know that, don't you?

A. They were licensed in a particular theater.

Q. But it was for a certain run in Lubbock?

A. That is true.

Q. And not for a certain run in some part of Lubbock. In other words, there never has been a time in which the distributors have divided up the town of Lubbock
968 in areas and licensed first run in a first area and so forth?

A. Nothing, as I say, except by particular theaters, which would serve that theater.

Q. Even then the run was for the town of Lubbock?

A. It was for the town of Lubbock and had to be run in a stated theater.

Q. Isn't it a fact in your contracts that were taken after the Tower was opened up that Paramount, Fox, Metro and RKO, that in each one of those contracts it was for a certain run in Lubbock and it was for either the Tech or Arcadia?

A. No. There was one or two companies that gave us the privilege. Columbia was one, and I believe Warner was the other. They gave us the privilege of playing, or stated it in the contract, the Tech or Arcadia.

969 Q. Wasn't that also in the Paramount contract?

A. No, sir; we bought separate runs for Paramount.

Q. But whether it was for a separate run, whether the contract with Paramount was a separate run or not, and some of the others may have included both the theaters on each one, where it had runs, it would be the run for the town of Lubbock and not for any particular area?

A. Well, of course there was nothing said about the area, but as I said, there was something said about the theater.

Q. Just answer the question. You have told us about that, but I want to know if the contract didn't specify the run in Lubbock, and not in any area?

A. There was no area mentioned, that's right.

Q. And even Metro, which provided that the Tech would play behind you, in licensing your product, licensed it for a certain run in Lubbock, didn't it?

A. I didn't get the question.

Mr. COCHRAN. Read it.

The COURT. I think he has answered the question.

Mr. COCHRAN. All right.

By Mr. COCHRAN:

Q. Just one more question about the Paramount deal. In answer to my question you stated that you had filed an application after the Tower opened for product 1939-40 for your Tech theater, and with the provision that it

970 would play over the Tower, and that after that time you cancelled that application. Now, on your redirect examination by Mr. Wright, you stated that your contract was rejected by Paramount. Which is correct?

A. We had one contract, if I am not mistaken, this was a different contract that I am speaking of here, we had one contract, if I recall right, that was rejected; there was another one, however, that we signed, and before it was approved, we learned our price was unreasonably too high for us, and we couldn't run them.

Q. That was after the Tower was opened, wasn't it?

A. We signed the contract, the salesman took it into Dallas and we received a telegram—speaking of the one he had reference to.

Q. I want to know if it was before or after you opened the Tower, I mean the Tower was opened?

A. That I couldn't say, to be honest.

Q. Do you know that your cancellation was after the Tower opened?

A. I am not sure of that.

Q. That was a cancellation on your part of your offer to buy the product, wasn't it?

A. That's true.

Mr. COCHRAN. That's all.

971 Re-direct examination by Mr. WRIGHT:

Q. Let me get the straight of it. Two contracts, did you sign two Paramount applications?

A. There were two separate negotiations. One of them was where the pictures were—we had already signed the contract—we learned they were too high, and we sent them a telegram asking them not to send the contract in.

Q. Both of these negotiations you are talking about, was there an application signed by you in each case?

A. That's true.

Q. And the one that you told me about, where they rejected it, that application, was that made before or after the second one, where you say you told them to cancel the application?

A. I can't, I can't answer that because I don't know. They were both about the same deal, and I forget which was which.

Q. What do you mean, they were both about the same deal?

A. I mean the same year's product. In other words, at that particular time was when we were negotiating for that year's product, and I forget which one came first.

Q. Were they both on the basis of a run ahead of the Tower?

A. The one that we signed and later rejected
972 wasn't, I mean that we signed and then sent a wire for them not to send through wasn't, didn't give us the privilege of running pictures ahead of the Tower.

Q. The one deal which gave you the privilege of running ahead of the Tower was the one that was rejected by Paramount, is that right?

A. That's true, if I remember correctly.

Mr. WRIGHT. That's all.

Re-cross-examination by Mr. COCHRAN:

Q. Isn't this the way that happened, that your first application for that product in the fall of 1940 was signed by you on terms which you thought were fair, and that that contract was not approved by the home office of Paramount, and their salesman, or representative, then further nego-

tiated with you and took an application which carried with it some increase in price?

A. If I remember correctly——

Q. (Interrupting.) Just tell me if that is true or not, and we will get through.

A. I don't know.

Q. You don't know?

A. No, sir.

973 Q. Will you say that that last contract, except for the price, that that application did not carry terms which were identical with the one which had been rejected by Paramount, and contained the same clearance provisions that the first application contained?

A. I cannot answer that.

Q. So when you told counsel that the second application didn't give you the right to play in the Tech over the Tower, you now want to say that you can't say whether——

A. (Interrupting.) I was speaking in reference to the prices when I said I couldn't handle it.

Q. Isn't it a fact that the only change in the second application over the first, was that in the first application there were two pictures in the first bracket, price bracket, and in the second one there were eleven or twelve in that first price bracket; isn't that the only change that was made in those two applications?

A. I don't remember enough about that to answer those questions.

Q. Are you willing to say now that the second application didn't give you the same playing privilege that was contained in the first application?

A. I am saying what I think. I can't be positive.

Q. I am asking if you know and can tell us.

A. No, I cannot.

Mr. COCHRAN. That's all.

974 Re-direct examination by Mr. WRIGHT:

Q. Did you ever get the applications back, did they come back to you, or what happened to them?

A. I received a telegram that one was rejected.

Q. The contract applications themselves, were they retained by Paramount or were they given back to you?

A. I don't remember; to be honest about it, I don't remember.

Q. Would you make a search and see if you can locate either one?

A. Yes, sir. (Referring to paper.) No, I don't have a copy of it.

Mr. WRIGHT. That's all.

The COURT. Stand aside.

(Witness excused.)

Mr. WRIGHT. Can we have a brief recess, your Honor, I have some papers downstairs that I want to bring up?

The COURT. We will take a short recess.

(After a short recess, the proceedings herein were resumed as follows:)

Mr. WRIGHT. I would like to call Mr. John Jones.

Mr. COCHRAN. I want to recall Mr. Jake Jones.

975 Mr. WRIGHT. If you don't mind, I prefer to go ahead and finish the Shawnee situation with Mr. John Jones, and then recall Mr. Jake Jones.

Mr. COCHRAN. Mr. Jake Jones has already been on the stand; let's finish his testimony.

Mr. WRIGHT. I think I ought to be able to control my own order of proof.

The COURT. Go ahead.

JOHNNY H. JONES, called as a witness by and on behalf of the plaintiffs, and being first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct-examination by Mr. WRIGHT:

Q. Will you state your name and address?

A. Johnny H. Jones, my legal address is Shawnee, Oklahoma.

Q. You are now in the army, are you?

A. Yes, sir.

Q. You are the son of Mr. Jake Jones, who testified here the other day, are you?

A. Yes, sir.

Q. How long have you been in the army?

A. Since January 26, 1942.

976 Q. And before that were you associated with your father in the theater business at Shawnee?

A. Yes, sir.

Q. For about how long?

A. Well, sir, I was raised in the theater business with my father, as far back, well, as I could usher, but active management in the theater, I will say about ten to twelve years, prior to getting into the army.

Q. You were familiar with the theater situation there in 1935-36 season, were you?

A. Yes, sir.

(Plaintiff's Exhibit 267 for identification was marked by the reporter.)

Q. Do you recognize this document, marked Plaintiff's Exhibit 267 for identification, as the contract for the first run exhibition of Universal pictures in the Ritz Theater for the season of 1935–36, the 1935–36 season?

A. Yes, sir.

Mr. WRIGHT. I will offer this Exhibit 267 in evidence. (Handing to counsel for defendants.)

The COURT. What is the date of that?

Mr. COCHRAN. The application date is October 8, 1935; the approval date is October 14, 1935.

The COURT. October what?

Mr. COCHRAN. October 14th is the last date.

977 The COURT. That's a contract with Universal?

Mr. COCHRAN. That's right. I desire to call your Honor's attention to the fact that this contract contains the clause "preview privilege granted".

The COURT. Preview privilege what?

Mr. COCHRAN. Granted. No objection.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. Do you know, Mr. Jones, whether the Universal pictures for the following 1936–37 season were offered to the Ritz on the same runs?

A. No, sir, they were not.

Q. Did you make any efforts to license those pictures?

A. Yes, sir, we did.

Q. What were the efforts you made?

Mr. COCHRAN. May I ask one question? Did you carry on those negotiations?

A. Not all negotiations, sir.

The COURT. Just state what you did personally, not what some one else did.

A. Several times I went into the Universal exchange in Oklahoma City asking about their product for the coming seasons, that is, following this contract there, and I was told——

Mr. COCHRAN (interrupting). Wait a minute. We object to any statement made to him at that time.

The WITNESS. O. K., sir.

978 Mr. WRIGHT. Will the Court rule on the objection?

Mr. COCHRAN. We are objecting to the statement, any conversation that he had with the Universal representative at that time.

The COURT. It will be sustained and an exception allowed.

By Mr. WRIGHT:

Q. Did they ever give you an application?

A. The next year we had a Universal contract, but not like this.

Q. I mean a first run application.

A. Not for the entire product. We later bought a lower group, the next year, first run.

Q. What do you mean by a lower group?

A. Well, that is the smaller pictures on the contracts; you could call them rejects or——

Q. (Interrupting.) Where were the so-called top pictures of Universal pictures played the next year?

A. They were played in the Bison, Criterion, and Avon in Shawnee.

Q. Those theaters were operated by whom? A. Griffith Amusement Company.

Q. And was any of those pictures ever offered to you, first run?

A. Only what I said.

979 Q. I am talking about the top pictures that were played in that city.

A. Not the top pictures, sir.

Q. This contract in evidence here as Plaintiff's Exhibit 267, that calls for a full deal of the Universal pictures for that season, does it?

A. I think that is everything except the westerns. (Referring to exhibit.) No, it has the westerns. To my knowledge that's the full deal for that year.

Q. Now, I call your attention to the year 1936. You and your father and the Seminole Amusement Company were then operating the Ritz Theater in Shawnee, is that right?

A. My father and I were operating the Ritz Theater in Shawnee.

980 Q. Then did you open another theater there?

A. We did. The Seminole Amusement Company opened the State Theater.

Q. When was that?

A. I believe that was October 18, 1936.

Q. Can you describe that theater generally?

A. Well, it was a theater of approximately seven to eight hundred seats, balcony, main floor, very large stage. It had been a theater there for quite sometime.

Q. What was the name it formerly operated under?

A. It was the Savoy Theater formerly.

Q. And had been operated by whom?

A. In the past it had been operated by A. B. Momand. When he lost it, it had been operated formerly by independents.

Mr. COCHRAN. We object to his statement "When he lost it."

A. When he gave it up then.

By Mr. WRIGHT:

Q. Do you know about how many seats it had?

A. I would say between seven and eight hundred seats.

Q. When you opened that, what sort of policy did it operate on?

A. It was originally opened to operate on a stage show and a picture policy. It was our policy to book acts of vaudeville in there as often as we could with pictures
981 and utilize the stage.

Q. What was the admission price policy there then?

A. When we ran it with stage shows it varied. The price was around 35 cents for adults and 10 cents for children but when we ran it straight pictures on subsequent runs, it was placed on a 15 and 10 cent basis.

Q. Was that the admission price policy at the Ritz also?

A. The main price policy of the Ritz was 15 cents for adults and 10 cents for children except on a Sunday change. Sometimes Sunday, Monday, Tuesday change would go up to 25 cents, depending on the run of the picture we had to offer.

Q. During that '36–37 season, you were exhibiting product on what runs at those two theaters?

A. Well, we had mostly second and third run. Mostly third. We had some United Artists, we had United Artists first run which we played at both theaters.

Q. What were the admission price policies of the Griffith Theaters there in 1936?

A. I believe the Bison——

Mr. COCHRAN. We object unless he knows.

A. The Bison was 25 cents for adults, 10 cents for children. The Criterion price was 15 cents for adults and 10 cents for children. The Avon was 15 cents for adults
982 and 10 cents for children.

Q. The Bison was the first run house there?

A. Yes, sir.

Q. Did the Criterion and Avon play any major product, first run?

A. The Criterion played major product, first run.

Q. At 15 and 10 cents?

A. Yes, sir.

Q. Then what did the Avon play?

A. Second run of the major product.

Q. Then your houses followed the Avon, did they?

A. When we played the major product third run, we followed the Avon.

Q. When you got it second run——
A. It was either after the Bison or Criterion.
Q. Where Griffith played no second runs?
A. At the Criterion——
Q. No, I said the situations where you got second run on major product was where Griffith didn't play a second run. Is that right?
A. That is right.
Q. Generally, those admission prices which you charged were written into your contracts?
A. Generally, yes, sir.
Q. At 10 and 15 cents?
983 A. Yes, sir.
Q. Do you know whether any efforts were made to play any of the major product there at a lesser price than 15 cents at the Ritz or State?
A. What run are you talking about, any run?
Q. The subsequent runs that you played at the Ritz or State?
A. No, we didn't play any major product at less than 15 cents for adults.
Q. My question was, whether you made any attempt to get permission to play at a lower price than 15 cents.
A. Yes, we did once or twice there.
Q. Now, I show you a copy of a letter dated December 11, 1936, addressed to Fox Film Corporation at Oklahoma City, marked Plaintiff's Exhibit No. 268 for identification, and ask you if you recognize that as a copy of a letter that was written on or about that date on behalf of the theaters operated by your father and sister and you?
A. Yes, sir, we wrote this.

By the COURT:

Q. What is the date of that letter?
A. December 11, 1936.

By Mr. WRIGHT:

Q. I show you this letter on Fox stationery, addressed to Jake Jones, Ritz Theater, dated December 14, 1936, marked for identification as Exhibit 269, and ask you if that is the reply you received shortly after that
984 date?
A. Yes, sir.
Q. And I show you this copy of a letter to Fox marked Exhibit 270 for identification, and dated December 17, 1936, and ask you if that is a copy of the reply that was made to Fox's letter of December 14?
A. Yes, sir.
Q. I show you this letter from Fox to Jake Jones, Ritz Theater, Shawnee, dated December 23, 1936, marked as

Exhibit 271, and ask you if you received that shortly after the date it bears, December 23?

A. Yes, sir.

985 Q. Do you recognize this copy of a letter dated December 24, to the Fox Film Corporation at Oklahoma City, marked Plaintiff's Exhibit No. 272 for identification, as the reply which was made to the letter of December 23rd from Fox to you (handing)?

Mr. COCHRAN. What is the date of Exhibit 272?

The WITNESS. December 24, 1936.

A. Yes, sir.

Mr. WRIGHT. I will offer these exhibits Nos. 268 to 272 inclusive, in evidence.

Mr. COCHRAN. We object to each of the exhibits which are now tendered and offered as being hearsay.

The COURT. The objection will be sustained and an exception allowed.

Mr. WRIGHT. If the Court please, in this connection, I think when I offered some letters the other day, your Honor asked me if I thought they stood on any other footing from any of the other hearsay testimony that we had offered, and I think I replied that we thought it was equally admissible. I just want to point out at this time with reference to the letters of this character and of the character which have been previously introduced, that they do come within another exception to the hearsay rule, which does not apply to conversations, and that is that these are, of course, business communications made in

986 the ordinary course of business, and I think that wherever a course of business is an issue in a lawsuit, as it is here, probably the evidence which has the highest probative value in proving or establishing any course of business are the actual documents which were recorded contemporaneously in the form of memoranda or letters, which show what was done at the time and which were made at the time, and to that extent I think letters of this character are more admissible even than conversations would be, and that they would be admissible under the business records exception to the hearsay rule, in addition to the other theories on which we asked your Honor to admit the conversations.

The COURT. I think the same rule would apply in this case. There is not any reason shown why you cannot disclose the same evidence to the Court by the man who wrote the letter. He would be a competent witness as to anything that Griffith said, because Griffiths are defendants in this case. Now, you are offering letters between this

witness and those who are not parties to this case, and it would be hearsay. The objection will be sustained and an exception allowed. They are in the record, however, for your purposes.

By Mr. Wright:

Q. Now, Mr. Jones, was it a fact that in December of 1936 the Griffith theaters at Shawnee, one or more of them had played Fox pictures ahead of your theaters
987 there at a 10-cent matinee price?

A. The Avon Theater played a 10-cent matinee during the week days.

Q. And those were Fox pictures that were played at that matinee?

A. Yes, sir, Fox.

Q. And did you play any Fox pictures after the Avon at less than 15 cents?

A. We completed our picture agreement with Fox; no pictures were canceled as the result of that 10 cents.

Q. I don't think you answered the question. Will you read the question?

(Last question read by the reporter.)

A. Not less than 15 cents, no, sir.

Q. Now, how long did you operate the State Theater there?

A. It was closed in June, June 30th, I believe, 1938.

Q. And in connection with the closing was any agreement made with the Griffith interests?

A. Yes, sir.

By the Court:

Q. What theater are you speaking about?

A. The State Theater.

My Mr Wright:

Q. The State?

A. Yes, sir.

Q. Do you have a copy of that agreement?

A. (After referring to papers) Yes, sir (handing).

988 (Plaintiff's Exhibit 273 for identification was then marked by the reporter.)

Q. Now, this agreement that has been marked as Plaintiff's Exhibit No. 273 for identification, dated April 29, 1938, is the one you referred to, is it (handing)?

A. This is it.

989 Q. And that was signed by you there, was it, on behalf of the Seminole Amusement Company as Secretary?

A. I was one of the signers.

Q. And that is your father's signature, the other signer?
A. Yes, sir.
Q. It was signed by the Griffith Amusement Company by——
A. L. O. Griffith and H. J. Griffith.
Mr. WRIGHT. I will offer in evidence Plaintiff's Exhibit No. 273 for identification.
The COURT: What is the date of that?
Mr. COCHRAN. April 29, 1938. No objection.
The COURT. Let it be admitted.

By Mr. WRIGHT:

Q. Now, after this agreement marked Plaintiff's Agreement 273 was made, was the State Theater converted into a store?
A. Yes, sir.
Q. And has not been operated as a theater since?
A. No, sir.
Q. After the State was converted you and your father were then operating only one theater in Shawnee?
A. The Ritz.
Q. And during the '37–38 season—you say for the '36–37 season you had been playing from United Artists first run there?
990 A. Yes, sir. In '36–37 we had United Artists first run.
Q. Did you have it for '37–38?
A. We did not have a complete deal, no, sir. We had a few United Artists, first run.
Q. And who played the other United Artists?
A. The Griffith Theaters.
Q. Were you offered an opportunity to negotiate for any of those that the Griffith Houses played?
A. No, sir.
Q. When you say "a complete deal," you had had a complete deal in '36-37?
A. Yes, sir.
Mr. COCHRAN. We move to strike out his statement about having a complete deal for '36–37 for the reason the contracts would be the best evidence. He said he played some product. We have no objection to that, but when he stated he had a complete deal, we are objecting seriously for the reason we contend they cannot produce contracts substantiating that statement and he cannot produce contracts showing that Griffith licensed the remaining pictures which were not licensed to him for '37–38. It is just not the best evidence.
The COURT: Overruled. I think that would be proper on cross examination, but I think it is competent for him to state whether he knows.

991 Mr. COCHRAN. My point is it is not only not the best evidence but he just can't know about those things.

The COURT. Exception allowed.

By Mr. WRIGHT:

Q. As I understand it, for the '37–38 season you had no regular full season deal of any major product, first run. Is that right?

Mr. COCHRAN. We object to the question as leading.

The COURT. Well, he is just repeating his statement. Overruled and exception allowed.

A. Will you repeat that question please?

(Question read.)

A. We did not have any major product, first run, for '37–38, full season deal.

Q. I show you this document marked Plaintiff's Exhibit 274 for identification and ask you if that is a copy of the first run contract you made with RKO for the '38–39 season?

A. Yes, sir, it is.

The COURT. What is the date of that?

Mr. WRIGHT. The application is dated, it has an approval date of December 15, 1938. It has an application date of November 28, 1938.

Mr. COCHRAN. No objection.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. Did you have any other first run major product for the '38–39 season?

992 A. No other major product, no sir.

Q. Were you offered any?

A. No, sir.

Mr. WRIGHT. You may cross-examine.

993 Cross-examination by Mr. COCHRAN:

Q. Sergeant, you are stationed where?

A. At Will Rogers Field.

Q. And you have been since what time in 1943?

A. Since June.

Q. Since June 1943?

A. Yes, sir.

Q. What are your duties there?

A. I am a chief clerk in the processing center.

Q. You have been managing two theaters at Shawnee during all of that time, have you?

A. You say managing?

Q. Yes.

A. No, I have not been managing them, no, sir.

Q. What services have you been performing in connection with the two theaters, known as the Ritz and the Jake?

A. I have been trying to help my sister all I could.

Q. What services have you rendered?

A. Oh, helping her in booking and in buying and in buying equipment, to see that it is installed, and so forth.

Q. How often do you go to Shawnee?

A. As often as I can; usually about once a week, sometimes oftener.

Q. Have you been conducting any of the negotia-
994 tions for licensing of pictures during that period?

A. The actual negotiations?

Q. Yes.

A. No, sir.

Mr. WRIGHT. If the Court please, I don't see how this is material. There was nothing offering on his direct examination that dealt with the period since he has been in the army.

The COURT. I don't see the materiality of it, but it may be proper cross-examination.

Mr. COCHRAN. Counsel likes to float over the '38–39 when it suits his convenience.

The COURT. Well, gentlemen, we will argue the case later.

By Mr. COCHRAN:

Q. When was the Jake Theater opened?

A. It was opened October 18, 1944.

Q. Who owns that theater?

A. My sister and myself are partners in that theater.

Q. And the other theater which you are interested in, the Ritz, who owns that?

A. My father owns that theater, the Ritz.

Q. No one else has any interest in it?

A. No, sir.

Q. The Seminole Amusement Company has no interest in it?

A. There is no Seminole Amusement Company at this time.

995 Q. That was dissolved, was it?

A. Yes, sir.

Q. Did the Ritz at one time belong to the Seminole Amusement Company?

A. It never did, sir.

Q. Do you have any contract with you, with any of the companies, that was made during the period that your family were interested in the operation of the State and the Ritz?

A. Yes, sir, I have.
Q. During what period was that?
A. It was from '36 to '38.
Mr. COCHRAN. There has not been produced in evidence a contract for that season, has there, '36–37?
Mr. WRIGHT. We have the contracts that were drawn, and we will offer them to you to look at, if you want to see them.
The COURT. What was the question?
Mr. COCHRAN. The contract for the '36–37 season at the State and the Ritz.
The WITNESS. Did you say all contracts, did I have all of them?

By Mr. COCHRAN:

Q. No, I just wanted to know if any contract for that season had been introduced in evidence.
Mr. WRIGHT. None of them have been introduced. These are the contracts that he brought.

996 By Mr. COCHRAN:

Q. Can you find one of the contracts for the '36–37 season?
A. You want it for which theater?
Q. Any company, with any company that you have, for either one of the theaters.
A. Well, most of those, most all of those are the Ritz, and these are the State, and the Ritz or the State.
Q. Do you have one for the Ritz there with Fox for that season?
A. No, I haven't.
Q. Do you have one with Paramount?
A. For the '36–37?
Q. For '36–37.
A. I will see.
Q. For the Ritz Theater?
A. I don't think so.
Q. You used Fox and Paramount pictures for those seasons, didn't you?
A. '36–37?
Q. Yes.
A. I didn't use Paramount or Fox in the Ritz.
Q. Did you use it in the State?
A. I used Fox in the State.
Q. Do you have any Fox contract with you for the '36–37 season for the State?
997 A. No, I haven't.
Q. Where did you attend college?

A. At the Oklahoma Baptist University, and I have my degree from Oklahoma A. & M. College.

Q. When did you complete your college education, at A. & M. College?

A. January 1937, I completed my scholastic term. I got my degree in June.

Q. About how old were you at that time?

A. Well, 22 I believe, or 21. My birthday is in October.

Q. What year were you born?

A. October 1915.

Q. Did you at one time work for Standard Theaters in Oklahoma City?

A. Yes, sir.

Q. When?

The COURT. For whom?

Mr. COCHRAN. Standard Theaters in Oklahoma City.

A. Yes, sir.

By Mr. COCHRAN:

Q. At what time?

A. June 1940 to January 1941.

Q. During that time were you living in Oklahoma City or Shawnee?

A. I was living in Oklahoma City.

998 Q. You introduced the contract here with Universal for product in the Ritz Theater for 1935–36, first run. Now, your father had been operating that Ritz Theater since the fall of 1931, hadn't he?

A. I believe that's right.

Q. Do you know who licensed the Universal—do you know whether the Ritz Theater licensed the season's product of Universal for any of the seasons since it commenced operation under your father's ownership and management, prior to the 1935–36 season?

A. Do I know any?

Q. Yes.

A. Sure, yes.

Q. When?

A. Oh, Universal?

Q. That's right.

A. Wait a minute, I beg pardon here. In 1931–32, we licensed Universal second run.

Q. I asked you the first run season's product?

A. Oh, no, no first run prior to that.

Q. So the product of Universal was licensed to you for '35–36 and then the next season, you have told counsel for the plaintiff that you did not license the full season's product, '36–37?

A. Not first run.

Q. First run?

999 A. No.

Q. Now, you spoke of rejections. You simply mean by that that you used certain of the pictures that were not used by Griffith?

A. That's right.

Q. You said that those were some of the minor pictures. As a matter of fact, for the '36–37 season you were offered and had the privilege of licensing all of the product except the twelve top features, weren't you?

A. All but twelve?

Q. All but twelve.

A. I couldn't say for sure. We were offered some.

Q. Do you have your contract or the contract of the Ritz with Universal for the '36–37 season?

A. I will see if I have (referring to papers).

The COURT. We will recess at this time, gentlemen, until two o'clock.

(Whereupon at twelve-thirty o'clock court recessed until two o'clock p. m.)

1000 AFTERNOON SESSION

2:00 o'clock p. m.

JOHNNY H. JONES, was recalled and further testified as follows:

Cross-examination (con't) by Mr. COCHRAN:

Q. When was it that you acquired the title of manager of the Ritz Theater?

A. About 10 years ago.

Q. What year was that?

A. The first of '37.

Q. That would be during the '36–37 season, is that right?

A. Well, I say the first part of '37. I didn't say anything about the season's product.

Q. But the year '37, the first part of '37 would be in the motion picture industry the season of '36–37?

A. Right, but the motion picture season began in September of '36.

Q. The '36–37 season would begin the first of September, 1936 and extend until the last of August, '37. How long was that after you completed your course at A & M College, or had you completed it?

A. I had just completed it.

Q. From what source do you obtain information which you have been giving from the stand in regard to

1001 happenings prior to the early part of 1937?

A. What source?

Q. Yes.

A. Actual happenings I knew about and was present at.

Q. Were you familiar with the product that was licensed prior to the time you became manager in '37?

A. Yes, sir.

Q. You knew all about that?

A. I was familiar with it.

Q. Your sister was the manager wasn't she, prior to that time?

A. My father was the manager prior to that time.

Q. What did your sister do?

A. She helped my father.

Q. Wasn't she the manager?

A. I said my father was the manager.

Q. I asked you if she was.

A. I said my father was the manager.

Q. I just wanted your answer, no. Did your sister do any of the buying and booking of the pictures prior to the time you became manager?

A. Yes, sir, we all sat in on the buying and booking.

Q. At the time you were at A & M College did you sit in on the buying of pictures?

A. A lot of them I did.

1002 Q. Did you come home every week?

A. Every week, sometimes during the week.

Q. Do you have a contract in your possession, a contract with Universal, for product of the '36–37 season?

A. I have (handing).

Q. Do you have a contract for the '37–38 season?

A. I have (handing).

(Defendants' Exhibits Nos. 1, 2 and 3 were marked by the reporter for identification.)

Q. I hand you Defendants' Exhibit No. 1 for identification and ask you to state if that is the contract which was executed on October 21, 1936?

A. It is.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 1.

Mr. WRIGHT. No objection.

The COURT. That is a contract with Universal?

Mr. COCHRAN. Yes, sir, between Jake Jones and Universal. It says, "exhibitor agrees to play thirty features selective as follows: eight features at $25, two or three days, eight features at $17.50, two or three days, fourteen features at $12.50, two or three days, number offered thirty-six, number licensed, thirty. Distributor has privilege of

withdrawing any eight features at top rentals. Ex-
1003 hibitor agrees to play following run on these eight features at $17.50. If any features in this contract play first run price to be $17.50. Playing arrangements: Exhibitor agrees to play or pay for three of the above productions each and every month beginning January 1937 in the order released, if and as available—three of the above productions each and every month beginning January 1937, in the order of release." Under the heading of run and clearance are the words "second run".

Q. Do you know whether there was another contract covering all but the twelve top features first run for that season?

A. I don't know of any other contract except that.

Q. Will you say there was none?

A. To my knowledge there was none.

Q. Do you know whether or not there was?

A. Well, sir, that is all I have.

Q. Do you have all the contracts?

A. I have all the contracts we have.

Q. I just wanted to know if you know.

The Court. Well, he has answered the question.

Mr. Cochran. All right.

Q. I hand you Defendants' Exhibit No. 2 and ask you to state if that is the contract dated October 27, 1937, signed by Jake Jones and Ruby H. Jones?

A. That's right.

1004 Q. In whose handwriting is that?

A. That is my sister's, Ruby H. Jones.

Q. The Jake Jones there is in her handwriting also, is it?

A. That is her handwriting.

Mr. Cochran. We offer that contract in evidence.

Mr. Wright. No objection.

The Court. It will be admitted.

1005 By Mr. Cochran:

Q. This covers group 1, 12 pictures at $17.50, first run. Group 2, 12 pictures first run; group 3, 16 pictures first run. Release here of the product licensed '37–38. Exhibitor has privilege to play second run two or three days at $12.50 on the above first run picture, selection or rejection to be made 30 days after first run, all second run pictures to be played within 120 days after first run; preview privilege playing arrangement. Exhibitor agrees to play and pay for three of the above product each and every month in the year from January, 1938, in the order of release if, and as, available. Admission prices: matinee 15 cents, children and adults 15. The contract itself has the ten in each instance under "Register" instead of "Chil-

dren," apparently, but that is intended to mean 10 and 15 cents in both instances?

A. That is right.

Q. And under clearance and run it cites first run and third run as stipulated above.

A. Yes, sir.

Q. I hand you Defendant's Exhibit 3 and ask you if that is a contract dated October 27, 1937, the same date of the previous contract, covering several Universal reissues.

A. It is.

Mr. COCHRAN. We offer in evidence Defendant's Exhibit 3.

1006 Mr. WRIGHT. No objection.

The COURT. It will be admitted.

By Mr. COCHRAN:

Q. It covers the pictures "Showboat", "Magnificent Obsession", "Imitation of Life", first run, reissue, preview privilege. During the season 1935–36, were you familiar with the booking chart of the Ritz Theater?

A. Yes, sir.

Q. Do you have that booking chart?

A. Yes, sir.

Q. Please turn to that booking chart and tell me whether the Ritz Theater played the picture "Diamond Jim", first run that year.

A. Can you tell me the approximate date?

Q. No, I can't.

A. It played "Diamond Jim" December 29, 30, and 31, 1935, at a preview on the 28th.

Q. What date did you play "Storm Over the Andes", first run?

A. February 9, 10, and 11, 1936, with preview on the 8th.

Q. And "The Throw Back"?

A. Are you sure the title of that picture has not been changed?

Q. It was a picture starring Buck Jones and Muriel Evans.

A. April 17 and 18, 1936.

Q. The picture "King Solomon of Broadway"?

1007 A. February 2, 3, and 4, with preview the first of February, 1936.

Q. "Fighting Youth." I will tell you a better way to do that, Mr. Jones, if you will just start at the beginning——

A. (interrupting). I played "Fighting Youth" the 23rd and 24th of October 1936.

Mr. WRIGHT. If the Court please, may we ask what the purpose of this is? Maybe we can shorten it up.

Mr. COCHRAN. I would prefer not to disclose my purpose at this time, but I assure your Honor it is perfectly competent and relevant, and I will state it, if necessary.

The COURT. Read the question.

Mr. COCHRAN. I just asked him, I am asking him the play dates on various pictures in the season 1935-36.

The COURT. All right, go ahead and answer. I don't know, it doesn't appear material, but it may be.

Mr. COCHRAN. I think it will be very apparent in due time.

Q. Mr. Jones, just start at the beginning of that season and give us each one of the Universal pictures and the date it was played, first run.

A. Mr. Cochran, I don't know the titles of all those pictures.

Q. All right.

A. You have the release sheet probably in front of you.

Q. You don't have the distributor of the picture?

1008 A. No, all I have is my own dates.

Q. The "Affairs of Susan", first run.

A. The 12th, 13th and 14th of January 1936, with preview on the 11th.

Q. "His Night Out".

A. The 3rd and 4th of January, wait a minute here, the 3rd and 4th of January.

Q. 1936?

A. Right.

Q. "Three Kids and a Queen".

A. The 16th, 17th and 18th of February 1936; preview on the 15th.

Q. The issue of "Show Boat", first run.

Mr. WRIGHT. That's one of those that was not bought until '37, wasn't it?

A. What was the date of that contract on that?

Mr. COCHRAN. I believe you are right, that wasn't bought until October 1937.

Mr. WRIGHT. I think the contract is dated in October '37.

Mr. COCHRAN. Just kill that question.

Q. The picture "Sweet Surrender".

A. The 23rd, 24th and 25th of February, 1936; preview on the 22nd.

Q. "Stormy".

1009 A. The 29th, 30th and 31st of March, 1936; preview on the 28th.

Q. "Remember Last Night".

A. The 1st, 2nd and 3rd of March; preview on the——

Q. (interrupting). "Ivory Handled Guns."

A. You didn't let me finish. Do you want the preview date on that?

Q. Yes.

A. Preview on February 29, 1936.

Q. "Ivory Handled Guns."

A. Is that a Buck Jones picture?

Q. Yes, sir.

A. The 12th and 13th of June 1936.

Q. "The Great Impersonation."

A. April 5th, 6th and 7th; preview the 4th; 1936.

Q. "Dangerous Waters."

A. May 17th, 18th, and 19th; preview the 16th; of 1936.

Q. "Silver Spurs." That was also a Buck Jones' picture.

A. I am trying to find that one. I must have missed it.

Q. Suppose we pass that one for the present.

A. It is all right with me.

Q. Maybe we can pick it up somewhere else.

A. All right.

Q. The picture "East of Java," released December 2, 1935.

1010 A. I found "Silver Spurs," if you want it.

Q. All right, what is that date.

A. The 24th, 25th and 26th of May; preview on the 23rd, and the other one is "East of Java"?

1011 Q. "East of Java." While you are looking for that look for "Don't get Personal," "Love Before Breakfast."

A. I can give you "Love Before Breakfast." "Love Before Breakfast," the 31st of May, 1st and 2nd of June, 1936; preview on the 30th of May.

Q. "Don't get Personal" and "East of Java."

A. "Don't get Personal" the 3rd, 4th and 5th of May with preview on the 2nd, 1936.

Q. "Magnificent Obsession."

A. I believe that is on the same contract, is it not?

Q. It is a reissue, I guess.

A. The '37 contract.

Q. This doesn't show a reissue here but let's pass that. Look for "Dracula's Daughter."

A. The 14th, 15th and 16th of June, 1936; preview the 13th.

Q. "For the Service"?

A. Are you sure the title didn't change on that?

Q. It is a Buck Jones and Beth Marion picture. Did you find "Nobody's Fool"?

A. I am still looking for that Buck Jones picture.

Q. Just pass that. What date was "Invisible Ray" played, first run?

A. "Invisible Ray" played on the 19th, 20th and 21st of April, 1936; preview on the 18th.

1012 Q. Have you found "East of Java"?

A. No, I haven't.

Q. All right, we will pass that for the present then. After you leave the stand I wish you would see if you can find "East of Java" and "For the Service" and "Magnificent Obsession." I don't believe you gave "Magnificent Obsession."

Do you have the contracts with Universal for the '38–39 product?

A. I have these, yes, sir.

Q. I hand you Defendant's Exhibit 4 and ask you to state if that is the contract which was entered into between Universal and Jake Jones by Ruby Jones on March 20, 1939?

A. Yes, sir.

Q. Did you participate in negotiating that contract?

A. I believe I did. I am sure I did, Mr. Martin.

Q. Have you had any negotiations with Mr. Martin or anyone else with Universal prior to the time, prior to this date with regard to product of that season?

A. Not that I can remember of.

Q. Would you say there was none?

A. I couldn't say that.

Mr. COCHRAN. We offer in evidence Defendant's Exhibit 4.

Mr. WRIGHT. We don't have any objection. I think we ought to know what the purpose of putting all these

1013 contracts in evidence is in order to see where we are going.

Mr. COCHRAN. I have no objection to stating it. First, it is a basis of further examination. Second, it is to show the product which he had of this Universal Company during that season. Third: The statements are all written into the faces of the contracts themselves.

1014 Mr. WRIGHT. I don't think any of those matters are in dispute.

The COURT. If some of these matters are not in dispute, why not stipulate on them. We are taking an awful lot of time.

Mr. COCHRAN. Some of these matters that appear in these contracts are going to be matters which they contend was discriminatory features of the contract with Griffith when they get down to the argument. My purpose is to get

some of these contracts in evidence as the basis for comparison.

The COURT. Very well, proceed.

Mr. COCHRAN. This contract covers sixteen pictures, twelve of them second run, eight third run, and provides under the heading clearance, sixty days, and has the clause "exhibitor has privilege of preview."

Q. Can you tell us whether prior to the time that that contract was made with Jake Jones by Ruby Jones, that there had been licensed to Momand for the Odeon Theater certain product to play ahead of your theater?

Mr. WRIGHT. If the Court please, he can't possibly know the terms on which product was licensed to Mr. Momand. He can say whether he played it or not.

The COURT. You may state whether or not you know.

A. I don't know whether Mr. Momand had product or not.

1015 By Mr. COCHRAN:

Q. Can you tell us whether he played some 1938–39 Universal product ahead of the Ritz Theater?

A. Not that I know of.

Q. Well, can you say that he did not?

A. I believe I can, yes, sir.

Q. You kept up with the product that was playing at the various theaters, did you?

A. To the best of my ability, I did.

Q. How many theaters were operating in Shawnee at that time?

A. What time?

Q. In the fall of 1938 and the first part of 1939?

A. There were five theaters.

Q. Three being operated by the Griffith Amusement Company, one by Momand, and one by Jake Jones?

A. Right.

Q. And you are able to tell us at this time the product of the various distributors which was being played at that time in each one of those theaters?

A. At each one of those theaters?

Q. Yes.

A. I couldn't tell you every foot of film that was run.

Q. Are you able to tell us what product of the various distributors was being played by Momand?

A. I couldn't tell you what Mr. Momand was playing.

1016 Q. You cannot tell us?

A. No.

Q. You know he was playing product?

A. Sure, he ran a theater.

Q. You have told us that in 1938–39 the Ritz Theater played the RKO product, first run, is that correct?

A. We played RKO first run in the '38–39 season.

Q. Do you have the booking chart for the product for that season?

A. I believe I do.

Mr. COCHRAN. Your Honor, without taking up too much of the Court's time just now, I will follow this through as I did with Universal. These are the only two that I expect to follow through. I would like to have this witness, to give him a list of pictures and have him supply us the dates on which those pictures were played first run in the Jones theaters.

The COURT. Can you furnish him a list and let him furnish it?

Mr. COCHRAN. Yes, sir, I can furnish him a list, if it is satisfactory.

Mr. WRIGHT. We would like to know the purpose of this before he leaves the stand, for the purpose of redirect examination.

Mr. COCHRAN. Before he leaves, we would like to
1017 furnish that list.

Mr. WRIGHT. I imagine if you give him the list at the recess he can probably check the dates on it.

Mr. COCHRAN. I thought we would go ahead further until a more convenient recess.

Mr. WRIGHT. Go ahead; sure.

By Mr. COCHRAN:

Q. Were you familiar with the theater situation in Shawnee in September of 1931?

A. Yes, sir.

Q. You were about sixteen years old then, weren't you?

A. About.

Q. Were you assisting in the buying and booking of pictures at that time?

A. I sat in on some of it.

Q. You recall when your father reacquired the Ritz Theater, don't you?

A. Yes, sir.

Q. When was that?

A. I can give you the exact date.

Q. Well, just tell us from memory.

A. September 1931, I believe.

Q. October, you say?

A. I said September.

Q. September?

A. Yes, sir.

Q. Were you familiar with the theater known as
1018 the Victory, at that time?

A. I know there was a theater there, that is, there had been a theater there, named the Victory.

Q. Do you know when that theater was re-opened as the Rex?

A. Do I know the exact date?

A. The approximate date. The exact date, if you know it.

A. No, I don't.

Q. Can you give us the approximate date?

A. I wouldn't try.

Q. Do you know when the Avon was built and opened?

A. I would have to guess at the date.

Q. Do you have anything——

A. (Interrupting.) I don't have anything——

Q. In your possession, any memoranda that would give you any information on that?

A. No, I haven't.

Q. You spoke of not having a complete contract there with United Artists for the 1937–38 product. I mean by that, your testimony was, as I understand it, that for the '37–38 season, you did not license all of the United Artists releases?

A. That's right.

Q. For the season, that season, first run?

A. That's right.

1019 Q. Do you have the contracts which you did execute with United Artists for that season?

A. I will see if I have (referring to papers). The '37–38?

Q. The '37–38.

A. I think these are them. Do you want only the first runs?

1020 Q. Only the first runs, yes. The contract which you have produced is dated October 15, 1937 and covers the pictures "Over the Moon," "Mutiny in the Mountain," "Four Feathers," and "Gaiety Girl," first run, Ritz or State, Shawnee; preview privileges. Is that correct?

A. That is correct.

Q. Do you have with you any other contract with United Artists for the '37–38 season?

A. First run?

Q. First run.

A. I have not. This is not first run.

Q. You do have some other contracts which you have labeled "first and third run"?

A. That is right. That come off the top of this.

Q. So that contract is the only one which you have in your possession for first run, and the other contracts which you have are for a third run?

A. That is right.

Q. Do you know what United Artists pictures Mr. Momand played for the '37–38 season?

A. I do not.

Q. Do you have any United Artists contracts for the '36–37 season?

A. I do.

1021 Q. First run. You have handed me one contract dated September 14, 1936 for a picture "One Rainy Afternoon" for the Ritz or State Theater, Shawnee. first run, and one contract dated January 22, 1936, covering the picture, "The Ghost Goes West," for the Ritz Theater, first run, Shawnee; one picture, "These Three" for the Ritz Theater, contract of June 22, 1936, and one picture, "Modern Times," dated June 22, 1936, for the Ritz Theater, first run, and one picture, Laughton production, an untitled picture dated June 22, 1936, for the first run, Ritz Theater, Shawnee. Is that correct?

A. That is correct.

Q. Those are the only first run contracts which you have in your possession?

A. That is right.

Q. For that season of '34–35. We will make it '35–36. Do you have any first run contracts with United Artists?

A. '35–36?

Q. '35–36, or for any other run?

A. I have none for '35–36.

Q. You have in your possession no contracts with United Artists for the season of 1935–36?

A. No, I have not.

Q. You have not, you say?

A. Have not.

1022 Q. For '34–35, do you have any contracts with United Artists for any run?

A. Yes, sir.

Q. Just tell me from your memorandum how many pictures you licensed from United Artists for the '34–35 season.

A. First run?

Q. Yes.

A. I have 16 contracts.

Q. 16 pictures first run?

A. These pictures—I am not so sure whether they are '34–35 or whether they are '35–36. They were bought in '35.

Q. There are 16 pictures, first run?

A. Right.

Q. What is the date of the contract?

A. Well, they vary from January 19, 1935, to September, 1935. I have one for June 21.

Q. Mostly one picture at a time were they?

A. They are all one picture deals.

Q. I know, but one picture on each day?

A. That is right.

Q. Spread out over a considerable period of time?

A. There are some of them, one is '35, January 19, 1935. I bought most of them on that date. There are others spread out during the year.

Q. How many did you buy on January 19, 1935?

A. I bought 15 but there are more than 16 here. I
1023 miscounted them.

Q. How many pictures do you think United Artists released during the '34–35 season?

A. Offhand I don't know.

Q. For the '33–34 season, how many contracts do you have?

A. I don't have any.

Q. For the '32–33 season?

A. I have six contracts.

1024 Q. Covering how many pictures?

A. Six pictures.

Q. What is the date of those contracts?

A. 3-30-33.

Q. For the year 1938–39 do you know what Columbia pictures and on what run Jack Smith was playing at the Odeon in Shawnee?

A. I believe—he was following Griffith Theaters—it should be third run.

Q. You were not playing any Columbia pictures in '38–39?

A. No, sir.

Q. Or in '37–38?

A. '37–38?

Q. Yes.

A. No, sir.

Q. Did you play any in 1936–37?

A. Yes, sir.

Q. Did you play any in 1935–36?

A. No, sir.

Q. Or '34–35?

A. No, sir.

Q. Or '33–34?

A. No, sir.

Mr. WRIGHT. Were you asking him about first run, or any run?

1025 Mr. COCHRAN. No, I am asking him any run.

Q. Now, with the exception of one year that you mentioned there, Momand's theater, the Odeon, was following the Griffith theaters with Columbia product, is that right?

A. As far as I know, it was. If they were being played, he would play them, I didn't.

Q. In 1938–39 did you have a contract, a season's contract, any run, on Vitagraph pictures or Warner's?

A. Just a minute. You say 1938–39?

Q. '38–39.

A. 1938–39?

Q. Yes, sir.

A. No, sir.

Q. Did you play any Warner pictures in '38–39?

A. If I did, it was spot booking agreements. I don't believe I did, though.

Q. Do you know whether the Odeon Theater was playing some Warner pictures that season?

A. I couldn't definitely say. I think he did.

Q. For the '37–38 season, did you play any Warner pictures?

A. Warner's?

Q. Yes.

A. No, sir.

Q. In 1936–37 you licensed some Vitagraph pic-

1026 tures for third run, didn't you?

A. Yes, sir.

Q. Do you have those contracts?

A. Yes, sir.

(Defendants' Exhibit 5 for identification was marked by the reporter.)

Q. Defendants' Exhibit No. 5 is the contract that you have just referred to.

A. This one?

Q. Yes (handing).

A. Yes, sir.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 5.

Mr. WRIGHT. Wait a minute. I thought you had marked the Universal contract as No. 5. Shouldn't that be No. 6?

Mr. GRIFFING. It should be 5.

Mr. WRIGHT. What have you got for Exhibit 5?

Mr. COCHRAN. This is 5.

Mr. GRIFFING. No 5 has been introduced.

Mr. WRIGHT. All right, go ahead.

Mr. COCHRAN. This contract is dated December 10, 1937, signed by the Seminole Amusement Company by Jake Jones by Ruby H. Jones, operating the State Theater, Shawnee, dated September 10, 1937, and lists a number of pic-
1027 tures sold on weekly payment plan, third run. Clearance none. Exhibitor may select any feature not designated in place of one specified at the same rental terms, to play one each week starting November 1, 1937.

Q. Do you have any other contract with Warner Bros. for that season?

A. I believe I have, two separate pictures.

Q. Well, those are just two special pictures, are they?

A. Two special pictures.

Q. That were licensed to you on the same run, the third run?

A. The third run.

Q. Do you have any contracts with Warner Bros.—first, though, let me ask you this. The State Theater was closed when?

A. June 30, 1938.

1028 Q. Do you have any contracts in your possession with Warner Brothers or Vitagraph for the '35–36 season?

A. Yes, sir.

Q. For that season's product you had 20 pictures, third run?

A. Right.

Q. For the Ritz or State?

A. That is right.

Q. For the '34–35 season do you have any contract?

A. I have none.

Q. On any run?

Q. No, sir. You are talking about Warner Brothers, aren't you?

Q. That is right, or Vitagraph.

A. I have not.

Q. Did the Ritz or State Theaters play any Warner Brothers or Vitagraph pictures for '34–35 season?

A. No, sir.

Q. For the '33–34 season's product?

A. No, sir.

Q. Did the Ritz or State play any of the Warner or Vitagraph products?

A. You said '33–34?

Q. '33–34.

A. No, sir.

1029 Q. On any run?

A. No, sir.

Q. How about the season of '32-33?

A. No, sir.

Q. And '31–32?

A. No, sir. No Warner product.

Q. Turning now to the Fox or M-G-M or Loew. The Ritz Theater played some of the M-G-M product, second run for the '31–32 season, did it not?

A. Yes, sir.

1030 Q. That is the contract that has been introduced in evidence already?

A. Yes, sir.

Q. Do you have any contract with Loew's for the '32–33 product?

A. I believe that has been introduced, sir.

Q. Look at your memoranda and see what you have for the '32–33 product.

A. No, I didn't have any of their product for '32–33.

Q. And none of it was played in the Ritz Theater?

A. No, sir.

Q. Do you know whether the Momand theaters played any of the Metro product for the year '32–33, for the '32–33 season?

A. No, I don't.

Q. At that time Momand was operating the Savoy and Odeon, is that correct?

A. I am not sure about the Savoy.

Q. No, I am wrong about that, because as I recall, Momand discontinued operating the Savoy along in the fall of 1931. Is that your recollection?

A. I don't know, sir, the exact date.

Q. You don't know?

A. No.

Q. Then, for the '33–34 season, did the Ritz Theater play any of the Metro product?

1031 A. No, sir—'33–34?

Q. The '33–34 season.

A. No, sir.

Q. During that season who was operating the old Savoy Theater?

A. I don't know, sir.

Q. How long had that theater been known as the State Theater prior to the time that your father or the Seminole Amusement Company or some one in your group took over that old Savoy?

A. When it opened in 1936 it was known from then on as the State until it closed.

Q. Prior to that time.

A. It was not known as the State.

Q. It was known as the Savoy?

A. I don't know what they called it. When Mr. Momand run it, it was the Savoy.

Q. What was it called or named during the period after Mr. Momand ceased to operate it and until your father opened it up as the State?

A. I heard it referred to numerous times as the Savoy.

Q. Do you know who was operating it?

A. No, I don't.

Q. Do you know what product it had during that period?

A. No, I don't.

1032 Q. For the season of 1934–35, do you have any Loew contracts for the Metro-Goldwyn-Mayer product?

A. Yes, sir.

Q. I hand you Defendants' Exhibit No. 6, and ask you if that is the contract which you refer to of Metro covering the '34–35 product?

A. Yes, sir.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 5.

Mr. WRIGHT. No objection.

Mr. COCHRAN. It is a contract dated August 13, 1935, covering 25 pictures, third run, playing arrangement, the exhibitor agrees to play and or pay for at least three pictures per month commencing January 1, 1936, in order of release if and as available until all pictures licensed hereunder are exhibited and or paid for. The exhibitor has the right to preview on Saturday night preceding opening and on following Sunday on any picture so booked. The theater is the Ritz Theater.

The COURT. Who are the contracting parties?

Mr. COCHRAN. Between Jake Jones, by Ruby Jones, and Metro-Goldwyn-Mayer. There is a clause under "clearance" "any pictures listed hereon played second run in Shawnee for a maximum admission of 10 cents may be excluded from this contract."

1033 By Mr. COCHRAN:

Q. Now at that time do you know that the Odeon Theater was playing on a regular 10 cent admission?

A. That is right. What year is that?

Q. 1935.

A. That wasn't put there because of the Odeon.

Q. I didn't ask you that. I asked you if the Odeon was not playing at a regular 10 cent admission price all the time.

A. To my knowledge it was.

Q. Do you have some other contracts there with Metro for that season?

A. '34–35?

Q. Yes.

A. Yes, sir.

Q. One of those contracts is dated August 13, 1935, and covers three pictures, third run, and the other is dated February 23, 1935, one picture third run. Is that correct?

A. That is correct.

Q. Now for the season of 1935–36, do you have any Metro contracts?

A. Yes, sir.

Q. You have a contract dated June 4, 1936, between Jake Jones and Metro covering——

Mr. WRIGHT. Is that the application or approval date?

1034 By the WITNESS:

A. It is approved.

Mr. COCHRAN. It is the application date. Do you want the date of it?

Mr. WRIGHT. Yes.

Mr. COCHRAN. The approval date is June 16, 1936, covering 16 pictures, isn't it?

By the WITNESS:

A. That is right.

By Mr. COCHRAN:

Q. Second run?

A. Yes, second run.

Q. And the other contract is dated April 19, 1937, between Jake Jones and Metro covering 12 pictures, third run. Is that correct?

A. That is correct.

Q. Do you have any pictures for any contracts for the '36–37 season of Metro? (Witness produces contract.) You have here one contract dated April 19, 1937, with Jake Jones by Ruby Jones and approval April 28, 1937, covering 30 pictures third run and containing a notation that all the pictures were offered.

A. It don't say all pictures offered.

Q. "Total number of features motion pictures, offered all."

A. All that are listed.

Mr. WRIGHT. Why not have the contract marked for identification and then offer it? There isn't any question of what it says.

1035 By Mr. COCHRAN:

Q. Defendants' Exhibit No. 7 there is the contract to which you have been referring, is it?

A. That is right.

Q. The contract bears application date of April 19, 1937, Jake Jones for the Ritz or State, Shawnee with Loew's?

A. For what year's product?

Q. Covering the product of the '36–37 season. It lists 30 pictures, total number of feature motion pictures offered all. Total number of feature motion pictures listed, 30. Admission price 10 and 15 cents; third run. The exhibitor has the privilege of Saturday preview on any of the above pictures opening Sunday.

1036 (Defendants' Exhibit 8 for identification was then marked by the reporter.)

By Mr. COCHRAN:

Q. I hand you Exhibit 8, and ask you if that is another contract covering the product of the '36–37 season between Jake Jones and Loew's?

A. Yes.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 8.

The COURT. What is the date of it?

Mr. COCHRAN. The date of the application is September 28, 1936, approved October 19, 1936. It covers twenty-two pictures, second run, and it states total number of feature motion pictures offered twenty-two, total number of feature motion pictures licensed twenty-two; to be played and/or paid for as available. Exhibitor has privilege of Saturday midnight preview on all subjects opening the following Sunday.

Q. Are those all the contracts you have for the '36–37 product with Loew's?

A. That's all, yes, sir.

Q. Let me have your '37–38 contracts.

A. '37–38?

Q. Yes.

A. I don't seem to have those.

Q. Do you have any contracts with Metro for '37–38?

A. Just a minute. I believe I did.

1037 Q. Beg pardon?

A. Yes, sir.

Q. Do you have those contracts?

A. I don't have the contracts, no, sir.

Q. For that season's product you had a contract for second run for the Ritz or State Theater on twenty-two pictures, second run, did you not?

A. What contract do you say? I didn't get the first.

Q. Covering the product of the 1937–38 season.

A. Loew's?

Q. Yes.

A. We had a contract; I don't know for how many pictures; I haven't got that record here.

Q. Your notes don't show how many pictures?

A. Not the number of pictures.

Q. Do you have the contracts with Loew's for the '38-39 product?

A. Yes, sir.

Q. Your contract, or rather the contract between Jake Jones and Loew's for the '38–39 season, second run, is dated, the application, December 5, 1938, and the approval date was December 20, 1938, is that correct (handing)?

A. That's correct.

Q. It covers twenty-two pictures, doesn't it?

A. That's correct.

1038 Q. Second run?

A. That's right.

Q. With preview privilege?

A. Correct.

Q. On the same date?

A. Right.

Q. The application was made for third run product, which was approved on December 20, 1938, covering thirty pictures, third run?

A. That's right.

Q. Also with the privilege of Saturday night preview on any of the features?

A. That's right. Do you want this?

Q. No.

A. That was the lower half of the second run, and then the upper group third run.

Q. In each of these second run contracts which you have produced here in evidence, with Loew's, the second run group was the lower part?

A. The lower part of their contract.

Q. Of their contract?

A. The lower allocations.

Q. That's right. Do you have your contracts with Twentieth Century-Fox?

A. No, sir.

1039 Q. None of them?

A. What year?

Q. Beginning with 1931–32.

A. Just a minute.

Mr. WRIGHT. I think the '31–32 contract is in evidence.

Mr. COCHRAN. You are right.

Q. Beginning with the '32–33 season.

A. All I have is the 1930–31 Fox.

Q. Do you have any recollection as to what Fox product was played in the seasons 1932–33 through 1938–39?

A. There was none played in 1932–33, none in 1933–34, none in '34–35, none in '35–36. Now, we played some Fox product in the State Theater, I don't know what year it was, but——

By Mr. WRIGHT:

Q. (Interrupting.) The answers you have given are with reference to the Ritz?

A. Well, the answers I am giving are with reference to the Ritz, if that is what you want.

By Mr. COCHRAN:

Q. I want any theater.

A. Here is the Ritz. None in the Ritz from 1932 through 1938–39.

Q. How about the State?

A. We had one deal, I don't remember how many was on that. I couldn't locate it.

1040 Q. Was that the contract that the previous operator of the State had with Fox, which you took over at the time——

A. (Interrupting.) No, sir, I took over no contracts of that theater.

Q. Do you know whether that theater or Momand's theater had been previously playing Fox product, some part of it?

A. I don't know about Mr. Momand, but it wasn't playing there before.

Q. How about the '36–37 season?

A. For what theater?

Q. The Ritz or State.

A. I said for the Ritz I had none up through the 1938–39 season. From 1932–33 through 1938–39, none for the Ritz.

Q. How about the State?

A. I told you I had some Fox pictures for the State one year, I don't know how many or what year it was.

Q. Do you mean to say through '38–39 you only had some Fox product for one year for the State?

A. Right. I don't remember whether that was a regular

contract or a booking arrangement, a spot booking arrangement.

1041 Q. Now you have testified something in regard to admission prices. Can you tell us when the Momand Theaters, or theater, rather, the Odeon Theater, commenced to exhibit pictures at 10 cents?

A. I can't tell you the first time, no, sir.

Q. Don't you recall that it dates as far back as the time when he ceased to operate the Savoy Theater?

A. I don't recall that.

Q. Do you know whether he also was operating on some days on what is known as "Penny" day?

A. He didn't use "Penny" day.

Q. What other methods of operation did he use in connection with reduced admissions?

A. You are talking about Mr. Momand's theater?

Q. Yes, sir.

A. "Pal day" was what he used.

Q. That is where two could go in for the price of one?

A. That is right.

Q. And what else did he use?

A. That is all I know of.

Q. Do you know when he first started double billing that theater?

A. No, sir.

Q. At the time you took over the operation of the State Theater, what was its operating policy, just prior to

1042 the time you took it over?

A. Prior to the time we took it over?

Q. Yes.

A. I don't know. It was not operated as a theater very regular. There used to be boxing and wrestling there.

Q. When you took it over, as I understand, you commenced its operation as a vaudeville place with some motion pictures?

A. Vaudeville and pictures.

Q. How many picture show changes did you make a week at first?

A. Three.

Q. Single bills or double bills?

A. Single bill.

Q. How long did you continue to operate it on that policy?

A. The State operated on that policy from its opening to its closing.

Q. Using vaudeville during the entire time?

A. Not during the entire time, no, sir, but when we could get the acts, when we could get vaudeville and when we could get the different shows.

Q. Did you make any improvements of any kind in the Savoy Theater at the time you took it over and made it into the State?

A. Yes, sir.

1043 Q. What changes were made?

A. We installed new sound and projection equipment; we decorated the theater completely; installed new cooling and ventilating equipment; installed new heating unit; all the stage equipment; we installed light fixtures; installed new plumbing facilities; new front boards, display boards, and a new sign. That is about all I can think of offhand.

Q. At any time prior to the time you discontinued operating the State Theater, did you play double bills on any program?

A. We had some double bills in the State. I can tell you the exact number if you want to know. They are very few.

Q. It was not a regular policy?

A. No, sir. It would not average one a month.

Q. What time in 1935 was it that you took over the State?

A. I didn't say we took it over in 1935.

Q. What year was it?

A. I said we opened it in October, 1936.

Q. Back in 1935, your father was only operating the Ritz Theater?

A. That is right.

Q. You spoke of some kind of controversy in regard to admission prices at that time. I believe you stated

1044 that in your Ritz Theater in 1935, the admission price was at all times 10 cents for children and 15 cents for each adult.

A. I didn't say at all times.

Q. What did you say?

A. I said on the Sunday change the Ritz Theater varied with the type of picture that was offered, the run.

Q. We will say then that your testimony was the admission price was not less than 10 cents for children and 15 cents for adults on any playing date. Is that correct? Is that your testimony?

A. That is right.

Q. Would you say on December 13, 1935, you were not playing pictures in the Ritz Theater on a basis of the two for one policy in effect on Wednesdays and Thursdays?

A. It is called "penny day." It was on Wednesday and Thursday.

Q. So in 1935 you were operating on a basis of two admissions for 16 cents?

A. That is right.

Q. So that was a deviation from your regular 15 cent admission, wasn't it?

A. That is right.

Q. And two children for 11 cents?

A. That is right.

Q. When did you start that policy?

1045 A. When we started the other, 15 cents.

Q. I beg your pardon.

A. You mean what year?

Q. Yes, what date.

A. I can't tell you the year. I don't have that record here.

Q. Will your booking record show that?

A. No, sir.

By the COURT:

Q. Did you begin that at the time you took over the Ritz?

A. No, sir.

By Mr. COCHRAN:

Q. How long had you been operating the Ritz when you commenced that policy?

A. I don't know.

Q. You know that the Odeon for considerable time prior to the time you started that policy had been operating on 10 cents admission and also "pal day", do you not?

A. I believe they were.

Q. For a considerable time?

A. They were operating on that basis—wait a minute—on "pal day"?

Q. Yes.

A. I couldn't say whether they were or were not on that. I should say they were operating on a 10 cent admission, but I couldn't say as to "pal day."

1046 Q. I should not have joined the two together. But you can say they had been operating a considerable time on the 10 cent admission?

A. Yes, sir.

Q. Mr. Jones, at the present time, as I understand it, your father is operating the Ritz Theater and your sister is operating the Jake Theater?

A. My sister and I are partners in the Jake Theater.

Q. And you are manager for both the Ritz and the Jake?

A. Not right now. I can't be the manager and in the Army too.

Q. I thought you said you continued to assist?

A. I continued to contribute all the help I could but I can't be called the manager and in the Army too.

Q. What product is now being played in the Ritz Theater?

A. The Ritz?

Q. Yes.

A. For the present year?

Mr. WRIGHT. This is away outside the scope of the direct examination. There wasn't anything offered about the present condition.

The COURT. Overruled. I think they can show that, whether or not the condition existed prior. It is merely circumstance. It is pretty hard to draw the line on the broad scope of this evidence. You may answer.

1047 A. We were playing first run, RKO Radio which we secured through arbitration.

Mr. COCHRAN. We move to strike that answer as not responsive.

Mr. WRIGHT. I think he can explain.

The COURT. Answer the question. What do you have?

A. RKO Radio first run and we are playing M-G-M.

By Mr. COCHRAN:

Q. Do you also have RKO second run?

A. Yes, sir.

Q. Do you use any RKO third run?

A. Yes. sir.

Q. Do you have your selection of the RKO product at the present time, any you want to run?

A. We have contracts for first and second run and we make our contracts for third run as we go.

Q. All right, Metro.

A. We have second and third run, approximately the same, lower group second run and the other third run.

Q. Paramount?

A. Paramount is played on a third run basis, mostly in the Jake.

Q. And Universal.

A. Universal is second and third run.

Q. Vitagraph and Warner.

1048 A. Warner third run.

Q. Fox?

A. Fox is third run.

Q. Columbia?

A. Columbia, that is third run I believe.

Q. United Artists.

A. I don't know what we have on United Artists.

1049 Q. At the present time in the Ritz Theater you are playing on a policy of a single feature picture Sunday-Monday-Tuesday and mostly double bills for Wednesday-Thursday, and double bills mostly on Friday-Saturday, are you not?

A. No double bills on Friday or Saturday.

Q. You play double bills all the time on Wednesday-Thursday?

A. Not always, most of the time.

Q. Can you tell us how many pictures you played in the Ritz Theater during the calendar year 1944?

A. I cannot, because I don't have my records here for that year.

Q. Doesn't that show on your booking chart?

A. I don't have the 1944 booking chart.

Q. I see.

A. I only brought records through 1938-39.

Q. I wish you would look through this list of bookings beginning with the week ending January 22, 1944, and ending with the week ending December 30, 1944, and state if you can tell us whether those are the bookings for the Ritz Theater for that period?

A. I can't do that without comparing it with my records.

Q. You have nothing here with which to compare it?

A. No, sir.

Q. Would you recognize advertisements for those

1050 theaters during that period?

A. Sure.

Q. Looking through these bookings here, I will ask you to state if it isn't a fact that it was the general policy to play double bills on Wednesday-Thursday?

Mr. WRIGHT. If the Court please, what if he did or didn't?

A. I can't see any objection to playing double bills.

By Mr. COCHRAN:

Q. I am not complaining——

A. (Interrupting) It is being done all over Oklahoma City, and all over the state, and all over the nation.

The COURT. What is the purpose of it?

Mr. COCHRAN. The purpose, your Honor, is to show he has ample product and the type of product which he does have, and he has product to the extent that he is not only playing single bills, but double bills.

The COURT. I understood counsel to say yesterday that he was admitting these independents had ample pictures of the kind.

Mr. COCHRAN. Sure, but we are showing the major product he has, we have already shown that now, and we are showing that he is showing that major product double bill in the Ritz Theater and has been doing it.

The COURT. Well, he stated that he had.

1051 Mr. COCHRAN. He attempted to limit it to an occasional double bill at the Ritz.

The WITNESS. The policy of the Ritz is not double bill every day; there is no set policy.

By the COURT:

Q. Do you know how often you run double bills?

A. Sir, it depends upon the product available and the pictures themselves.

By Mr. COCHRAN:

Q. Don't you know that you have a consistent policy, but that there are some exceptions to it, whereby you play double bills on Wednesdays and Thursdays; isn't that the policy?

A. It is the policy, but we don't do that every Wednesday and Thursday. Just like I say.

Q. I just wanted to know if that was the policy. Now, then, in the Ritz Theater during the year 1944, you have played product of every one of the distributors that were named in our recital a moment ago, have you not?

A. You asked for the present time, awhile ago, you asked for 1945; you said nothing about the product of 1944.

Q. All right, in 1944, what product were you playing in the Ritz Theater?

A. I don't have the records of the 1944 with me.

Q. You couldn't tell us from memory?

A. No, sir.

Q. Your memory is not as good on the '44 product

1052 as it has been on some of this '32–33, is it?

A. I have all of those records with me.

Q. Those records which you have with you don't tell when the product was played and where, does it?

A. You have had me marking down everything you wanted. I have been doing that as much as I could.

Q. And you had to check through your booking chart to do it?

A. Yes, sir, I have to check through my booking chart to tell you when I played them. I couldn't tell you in 1931 what I played and on what day.

Q. I am not asking you the day, I just am asking you for the year. In the year 1944 tell us.

A. I don't have those records with me. I don't have the booking book, the booking chart, any of those contracts, or anything.

Q. In the year 1944, the calendar year 1944, did you play in either of the theaters in Shawnee pictures of RKO?

A. I believe we did.

Q. Did you play Metro?

A. Yes, sir.

Q. Did you play Paramount?

A. I couldn't say on Paramount.

Q. Did you play Universal?

A. I believe so.

1053 Q. Did you play Vitagraph?

A. I couldn't say on Vitagraph.

Q. Or Fox?

A. I couldn't say on that.

Q. Or Columbia?

A. Or Columbia.

Q. Or United Artists?

A. I couldn't say on that.

Q. The theater which is now being operated as the Jake at the present time is operating on a policy of double bill each and every day, isn't it?

A. That's right.

Q. And has been since the time you acquired it, since you and your sister acquired it?

A. I wouldn't say every day.

Q. I mean that is the policy?

A. That's right.

Q. And playing mostly pictures of the so-called major distributors?

A. That's right, third, fourth, fifth, sixth and seventh runs.

Q. But playing product of the major distributors?

A. That's right.

Q. Do you know anything about the policy of the Jake Theater prior to the time you and your sister ac-

1054 quired it and it was operated as the Odeon, what its policy was?

A. I think it was double features.

Q. And that theater had been operated for a long time on ten-cent admissions and "pal" days, and "penny days", and so forth, is that correct?

A. When we acquired it?

Q. Just at the time you acquired it, yes?

A. It wasn't operating on a strictly ten-cent basis full week, when we acquired it. And I couldn't say he had "pal" day because I know he had admission prices of twenty and

twenty-five cents on Sundays, Mondays and Tuesdays. He was closed on Wednesday and Thursday, and he ran Friday and Saturday, I believe, at ten cents or fifteen, I am not sure which.

Q. That was for only a brief time that he was closed on Tuesdays and Wednesdays, wasn't it?

A. It was quite some time.

Q. Isn't it a fact that he operated on full bills, two bills a week, until the week ending September 9, 1944?

A. I couldn't say that, yes or no.

Q. Would you say that is not true?

A. I couldn't say that was true; I don't know. I can only speak of his theater in generalities; I could not give definite dates.

Q. Don't you know that at that time he was adver-
1055 tising "two-for-one's" and "pal days", in the operation of that theater?

A. You are talking about Mr. Momand, aren't you?

Q. Well, I am talking about the person who was operating that theater.

A. I never operated that theater prior to October 18, 1944. Prior to that time I suggest you talk to Mr. Momand about that.

By the COURT:

Q. Well, do you know?

A. I don't know what he was doing.

By Mr. COCHRAN:

Q. All right, you didn't notice the advertisements?

A. Sure I did; I read the paper every day.

Q. Don't you know from the advertisements that he was advertising "pal day" every Wednesday and Thursday, which admitted two for the price of one?

A. I couldn't say what day, what month, it was or what year.

Mr. WRIGHT. If the Court please, I don't see the possible materiality of this.

The COURT. I think he has answered the question. If he reads all the advertisements he would be a good booking man.

Mr. COCHRAN. That's all I have with him except the remaining checking of that '38-39 RKO play-off.

1056 The COURT. What is it that you would like on that?

Mr. COCHRAN. He was getting those play dates for me and he has not had a chance to complete that.

The COURT. You can prepare those and send them in and they will be accepted as a part of your evidence.

By Mr. WRIGHT:

Q. Do you have them now?

A. They are partially complete; they are not complete yet.

The COURT. You can send them in and they will be treated as a part of his testimony.

Mr. COCHRAN. I think he can have them by in the morning.

Mr. WRIGHT. May I ask the purpose of what the dates is?

Mr. COCHRAN. The purpose of these dates, is that they are to be used in connection with the contention which has been made so long and so strongly by counsel that there is something very ulterior in the contractual provisions with Griffith Amusement Company for playing out of order of release. The record will show from this witness, and it will show from every other person who exhibited films, that pictures are not played in order of release as available, and that will be our story and we will prove it by, not only this witness, but every other witness, if you give us a chance.

1057 Mr. WRIGHT. What has that to do with the contractual provisions made with Griffith? I am sure I don't know.

Mr. COCHRAN. I cannot enlighten you any further.

Mr. WRIGHT. We will be glad to have those dates to be put in the record on this occasion or any other occasion where counsel wants to show the order in which they are played.

The COURT. Anything further with this witness?

Mr. COCHRAN. Nothing except that information, and I would like to have it before he leaves.

Mr. WRIGHT. I think he can read those dates, he should be able to read those dates into the record tomorrow.

Mr. COCHRAN. Sure.

Mr. WRIGHT. Before the re-direct is concluded.

Mr. COCHRAN. That's right.

Re-direct examination by Mr. WRIGHT:

Q. Now, when you were asked about the RKO that the Ritz was playing first run, you said something about getting that by arbitration. What were you referring to there?

A. It was necessary to go before——

Mr. COCHRAN (interrupting.) We object to any showing in regard to arbitration, for the reason that these

1058 defendants were not parties to that arbitration, and it isn't binding on them in any way whatsoever.

The COURT. I don't know how that would be material.

Mr. WRIGHT. Well, if the Court please, I think we are entitled to show with reference to that RKO transaction, that RKO sold them away, and they filed a complaint, and they got the pictures, and it was only because the complaint was filed under the consent decree that they happened to have them today.

The COURT. Where did they file their complaint?

Mr. COCHRAN. The records, if they are admissible at all, will be the best evidence, your Honor please.

By Mr. WRIGHT:

Q. Were RKO pictures offered to the Ritz for the '39–40 season, do you know?

A. I don't believe they were, no, sir.

Q. That is at the time, of the season; then a complaint was filed, was it, under the consent decree?

A. We filed a complaint.

Mr. COCHRAN. We object to that. The complaint will be the best evidence.

The COURT. Overruled.

By the COURT:

Q. Where was the application filed, or the petition filed, for the consent decree?

A. Sir, there is an arbitration board here in Okla-
1059 homa City.

By Mr. WRIGHT:

Q. It was filed in Oklahoma City?

A. Where we filed this complaint against RKO for these pictures. The complaint was never questioned, was never brought before the arbitration board; it was settled between us and RKO, and they gave us the pictures, that is, sold us the pictures from then on. We have been buying them every year under the consent decree, so many pictures in blocks up to five, under the provisions of the consent decree.

1060 Mr. COCHRAN. We move to strike all that testimony as immaterial.

The COURT. Overruled.

By the COURT:

Q. Is there a Board here that regulates these matters?

A. At this time there was an Arbitration Board set up under the Consent Decree. The address of that Board at that time was at Robinson and Grand, I believe.

The COURT. What I am trying to find out is, who entered this Consent Decree.

Mr. WRIGHT. I think I am more competent to answer that than the witness. The Consent Decree was made between the Government and the five theater owning distributors in the suit pending in the Southern District of New York. In 1940, in November of 1940, that decree established a mechanism for arbitrating certain disputes such as complaints arising out of unreasonable clearance or loss of a run under certain limited conditions, and the American Arbitration Association performed the function of selecting the arbitrators and providing the places of hearing for those complaints, and that was all pursuant to the decree entered in New York.

The COURT. These distributors, then, are controlled and regulated by that decree?

Mr. WRIGHT. To that extent, the five of them who
1061 consented. The eight major distributors are party defendants to the suit. The five theater owning distributors consented to the entry of this decree against them. Those are Fox, RKO, Loew's, Paramount and Warner, and to the extent that the decree provides for the arbitration of disputes of certain clauses, they are subject to that regulation. There is at present in New York, in the New York court at the present time a motion to modify or have additional temporary relief in that connection, but that decree is an interim decree. That suit has been set for trial in October and will be tried on the merits then. This decree that has been referred to is not a final disposition.

Mr. COCHRAN. May we not put that in evidence, that consent decree by agreement?

Mr. WRIGHT. Certainly. It is judicially noticeable. I don't think it needs to be marked but we will agree the Court can notice the provisions of the decree that is on file in the Southern District of New York.

(Hereupon court adjourned until 10 o'clock a. m., May 16, 1945.)

1062 PROCEEDINGS

May 16, 1945, 10 o'clock a. m.

JOHNNY H. JONES, recalled, further testified as follows:

Cross-examination (con't) by Mr. COCHRAN:

Q. Mr. Jones, have you prepared a list showing the dates on which you played the pictures which were licensed first run in the Jones Theaters, RKO for '38–39?

A. I have.

Q. I hand you Defendant's Exhibit 9 and ask you to state if that sheet shows the RKO '38–39 releases which were

played first run in the Ritz Theater, unless otherwise indicated?

A. It is. It is the list you handed me to prepare for you. It is the list of pictures you handed me.

Q. Are those all '38–39 RKO releases?

A. They are. They are '38–39 releases.

Q. You have noted on there "Unless otherwise indicated." Will you indicate which of these pictures were not played first run in the Ritz Theater?

A. The picture "Renegade Ranger."

Q. Just indicate the picture.

A. Wait a minute——

1063 Q. If the Court please—just show the picture that was not played first run in the Ritz Theater.

A. Strike "Renegade Ranger" out. I don't know about that.

Q. Where you don't know just say so.

A. You would not give me a chance.

Q. Go ahead.

A. "Fisherman's Wharf." We did not play that first run. "Lost Patrol" was a reissue, I believe, that time, and we did not play that first run reissue. "The Story of Vernon and Irene Castle" we did not play first run. "Panama Lady" and "The Girl and the Gambler," I could not locate dates on. The rest is complete.

1064 Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 9.

By the COURT:

Q. What was your reason for not running those first run?

A. They were not sold to us.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 9.

Mr. WRIGHT. No objection.

The COURT. It will be admitted.

Mr. COCHRAN. That's all.

The COURT. Anything further?

Re-direct examination by Mr. WRIGHT:

Q. Did you also complete the list of play dates on the Universal pictures?

A. It is together with that, on the bottom of that list there are three Universal pictures.

Cross-examination by Mr. COCHRAN:

Q. On the last page of Exhibit 9 are the play dates on the three Universal pictures about which I inquired on

yesterday, and which, at the time of adjournment, you had not been able to locate?

1065 A. Yes, sir.

Q. To wit, "East of Java," "For the Service," and "Magnificent Obsession"?

A. Yes, sir. That "Magnificent Obsession" is a reissue.

Q. But they played in the Ritz on the dates shown?

A. That's right.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. WRIGHT:

Q. Can you tell the Court just how these pictures were made available to your theater, the Ritz in Shawnee, at the season they played; that is, this RKO, the RKO pictures for the '38–39 season?

A. They were made available as of release dates. We booked those pictures as and when we got the release dates, as we could but in instances where they couldn't serve that particular picture, for example, a George O'Brien, it didn't make any difference what George O'Brien it was, we didn't care whether it was the first release or the last release, as we did start the contract late in the season.

Q. Describe the mechanics under which the pictures were made available, just what was done.

A. Well, a notice of availability was submitted to

1066 us by RKO and we booked from that.

Q. Then you would get in touch with the RKO booker?

A. Yes, sir.

Q. And set a date?

A. We would set a date for all the pictures as they became available. Now, there are some instances when one picture would be played before the other, but they would be dated the same time, within a reasonable time of the date of the one that comes prior to that.

Q. The dates were determined to some extent, were they, by the availability of prints?

A. That's right.

Q. But in some particular instances there might not have been a print available?

A. That's right; and then the dates on the top pictures, some of them, were determined by their first run in Oklahoma City; that is, we would play those pictures first run sometimes day and date or after the Oklahoma City run, especially the percentage group, because RKO felt like——

Mr. COCHRAN (interrupting.) We object, if the Court please, to what the RKO felt like.

By Mr. WRIGHT:

Q. Just limit your testimony to what you did.

A. All right.

Q. The Universal pictures under the first run deal, where you put in the dates there, they were made available
1067 in the same way, were they?

A. That's right; but on Universal there was no mention as to the Oklahoma City dates.

By the COURT:

Q. Well, was that regulated by your contract?

A. You are talking about what, Judge?

Q. All of these pictures, their availability, when they would be released and when played, that was determined by your contract, was it?

A. The contract stated they would be dated as available on release date in order of release.

1068 Mr. WRIGHT. The contracts all provide that.

By Mr. WRIGHT:

Q. Now, the years when you had those RKO and Universal pictures, first run, it is a fact, is it not, that your theaters also played the second and third runs of those features?

A. That is right, played first run in the Ritz and played second run in the Ritz and sometimes third run in the Ritz.

Q. There were no Griffith runs on those Universal and RKO features following your runs, were they?

A. No, sir, not that I know of.

Q. During the entire period, '33-34 through '38-39, were there any Griffith runs on major product in Shawnee that followed runs at the Jones Theater?

A. '33 to when?

Q. '33-34 season through the '38-39 season.

A. The only ones I know of are these that were later reissued by Paramount.

Q. With the exception of reissues?

A. That is all I know of.

Q. Can you tell us what the procedure was with respect to making pictures available to you under the contracts which provided for runs after the Griffith runs in Shawnee?

A. Well, they were available to us after they were played by the last Griffith run that we were to follow, and
1069 only until they were played after that run, and they would be specified clearance for the Griffith run, of a number of days ranging from——

Mr. COCHRAN. We object. The contract shows the clearance.

The COURT. If the contracts cover that, they will be the best evidence.

By the WITNESS:

A. They cover that.

By Mr. WRIGHT:

Q. Did you know at the beginning of the season when any particular picture was going to become available to you under those subsequent run contracts following Griffith?

A. No, we did not.

Q. And it is a fact, is it not, you would not know when any were to be available until after Griffith had decided when and where they were going to play them. Is that correct?

A. That is correct.

Q. Were there any instances where pictures were first made available to you and then withdrawn because Griffith changed its dates?

A. That is right.

Q. And in effect the availability——

Mr. COCHRAN. We object to the leading character of the questioning and the argumentative character of the questioning.

The COURT. Don't lead the witness. If the contracts cover it, it seems to me they would be the best evidence.

Mr. WRIGHT. These contracts merely say on those pictures as available. I am simply attempting to show what the effect of the privilege was that was extended to Griffith of playing the films out of order of release in the prior runs——

The COURT. But the contracts you have heretofore shown required that these pictures all be played within, I think, 13 or 14 weeks something like that.

Mr. WRIGHT. No; the Griffith contracts do not. I want to show what the effect of the privileges were which were extended to Griffith on the bookings of these people who had to follow them with other runs.

Mr. COCHRAN. The principal objection to that is the fact he is asking for a conclusion without taking up a specific matter so we can have it to prepare the answer to that specific thing. It is just stating a conclusion after a leading question by counsel for the Government, and we object to the form of the question.

By Mr. WRIGHT:

Q. Can you give us any specific instances of occasions when pictures were made available to you because
1071 Griffith had dated them on a prior run and then Griffith pulled their dates and the pictures were withdrawn, as far as availability to your houses was concerned?

A. Offhand I can't think of any specific pictures.

Q. I show you this photostatic copy of a letter from Loew's Incorporated to Jake Jones, Ritz Theater, Shawnee, Oklahoma, dated March 19, 1939, marked for identification as L-83, and ask you to read that and see if that refreshes your recollection.

A. I recognize this. It is a letter to us.

Q. Can you tell what happened in that particular instance?

A. Well, the first paragraph here——

The COURT. Don't state what is in the letter. You can just use that letter to refresh your memory as to what occurred.

A. "Romeo and Juliet" and "Night Must Fall" were made available to us for booking——

By Mr. WRIGHT:

Q. Those are Metro pictures?

A. That is right, and Metro requested us to submit dates on those pictures, and then when we had worked out dates on these pictures we had another notice they could not service us on those runs because the Griffith office had notified them they would use them second run, so our dates for second would automatically be third run, and since they were not available for second run to us we had
1072 to cancel them and we had to substitute other pictures for these two. That is the story on that.

Q. When you are referring to these contracts that are in evidence here where you played the lower half of the Metro product first run, what did that term "lower half" mean with reference to the quality or box office value of the pictures?

A. Excuse me just a minute. You mean first run on M-G-M?

1073 Q. I am referring to the contracts that were introduced here yesterday with MGM, I think they are marked——

A. (Interrupting.) There is second run on the lower half.

Q. (Continuing.) as Defendants' Exhibits 7 and 8, 7 being a third run contract for the '36–37 features, and 8 being a second run contract on twenty-two '36–7 features, which I believe you described as the lower half?

A. That is second run, though, Mr. Wright.

Q. Yes, I say can you tell us what you meant by referring to these as the lower half on this second run contract Exhibit 8.

A. The lower half on that contract are the smaller pictures produced by Metro-Goldwyn.

Q. What do you mean by smaller pictures?

A. They are smaller pictures, of less box office value, of less star value and sometimes said the production costs are lower; they are allocated at lower rentals and they are not supposed to have——

Mr. COCHRAN (interrupting). We object to what he supposes about it.

By Mr. WRIGHT:

Q. Do they attract as many people to the box office——

A. (Interrupting.) No, they do not.

Q. As the upper half pictures?

A. No sir.

1074 Q. As I understand your testimony, the upper half was not offered to you, is that right?

Mr. COCHRAN. Wait a minute. We object to that, if the Court please, because there is nothing about halves; it is just a question—the contracts in evidence show for the particular season there was thirty Metro pictures licensed to Griffith, the top thirty pictures, I believe it was, there was a specified number, and the other pictures were licensed to this man. It is not a question of halves; it is a question of so many pictures.

By the COURT:

Q. What were your first half, or the upper half?

A. The upper halves we were not offered second run, your Honor; we were only offered those on third run basis.

Q. The upper half?

A. The upper half, the better pictures.

By Mr. WRIGHT:

Q. And those you bought on third run, is that right?

A. Yes, sir, as those contracts indicate. And at the time—they were not always bought at the same time, usually the second run contract was completed much in advance of the third run contracts.

Mr. WRIGHT. I will ask to have these second run and third run contracts for the Metro pictures for the '35-36 season marked with the next two plaintiff's exhibit numbers.

1075 (Plaintiff's Exhibit 275 for identification and Plaintiff's Exhibit 276 for identification was marked by the reporter.)

Mr. WRIGHT. The June 4th contract is No. 275, and third run contract, dated April 19, 1937, is marked as Plaintiff's Exhibit 276 for identification.

The COURT. What is the date of 275?

Mr. WRIGHT. That is dated, the application date is June 4, 1936, and the approval date is June 16, 1936; on the other, the application date is in April 1937 and the approval date is April 28, 1937.

Mr. COCHRAN. Mr. Wright, will you point out where that says anything about lower half.

Mr. WRIGHT. I don't think the contracts refer to the pictures as lower or upper. I believe they are designated just by particular number.

By Mr. WRIGHT:

Q. Now, the contract that was introduced yesterday as Defendants' Exhibit No. 6 for the '34–35 features from Metro, third run, is dated August 15, 1935, and bears an approval date of August 28th. Between that date and the time you finally made this contract, marked Plaintiff's Exhibit 276 for identification, in April 1937, for third run of the 1935–36 features, had you made any efforts to buy those 1935–36 pictures third run?

A. Yes, sir; numerous efforts.

1076 Q. That was over what period?

A. I beg pardon?

(Question read by the reporter.)

By Mr. WRIGHT:

Q. Over what period of time? Calling your attention to the '35–36 third run Metro features?

A. Well, from the beginning of that season to the time we finally contracted for those pictures.

Q. That is, from the beginning of the '35–36 season?

A. That's right.

Q. To April 1937?

A. Yes, sir.

Q. And prior to that contract that is dated in April 1937, marked Plaintiff's Exhibit 276 for identification, were you offered any of that season's Metro product third run at all?

A. Do you mean between the second run and the third run?

Q. No, until you made this contract in April, April 19, 1937?

A. Yes.

Q. Prior to that date were you offered any of the Metro '35–36 product on third run in Shawnee?

A. No, sir.

Q. Calling your attention to Defendants' Exhibit No. 6 and this provision that it has on there: "Any picture

listed hereon played second run in Shawnee for a
1077 maximum admission of 10 cents may be excluded from this contract", what theaters were playing the Metro pictures ahead of you during that season?

A. The Rex.

Q. And that was a Griffith house?

A. Yes, sir.

Q. And your admission was 10 and 15, as stated in the contract here?

A. That's right, sir.

Q. Do you know whether the Rex did play Metro pictures at 10 cents for that season?

Mr. COCHRAN. We object to that as repetition.

The COURT. Well, if you know of your own knowledge.

A. Yes, sir, I know they played Metro pictures at 10 cents.

By Mr. WRIGHT:

Q. The only Metro pictures they played were played ahead of your theater, is that right?

Mr. COCHRAN. We object to the leading question, if the Court please.

The COURT. Overruled; it is already in evidence. You may answer the question. Read the question.

(Question read by the reporter.)

A. That's right.

By Mr. WRIGHT:

1078 Q. Now, in connection with these days where you testified about so-called "penny days", where you had an additional admission for a one cent additional charge, I believe two for sixteen cents, what kind of product did you play, were you playing on those days when you made admission charges of that character?

A. They were product usually from the independent companies, Republic, Monogram, companies of that nature; they were small pictures, usually westerns and small pictures or action pictures so-called slough pictures, or not very attractive box office pictures that couldn't stand up on their own footing.

1079 By the COURT:

Q. Did you play any pictures in those cases from these producers that have been mentioned here?

A. No, sir, not the major producers.

Q. None at all?

A. No, sir. Metro-Goldwyn-Mayer pictures, my booking dates, nine out of ten would be on Friday and Saturday

and the other dates would be Sunday, Monday and Tuesday.

By Mr. WRIGHT:

Q. What were the admission prices at the Jake after that was opened and operated by you?

A. The admission prices at the Jake as we have operated it?

Q. Yes.

A. The Jake Theater, Sunday, Monday and Tuesday, the charges were 10 cents for children and 25 cents for adults. Wednesday, Thursday, Friday and Saturday it was 10 cents for children and 40 cents for adults.

Q. I want to call your attention to the Universal contract that was offered in evidence yesterday as Defendants' Exhibit 2 and it states group 1 pictures, 12 on third run and group 2 and group 3, first run. Can you tell us just what those group classifications were in terms of box office value of the pictures?

A. Group 1 on the Universal contract were the box value attractions listed by Universal. That is, their better pictures for that season. The second group were
1080 smaller pictures, not so much box office value, and the third group was just the lower class picture. I think they called them "program pictures" or sometimes refer to them as that type of picture. They were just small pictures made with hardly any box office value. They could be used on the lower end of a double bill or something like that; small pictures, and usually ran from 60 to 70 minutes.

Q. Were any of those features in that first group of '37–38 release, that is, the group classified there as a group when offered to you?

A. First run?

Q. Yes.

A. Not first run.

Q. Or second run?

A. Well, I think the clause there says something about second run. The only way I can play them second run, if they were turned down, second run by Griffith.

Mr. COCHRAN. If the Court please, this is all repetition. Counsel has gone into that with both Mr. Jones, Sr. and this witness.

The COURT. I think it has been covered. Do you intend to offer in evidence Exhibit 275 and 276?

Mr. WRIGHT. Yes. I want to offer in evidence Plaintiff's Exhibit No. 275 and 276 for identification.

The COURT. They will be admitted.

1081 Mr. WRIGHT. I have some correspondence here I wish to have identified.

By Mr. WRIGHT:

Q. Could you recognize this exhibit, Plaintiff's Exhibit 277 for identification, as a letter dated October 4, 1937, from Fox in Oklahoma City to Mr. Jake Jones at the Ritz, which was received by you shortly after that date?

A. Yes, sir.

Q. And this Exhibit 278, is that a copy of a letter written by you on or about October 1, 1936, to the Fox Company at New York?

A. Yes, sir.

By the COURT:

Q. What is the date?

A. The letter is dated October 1, 1936.

By Mr. WRIGHT:

Q. And this Exhibit 279. Is that a letter dated May 25, 1936, from Fox and to Jake Jones at the Ritz? Was that received shortly after the date it says?

A. Yes, sir.

Mr. WRIGHT. I offer these exhibits, Plaintiff's Exhibits 277, 278 and 279 for identification, in evidence.

Mr. DUDLEY. We object to each of the exhibits for the reason it is hearsay and no proper foundation laid. We make the same objection as heretofore made to declarations of these majors as they call them.

The COURT. Objection will be sustained for the 1082 same reasons. Exception allowed.

Mr. WRIGHT. That is all.

Re-cross-examination by Mr. COCHRAN:

Q. Prior to 1941, the pictures of the major distributors were licensed prior to the time they were produced, were they not?

A. Well, they were licensed——

Q. Just answer that yes or no.

A. I don't know the date of the consent decree, Mr. Cochran, or when that went into effect.

Q. The consent decree was in November, 1940.

A. After the consent decree they were licensed after they had been produced. Prior to that they were not. They were licensed before they were made.

Q. So that, at the beginning of the season prior to the time of the consent decree you could not tell whether any picture could be made available or whether it would even be produced, could you?

A. Will you repeat that?

Q. Prior to the consent decree when you licensed pictures before they were produced you did not even know whether the pictures would be produced that season?

A. Certainly not.

Q. And there were many pictures which were
1083 licensed that were never produced?

A. That is right.

Q. Therefore, you had no way of knowing when any picture would be available at the beginning of the season?

A. No, sir, except for the exchanges availability lists and their schedules that were released.

Q. The schedule of releases would not appear until the picture had been produced, would it?

A. That is right.

Q. A picture is not released until after it has been produced?

A. Of course not.

Q. You spoke of receiving notice of availability. There would frequently be a number of pictures on one availability notice, would there not?

A. That is right.

1084 Q. Your contract provides what shall constitute date of availability?

A. I didn't get that.

Q. Your contract says, it has the terms in it which says what is meant by the term "date of availability"?

A. I believe it does.

Q. You are familiar with that. Even though you received notice of availability on a number of pictures, some of which might be released prior to others, you frequently and almost always were permitted to book and date those pictures out of their order, out of the sequence of release, if it was within a reasonable time?

A. Sometimes I had to pay for them.

Q. I say, you were permitted to do it, if it was within a reasonable time?

A. Within a reasonable time, or else I had to pay for those pictures not booked.

Q. If they were not dated within a reasonable time you paid for them and then dated them at a later date?

A. Most times they were booked at that time.

Q. Just answer the question, please.

A. All right.

Mr. Cochran. Read the question.

(Last question read by the reporter.)

A. That's right.

1085 Q. You spoke of your admission price at the time in the 1935-36 season being 10 and 15 cents. That was a time when you were operating on the basis of two admissions for the price of one, plus a penny, is that right?

A. On Wednesdays and Thursdays.

Q. On Wednesdays and Thursdays?

A. Only.

Q. That policy continued until the time, or a little after you acquired the Odeon Theater and opened it as the Jake, is that correct?

A. No, sir, it did not.

Q. What was the date of the acquisition of the Jake?

A. We opened the Jake on October 18, 1944.

Q. Will you say that in the year 1943 you were not operating the Ritz Theater on a policy of Wednesday and Thursday of "two-for-one" plus a penny?

A. I think in '43 we were.

Q. All right, when did you discontinue that policy?

A. I don't have that record with me.

Q. Do you know when Griffith discontinued the policy of ten cents admission in its theater, where you said it had that policy?

A. Which theater are you referring to?

Q. You told us one where they were operating.

A. There were two theaters, in fact, there were
1086 three at one time; the Rex had had a 10-cent admission at one time, the Avon had a 10-cent matinee admission at one time, and the Criterion had a 10-cent admission at one time.

Q. When did the Avon have it?

A. The Avon was in December 1936, I believe.

Q. How long did that continue?

A. I don't have the exact days.

Q. It was only a short time, was it not?

A. It was only a short time, a period of a month or so.

Q. All right, when did the Criterion have that kind of policy?

A. I have a specific instance, on December 11, 1936.

Q. How long did that policy continue?

A. I only know of it for the engagement of that particular picture.

Q. You don't know that that was discontinued in a very short time?

A. It was discontinued, I believe, after that picture run the theater.

Q. Then the Rex, when did it have that policy?

A. When they opened the theater.

Q. How long did it continue?

A. I couldn't say. For quite some time.

Q. When did they open that theater?

A. I don't know that.

1087 Q. But you do know when they opened that theater, they operated it on 10-cent policy?

A. Yes, sir, they had a great big 10-cent sign in front of it.

Q. Matinee?

A. Matinee and night.

Q. Matinee and night?

A. Adults.

Q. But you cannot tell us how long that continued?

A. I don't have the record.

Q. Was that continuing in 1937–38?

A. I don't believe the Rex was open then.

Q. When was the Rex discontinued?

A. I don't know exactly.

Q. You said that at one time it was being carried on in three theaters, the Rex, Avon and Criterion. Don't you know as a matter of fact that the Rex didn't operate after the Avon was built?

A. I know that. I only gave you the specific dates for the Criterion and the Avon. I didn't say the Rex operated at 10 cents.

Q. But you told us it was being carried on in three theaters at the same time?

A. No, I didn't, at the same time. If I said at the same time——

Q. (Interrupting.) It is a mistake?

1088 A. I will retract that; but I will say at the time——

Q. (Interrupting.) That is sufficient; don't argue the case with me.

A. All right.

Q. The Avon replaced the Rex?

A. That's right.

Q. And the Rex didn't operate after the Avon?

A. It did not.

Q. And it has not operated since then?

A. No, sir.

Q. After you acquired the Jake Theater, and subsequent to that time, there has been no 10-cent adult admission price in any Griffith theater, has there?

A. No, sir, there has not.

Q. And there has been no 10-cent admission price or "two-for-ones" or anything of that kind in either of your theaters?

A. No, sir.

Q. Will you tell us whether from the time that you commenced to operate the Ritz until the time you acquired the

Odeon Theater, the Odeon was operated by Mr. Momand on a 10-cent admission price at all times?

A. I couldn't say that, sir.

Q. Can you tell us whether it was operated on that policy at any time?

1089 A. Yes, sir, I could.

Q. For what length of time?

A. I couldn't say how long.

Mr. WRIGHT. If the Court please, I don't see how this is proper re-cross. This was all gone over originally on cross-examination.

Mr. COCHRAN. He went into this admission policy.

The COURT. There is so much cross and re-cross-examination of this witness that I don't know where we are on the matter. Let's get through.

By Mr. COCHRAN:

Q. Wasn't the Odeon being operated on a 10-cent admission policy and also on various other irregular admission practices at the time it was taken over by you?

A. I couldn't say that.

Q. You don't know; you don't know what his policy of operation was?

A. I can tell you what I believe it was.

Q. No.

A. I wouldn't swear to what he was operating.

Mr. COCHRAN. That's all.

The COURT. Stand aside.

Mr. WRIGHT. That's all.

(Witness excused.)

1090 Mr. COCHRAN. At this point we would like to have a copy of this consent decree marked as an exhibit. May we mark that?

Mr. WRIGHT. Yes.

Mr. COCHRAN. Shall we give it a plaintiff's exhibit number?

Mr. WRIGHT. No, we are not offering it in evidence. We will agree that the consent decree and all of the proceedings in the case in which it was issued may be judicially noticed by the Court.

Mr. COCHRAN. It should be in evidence.

Mr. WRIGHT. I don't think it is proper to put it in evidence. I don't think it is admissible for the purpose of establishing facts.

Mr. COCHRAN. I don't think the Court could take judicial knowledge of the judgment of the Court. I think we have to prove it.

Mr. WRIGHT. We will agree that he may.

Mr. COCHRAN. Why not introduce it as an exhibit.

The COURT. It would not be evidence, a judgment of the Court is not evidence. I think the Court will take judicial notice of any judgment of a Court.

Mr. COCHRAN. I want to identify it for the record in some way.

The COURT. You can agree that Exhibit so and so
1091 is marked, and agree that that exhibit is a correct copy of a decision of the Court in such and such a case. That merely identifies it.

Mr. COCHRAN. Give it a defendants' exhibit number.

(Defendants' Exhibit No. 10 was then marked by the reporter.)

Mr. COCHRAN. May it be stipulated that Defendants' Exhibit 10 is a true and correct copy of the consent decree entered in the case of United States of America vs. the parties shown on the first page of the document, in Civil Action No. 87-273, in the District Court of the United States for the Southern District of New York?

Mr. WRIGHT. I assume it is, if you say it is. I haven't seen it in that printed form.

Mr. COCHRAN. Do you want to examine it so we can make our stipulation?

Mr. WRIGHT. No, I will take your word for it.

The COURT. The only reason for identifying it at all. I doubt if the Court would take judicial notice of it in pamphlet form.

Mr. COCHRAN. It is stipulated now that it is a true and correct copy.

The COURT. That is the only reason for having it identified.

1092 JAKE JONES, a witness on behalf of the plaintiff, having been previously duly sworn, was recalled, and was examined and testified as follows:

Cross-examination (resumed) by Mr. COCHRAN:

Q. You are the same Mr. Jake Jones who was on the witness stand in this case last week, are you?

A. Yes, sir.

Q. At that time you testified that in 1929 you received $561.61 a month rent on the Criterion Building and equipment?

A. Yes, sir.

1093 Q. In 1931, you reduced that rental to $500 a month?

A. I think it was in 1930, we reduced it to $500.

Q. You also received insurance and taxes on it?

A. Yes, sir, that was in the contract.

Q. Then you stated that in 1932 you reduced the rental down to $400?

A. No, we reduced it in 1931 to $400.

Q. Did you reduce it in 1932?

A. No, sir. It was $400 in 1932.

Q. Did you reduce it at that time?

A. No, sir, I reduced it in 1931.

Q. Was the agreement for reduction in writing?

A. Well, now, I don't know. As far as I can remember it was. We have got a record of it. That is the Seminole Amusement Company's record. That is the last one we made.

Q. I beg your pardon?

A. The last reduction we made and I think it was made for two years, and I think we have a record of that at home.

Q. You think that was in 1931?

A. Well, I believe it was in 1931.

Q. You told us that later you had a conversation at the Aldridge Hotel in Shawnee in which a further reduction was requested?

A. Yes, sir.

Q. That was about the time that this two year agreement was expiring?

1094 A. No, it run a little longer. I think it is six months before or maybe four months before. I don't remember the date.

Q. In other words, you think that conversation at the Aldridge Hotel was about six months before the expiration of the reduction agreement?

A. I believe that run to 1934, if I can remember. You have the record of it. I didn't know you wanted the record or I could have brought it.

Q. I am just asking you now about the time of that conversation you had in the Aldridge Hotel relative to the expiration of that agreement which had been made for a reduction of the rental to $400 a month.

A. You want to know how long it ran afterward?

Q. No.

By the COURT:

Q. How long did this reduction agreement run after you had the conversation?

A. In the hotel?

Q. Yes, sir.

A. I don't know offhand.

Q. Well, approximately.

A. Well, between—I will say six months or nine months; I don't know, but it ran into 1934, I am sure.

By Mr. COCHRAN:

Q. I am not so much interested in the time the reduction expired. That is, the one reducing it to $400 a month,
1095 but I am interested in trying to fix the time when you had this conversation in the Aldridge Hotel. How long before the time when this $400 agreement was to expire?

A. I don't know. I can bring the record and show it to you.

Q. That would not tell us when this conversation took place, would it?

A. No. The conversation was in the early part of 1933, is all I know.

Q. You know that the agreement whereby you reduced the rental to $400 a month went for two years regardless of when it was made. It went for two years, didn't it?

A. Yes, sir.

Q. Now, it was at a time just before that period of two expires had expired when you had the conversation in the Aldridge Hotel that you have heretofore detailed?

A. Yes, it was before it expired but I don't know how long.

Q. Wasn't it just immediately before the expiration?

A. No, I can't say how short it was unless I look at the record.

Q. A while ago you said you thought it was about from four to six months. Do you still think that?

A. No, I don't know exactly; I don't know. I won't say how long it was.

1096 By the COURT:

Q. Well, it was before the expiration?

A. Yes, sir.

The COURT. I think that is sufficient.

Mr. COCHRAN. The period is rather important.

The COURT. He says he doesn't know.

A. I can bring the record and show you.

By Mr. COCHRAN:

Q. Did you have more than one conversation with any representatives of the Griffith Amusement Company in the Aldridge Hotel at Shawnee?

A. You mean since?

Q. Any time?

A. Before?

Q. Any time.

A. Well, when they got the $400 Mr. Griffith came down and asked me for it and we granted it to him.

Q. Will you answer my questions, please.

The COURT. I think he is trying to answer.

By Mr. COCHRAN:

Q. Did you have any conversation at any other time except the occasion when the reduction was requested, after the $400 reduction, a conversation in the Aldridge Hotel?

A. You mean afterwards or before?

Q. Did you ever have any conversation with any representatives of the Griffith Amusement Company in
1097 the Aldridge Hotel except the ones you have mentioned?

A. No, just one.

Q. Other conversations you had with them were at places other than the Aldridge Hotel?

A. We never had any conversation about reducing any rent before, but we have talked to one another, yes. We have had a lot of conversations.

Q. Did you ever have any conversation with any representatives of the Griffith Amusement Company about anything in the Aldridge Hotel other than the one time?

A. No, sir.

Q. Will you now tell us when the Rex Theater was opened?

A. Sometime in 1933.

Q. And didn't it play second run pictures from the time it opened?

A. It played all second run, yes, sir.

Q. Wasn't that theater opened and operating as a second run house at the time you had the conversation at the Aldridge Hotel?

A. No, sir, it was closed. There wasn't any Rex then.

Q. Your conversation then must have been prior to 1934, the one you had at the Aldridge Hotel?

A. You mean before?

Q. Read the question.

1098 (Question read.)

By the COURT:

Q. Before 1934?

A. Yes, sir.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 11 and ask you to state if that is the agreement that you have referred to as reducing the rental on the Criterion Theater to $400 a month?

A. Where is the date on this letter, 19 what?

Q. You are reading it.

A. What is that, 1932? This agreement here——

Q. Will you answer the question?

(Question read.)

A. Yes. This is the agreement. That is my signature.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 11.

Mr. WRIGHT. No objection.

The COURT. What is the date of that?

Mr. COCHRAN. It is dated August 11, 1932. Instead of reading it I will just hand it to your Honor to read. Both counsel have read it.

The COURT. It will be admitted.

By Mr. COCHRAN:

Q. Do you know Mr. A. F. Hornbeck of Shawnee?

A. Yes, sir.

Q. Prior to the time you had this conversation in
1099 the Aldridge Hotel which you have heretofore detailed did Mr. Hornbeck contact you in regard to a meeting with the Griffiths?

A. You mean after we had that——

Q. No, before.

A. No, I don't remember that.

Q. Had you discussed the matter of meeting in regard to negotiations with the Griffiths with Mr. Hornbeck before that meeting in the Aldridge Hotel?

A. No, sir, I don't remember.

Q. As a matter of fact, the meeting which you had with the representatives of the Griffith Amusement Company in the Aldridge was on June 23, 1934, wasn't it?

A. I don't know. I couldn't say what date it was.

Q. On that occasion, in addition to the persons whom you have mentioned before, Mr. Adam Hornbeck was present was he not?

A. I couldn't swear to that. I couldn't remember only a few that were there. I wouldn't say that he was there.

Q. Would you say he was not there?

A. I won't say he was or was not.

Q. Mr. Bocher, I believe you said was also there?

A. Yes, sir, he was there.

Q. He was interested in the Seminole Amusement Company?

A. Yes, sir.

1100 Q. That is all.

By the COURT:

Q. That was the time you said something you say you do not want to go into the record?

A. Yes, sir. Your Honor, I have $75,000 invested.

Re-direct examination by Mr. WRIGHT:

Q. What is your best recollection now as to the date of the meeting as to whether it was in 1933 or '34?

A. Well, I don't remember. In early '33, I think, was the meeting.

Q. Have you anything else by which you can fix that date other than the agreement here that has been shown here?

A. No, I couldn't fix the date because I don't remember.

Q. Do you remember the date, when it was with reference to the opening of the Rex?

A. They opened what is known as the Victory Theater, about 60 or 90 days after that. They called it the Victory. It was a closed theater. They called it the Victory. I don't know who it belonged to, when they told me they were going to take my pictures away from me——

Mr. COCHRAN. We move to strike that as not responsive and calls for further examination if it is not stricken.

A. In 90 days they opened this Rex Theater.

1101 The COURT. It will be sustained as to the part of the answer that is not responsive to the question.

By Mr. WRIGHT:

Q. The other event you fixed the date by was reopening of the Victory, as was the Rex. Is that right?

A. Yes, sir.

Mr. COCHRAN. Objected to as leading.

The COURT. Overruled. That has been gone over. It is merely referring to what is already in the record.

Re-cross examination by Mr. COCHRAN:

Q. Mr. Jones, I will ask you if on that occasion, the substance of the conversation which you had in the Aldridge Hotel was as follows: "Mr. H. J. Griffith said, 'We understand you want to discuss a reduction under a new lease on the Criterion Theater Building' ", and you replied very quickly and with the language which you indicated you used, "I know nothing about a discussion of reduction, if that is what you fellows are up here for you have just wasted your time" and with that you got up and left the room?

A. That ain't what he said. He was talking to Mr. Bocher and asking him for more reduction.

Mr. COCHRAN. We object to further statements. He has answered my question.

Mr. WRIGHT. That is all.

(Witness excused.)

1102 JOHN GRAY, a witness produced by and on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. KALLIS:

Q. Will you please state your name?

A. John Gray.

Q. And where do you live, Mr. Gray?

A. Chickasha, Oklahoma.

Q. And what is your business or occupation?

A. Show business.

Q. Where?

A. Chickasha, Oklahoma.

Q. And how long have you been operating a theater in Chickasha?

A. A little over four years.

Q. Now, Mr. Gray, were you ever interested in the operation of a theater in Enid, Oklahoma?

A. Yes, sir.

Q. And calling your attention to the year 1935, did you open a theater there?

A. Yes, sir.

Q. In Enid, Oklahoma?

A. Yes, sir.

Q. And did you have a partner in that venture?

1103 A. I did, sir.

Q. And what is his name?

A. Roy T. Shield.

Q. And when in 1935 did you open the theater?

A. July 14th.

Q. And what was the name of the theater that you opened?

A. Gray's.

Q. Now, at the time you opened in Enid, what was the population of the city?

A. Approximately 30,000.

Q. And will you please describe what the theater situation there was with respect to the number and location and size of the theaters, and who operated them?

A. Well, there were four theaters owned and operated by the Griffith Amusement Company, and one small house, owned and operated by Max Burger, that would be five, and with my new house made six.

Q. Can you enumerate the Griffith houses at that time, in July of '35?

A. In what way do you mean, do you mean the names?

Q. Yes, the names of them.

A. Yes, sir; the Aztec, Criterion, and Mecca.

Q. Do you know whether or not the name of the Criterion was later changed to some other name?

A. Yes, sir.

1104 Q. Do you know what the name of that theater now is?

A. Yes, sir.

Q. What is it?

A. The Chief.

Q. Do you recall approximately when the name of the Criterion was changed to the Chief?

A. I am afraid not, sir.

Q. What was the name of Mr. Burger's theater?

A. The Rita.

By the COURT:

Q. Mr. Bird?

Mr. KALLIS. Mr. Burger, B-u-r-g-e-r; and Rita was the name of the theater.

By Mr. KALLIS:

Q. Mr. Gray, before you opened the Gray's Theater in Enid, in July of 1935, did you make any efforts at all to buy product for the theater?

A. I did, sir.

The COURT. Make any effort to do what?

A. I did, sir.

By the COURT:

Q. Did you make any effort to do what?

Mr. KALLIS. To buy product.

The COURT. Oh, to buy product.

Mr. KALLIS. Yes, sir.

By Mr. KALLIS:

Q. What did you do?

A. I contacted all branch managers of all the major companies.

1105 Q. Where?

A. In Oklahoma City.

Q. Did you see the branch manager of every major company?

A. Yes, sir.

Q. Did you submit any applications for product?

A. I did with two companies, sir.

Q. Which ones?

A. Warner Bros. and Paramount.

Q. Were those applications approved?

A. They were not, sir.

Q. And what kind of product did you try to buy for your Gray's Theater?

A. Any run.

By the COURT:

Q. What was the name of the theater?

A. Gray's.

Q. G-r-a-c-e?

A. G-r-a-y-'s.

Q. Oh, G-r-a-y-'s?

A. Yes, sir.

Mr. KALLIS. The theater was named after him, your Honor.

The COURT. All right.

By Mr. KALLIS:

Q. Well, now, calling your attention to the Universal Company, did you play any Universal pictures at the Gray's Theater?

1106 A. Yes, sir.

Q. Of what season's product?

A. As nearly as I can recall, it was the '35–36.

Q. Was that a regular season's deal?

A. Yes, sir.

Q. And what run, if any?

A. First and second.

Q. Did you play any RKO?

A. I played a few, yes, sir.

Q. And what runs were they?

A. First and second eliminations, and third run on the top; that's A pictures.

Q. Now, with respect to what you call eliminations, do you mean what is also commonly known as cutback pictures?

A. Yes, sir; the poorest product.

Q. Did you have some third run?

A. Yes, sir.

Q. Were those pictures which you played of Universal, were they current product or old product?

Mr. COCHRAN. We object to that——

A. (Interrupting) Current.

Mr. COCHRAN. If the Court please. He said they were '35–36 product.

The COURT. He said current.

By Mr. KALLIS:

Q. Did you play any Metro?

1107 A. Several.

Q. What run?

A. First and second—first and second cutbacks.

Q. What about Fox?

A. Possibly three; they were also cutbacks.

Q. What runs?

A. First and second.

Q. And then you played some independent product, didn't you?

A. Yes, sir.

Q. Like British Gamount?

A. Gamount British.

Q. And Grand National?

A. Yes, sir.

Q. And certain other independent companies' product?

A. Yes, sir.

Q. Now, did you make a sale of your interest in the Gray's Theater to Mr. Shield?

A. I did, sir.

Q. When?

A. In September of the following year, 1936.

Q. You sold all of your interest, did you?

A. Yes, sir.

Q. In September 1936, to Mr. Shield?

A. Yes, sir.

1108 Q. Did you leave Enid?

A. I did, sir.

Mr. COCHRAN. If the Court please, I rather object to the leading type of examination of this witness. I just offer that as a suggestion.

The COURT. Well, there is no jury, and it is on matters about which there is no controversy.

Mr. KALLIS. That is precisely the reason, your Honor, why I have put the questions as I did, in order to save time.

The COURT. Proceed.

Mr. KALLIS. And also, the questions can be answered yes or no. I am not suggesting an affirmative or negative answer.

By Mr. KALLIS:

Q. Mr. Gray, when did you return to Enid?

A. In December of 1936.

Q. And did you later open another theater in Enid, Oklahoma?

A. Yes, sir.

Q. And when was that?

A. February 20, 1937.

Q. What did you call that theater?
A. The Rivoli.
Q. Had that Rivoli Theater been known by another name?
1109 A. Yes, sir, the Ritz.
Q. Then, you took over the Theater that was formerly operated by Max Burger, is that right?
A. And several others, yes, sir.
Q. Before you opened the theater which you called the Rivoli, in February of 1937, did you make any remodeling or improvement?
A. Yes, sir, I did.
Q. What did you do?
A. Completely from one end to the other; new rest rooms, water fountain, new decorations, new marquee and new equipment.
Q. What about a screen?
A. Oh, yes, a new screen.
Q. Anything about a cooling system?
A. Yes, sir, I installed a late cooling system.
Q. What about rugs on the floors?
A. Yes, sir, all rugs and drapes were new.
Q. I believe you said you opened the Rivoli in February of 1937?
A. Yes, sir, I did.

By the COURT:

Q. How do you spell that?
A. R-i-v-o-l-i.

By Mr. KALLIS:

Q. With reference to your operation of the Rivoli
1110 Theater, did you make any efforts to buy product?
A. Yes, sir, I did.
Q. What did you do?
A. I approached all the branch managers of the film exchanges in Oklahoma City for some run.
Q. Calling your attention to the '36-37 releases of Universal, did you play any regular season's product of that company?
A. Yes, sir, I did.
Q. What?
A. Third run.
Q. And any cutbacks?
A. Yes, sir, first and second.
Q. And what about Metro?
A. First and second with Metro, and then later third run.

By Mr. COCHRAN:

Q. Do you mean first and second eliminations?

A. Yes, sir.

By Mr. KALLIS:

Q. You say that you later got a regular season's deal?

A. Yes, sir, from then on.

Q. From Metro for what run?

A. Third.

Q. And that refers, now, to the 1936-37 releases
1111 of Metro, does it?

A. Yes, sir.

Q. You opened in February of '37; about when did you get those third run pictures or product?

A. About four or five months after I had opened. Are you referring to Metro?

Q. Yes, sir.

A. That's right.

Q. You say you asked for, asked these companies for a run. Did you receive one from Fox?

A. I did, sir, a second run contract on about twenty pictures; they were cutbacks.

Q. You didn't receive a full season's deal then?

A. No, sir.

Q. On second run product of Fox?

A. No.

Q. With reference to Paramount, on 1936-37 releases, did you receive a regular season's deal there?

A. No, sir, just cutbacks.

Q. What run?

A. First and second.

Q. Is that true of RKO?

A. No, sir. I obtained third run and first and second cutbacks; that was a seasonal deal, past seasonal deal.

1112 Q. For '36-37?

A. '34-35.

By Mr. COCHRAN:

Q. I didn't understand that '34-35.

A. I went back and picked up the '34-35.

Q. First and second run?

A. No, sir, third run and first and second cutbacks that were available, and then followed through with regular seasonal features.

By Mr. KALLIS:

Q. Referring now to the '37-38 releases, did you have a regular season's deal from RKO?

A. I did.
Q. What run was that?
A. First and second.
Q. For '37–38?
A. No, sir. I answered that. I said I followed through and it was '38–39, I believe, I obtained first and second run.
Q. Let's go back to '37–38 product of RKO. Did you have third run?
A. Yes, sir, and first and second cutbacks.
Q. Is that true of Metro?
A. Yes, sir.
Q. You had the regular season's features for third run Metro for '37–38, first and second run cutbacks?
A. Yes, sir.
1113 Mr. COCHRAN. I object to the leading character of the examination for the reason this is not immaterial testimony. He is testifying to matters which should be shown by contracts because the documents are the best evidence. He is trying to testify as best he can from memory and on top of that counsel is leading him.
The COURT. Objection overruled and exception allowed.
Mr. COCHRAN. We object on the ground it is not the best evidence. The contract will show what he licensed.
The COURT. Overruled. It is a matter you can cross examine on. He can tell what he knows about it.

By Mr. KALLIS:

Q. With reference to Fox for the '37–38 releases, did you have a regular run?
A. No, sir, other than a few cutbacks of first and second.
Q. What was the situation with reference to Paramount for the '37–38 product?
A. Just cutbacks.
Q. Did you play any '37–38 United Artists pictures?
A. Yes, I did.
Q. Did you have a lower run?
A. The first run of the English type pictures, yes, sir, and first run of the A's.
Q. What about Universal for '37–38?
1114 A. About the same.
Q. Did you have a regular season's run?
A. Yes, sir.
Q. Which run was that?
A. Third and first and second cutbacks.
Q. Referring to '38–39 product, did you have any regular season's deal with RKO?
A. In what year?
Q. '38–39.

A. Yes, sir, I did, first and second.
Q. Was that a regular season's deal?
A. Yes, sir.
Q. What about Metro?
A. The usual third run and first and second cutbacks.
Q. Did you have any Universal pictures for '38–39 season?
A. Yes, sir.
Q. What were they?
A. The same, first and second run cutbacks and third on the A's.
Q. Do you have contracts in your possession for the various product which played at your Rivoli Theater from February, 1937, when you opened, until July, 1940?
A. I do not.
Q. Are you still operating the Rivoli Theater in Enid?
1115 A. No, sir.
Q. When did you stop that operation?
A. July 8, 1940.
Q. Did you transfer your interests to someone else?
A. I did.
Q. To whom?
A. Roy T. Shield.
Q. He purchased the Rivoli Theater from you?
A. Yes, sir.
Q. Now, Mr. Gray, during the three and a half years in which you operated the Rivoli, that is, from February, 1937, to July of 1940, did the Griffiths construct and open another theater in Enid?
A. They did, in 1938.
Q. What was the name of that theater?
A. Cherokee.
Q. Do you know what product Griffith was playing at the Cherokee when they opened it?
A. Yes. First and second.
Q. What type pictures?
A. A and B and westerns.
Q. When you opened the Rivoli Theater, February, 1937, what admission prices were you charging?
A. Ten and fifteen cents. That was the standard policy. Of course, I charged 20 and 25 on certain types of pictures.
1116 By Mr. COCHRAN:
Q. When you opened the Rivoli was Mr. Shield operating the theater which you and he had formerly owned and operated as the Grays?

A. Yes, sir.

Q. I don't know whether I asked you if he changed the name of the Grays theater.

A. He did later, yes, sir.

Q. When?

A. Sometime in December of 1936, as nearly as I can recall.

Q. In other words, it was just a month or so prior to the time you opened the Rivoli?

A. Yes, sir.

Q. What name did he adopt for the theater?

A. Royal.

Q. When you opened the Rivoli in February, 1937, will you please state what Mr. Shield's playing policy was?

A. His policy?

Q. Yes, sir.

A. You mean in regard to changes?

Q. In regard to admission prices and single and double features.

A. He was operating single bills with three changes a week and had a standard policy or set policy on Wednesday and Thursday to adults for 15 cents; two for 15,
1117 and that was each and every Wednesday and Thursday.

Q. Did he also have any policy that involved any kind of give-away?

A. Yes, sir; he had on Saturday night.

Q. What did he have?

A. "Country Store Night" he called it.

Q. What did that mean?

A. Well, he gave away groceries.

Q. And you opened your Rivoli Theater on what kind of a policy?

A. Ten and fifteen cents, the single bills.

Q. 15 cents for adults?

A. Yes.

Q. Both afternoon and evening?

A. Yes, sir.

Q. Did you play single or double features?

A. Single then.

Q. Did that policy of yours continue straight through until June of 1938?

A. As nearly as I can recall, yes, sir.

Q. Then calling your attention to about the middle of 1938, did you notice what Griffith's Criterion was doing with respect to single or double features?

A. Occasionally they spotted double bills.

Q. How occasionally would you say?

1118 A. Oh, once or twice a month. There was no regular routine; no regular procedure.

Q. When did that policy begin, as nearly as you can recall?

A. About a year after I had opened.

Q. About February of 1938?

A. I would think so, yes, sir.

Q. Did this double feature program at the Criterion occur every day or just certain days a week?

A. Certain days, Sundays, Mondays and Tuesdays.

Mr. COCHRAN. Objected to as repetition.

The COURT. He has already answered the question.

By Mr. KALLIS:

Q. And what admission price, as nearly as you can recall, did the Criterion charge Sunday, Monday and Tuesday when they had double features?

A. I believe it was 20 and 25.

Q. You say then up to about June of 1938 you were operating on a single feature policy?

A. That is right.

Mr. COCHRAN. Objected to as repetition.

The COURT. Overruled. Exception allowed.

By Mr. KALLIS:

Q. Did you make a change in that policy by instituting double features?

A. I did.

Q. When did that start?

1119 A. As near as I can recall, it was June of 1938 I went to double bills on Sunday, Monday and Tuesday.

Q. What about the remaining four days?

A. Single.

Q. When you played these double bills what was your admission price?

A. Ten and fifteen.

Q. Did Mr. Shield at the Royal Theater institute a policy of double bills?

A. He did, several months later.

Q. Well, as nearly as you can recall, when did he begin double features?

A. About two months later, after I had started them on Sunday.

Q. Or a double feature every day or just certain days?

A. No, sir, just the same days, Sundays through Tuesdays.

Q. What was his admission price on the days he double featured?

A. Ten and fifteen cents.

Q. As I understand, both you at the Rivoli and Mr. Shield at his Royal were double featuring on three days a week at an admission price for adults of 15 cents?

A. That is right.

Q. Did you notice whether Griffith started double
1120 featuring at any time at the Mecca Theater?

A. Not until later.

Q. When did that begin?

A. As near as I can recall it was in June of 1939.

Q. And did this double featuring take place every day of the week at the Mecca?

A. Every day except Friday and Saturday.

Q. What admission price did the Mecca charge on these double feature days?

A. I believe they reduced the admission to 10 cents to all when they started that policy.

Q. To go back to about the middle of June, 1938, Mr. Gray, do you know whether you began showing any two for one admissions?

A. I did.

Q. Can you state whether Mr. Shield had prior to June of 1938 a two for one policy?

A. Yes, sir, I did. That was the net policy of his operations.

Q. And that was the situation at the Royal Theater from that time until you opened in 1937?

A. Before that time. He was doing that before I opened. I don't know when he started, but just from observation I noticed that.

By the COURT:

Q. That is the Roy or Royal?

1121 A. The Royal.

By Mr. KALLIS:

Q. Then this two for one policy of Mr. Shield at the Royal Theater lasted continuously from, you say, at least December of 1936 down through June of 1938?

A. Yes, sir.

Q. And then when did you institute a two for one policy?

A. When he started double billing on Wednesday and Thursday.

Q. What month and year was that?

A. It was in 1938. As nearly as I can recall in August or September, the fall of that year.

Q. And did you give two for one admissions every day of the week?

A. No, sir, just on Wednesdays and Thursdays.

Q. And was it necessary to present anything at the box office in order to have this two for one?

A. Yes, sir.

Q. What was that?

A. A newspaper ad or theater calendar ad.

Q. And you continued this two for one policy two days a week with the newspaper clipping and 15 cents down through June or July of 1939?

A. Yes, sir, with occasionally making them good all through the week.

Mr. COCHRAN. I again ask the Court to have coun-
1122 sel refrain from leading the witness.

The COURT. Don't lead the witness.

By Mr. KALLIS:

Q. Mr. Gray, did you notice whether any other theaters in town besides your own were showing or issuing any two for one admissions?

A. None other than Roy Shield's theater.

Q. Do you know whether any of the theaters in town were issuing free passes?

A. Not until 1939, in June, approximately.

Q. What happened in approximately June of 1939?

A. All the Griffith houses started issuing free tickets to the Mecca Theater with each purchase of a ticket at each respective house. In other words, if you bought a ticket at any of their theaters they would give you one free to the Mecca.

Q. The Mecca at that time was charging how much admission if a person went there in the first instance without a pass?

A. As near as I can recall it was a dime, matinee and night.

Q. What did you observe about the distribution of these passes?

A. When they first started they only issued for that tickets purchased at the box office. Later their doorman and other employees just gave them out to people
1123 by the handful on the street.

Q. What did those tickets which you say Griffith was distributing call for?

A. Just a straight free ticket to the Mecca Theater.

Q. What product was the Mecca playing at that time?

A. It was playing second and first run; first run westerns and second run westerns and second run A, B, and C pictures.

Q. What was the Aztec playing?

A. First run, top allocation.

1124 Q. And what was the Chief playing?

A. Seconds, second top A pictures, first run westerns. No, the Chief, I beg pardon, they were playing B's, first run.

Q. What was the Arcadia playing?

A. Second B's.

Q. And the Criterion and the Cherokee?

A. Seconds A, first run westerns.

By the COURT:

Q. What do you mean by A and B?

A. Top allocated pictures. Of course, they had some B's included too on Wednesday and Thursdays.

By Mr. KALLIS:

Q. When you say top allocated pictures, are you referring to quality?

A. Yes, sir.

Q. Were any of the Griffith houses charged 15 cents admission at that time, and double featuring?

A. One, sir.

Q. Which one?

A. Two.

Q. Which ones were they?

A. The Arcadia and the Cherokee.

Q. And you say that these passes at that time were being distributed at every one of the Griffith theaters?

A. So far as I know, yes, sir.

Q. Did you then distribute passes yourself for

1125 your own theater?

A. The last two months that I was in operation, yes, sir.

Q. What did you charge for those passes?

A. I had a 5-cent service charge on them, sir.

Q. Now, Mr. Gray, do you know a person commonly known as Red Slocum?

A. Yes, sir, I do.

Q. Calling your attention now to the three and a half period, three and a half years while you were operating the Rivoli Theater, did you have occasion to see him in Enid?

A. Yes, sir, I did.

Q. Do you know what his business or occupation at that time was?

A. Yes, sir.

Q. What was it?

A. He was, I don't know what you would call it, front man for Griffith, I think, or "feeler outer".

Q. Do you know for a fact that he was an employee of the Griffith theaters circuit?

A. I take it for granted he was, yes, sir.

Mr. COCHRAN. We move to strike that.

By the COURT:

Q. Well, do you know what his connection was with Griffith?

A. Other than——

Q. (Interrupting.) Of your own knowledge.

1126 A. No, sir, I don't; I never did see his pay check.

Mr. KALLIS. Well, if the Court please, I request that you receive it subject to its being connected. I can do that very quickly as soon as I am through with this witness. I don't think there is any dispute as to the fact that this person, commonly known as Red Slocum, during this period, was employed by the Griffith Theaters circuit.

Mr. COCHRAN. That is a very broad term, your Honor, the Griffith Theaters circuit, because we have several defendants in this case, and at the time they are referring to, at least, a portion of this time, various companies were being operated, separately operated, and it is too indefinite entirely. If he can show, if he can testify with whom he was connected and show the authority, that's all right, but otherwise, we would like for the connection, what his connection was to be shown by the proof.

The COURT. I think it would be better to show his identity before you offer the proof.

Mr. KALLIS. I can do that, and then call the witness back later.

The COURT. Yes, I think that would be better.

By Mr. KALLIS:

Q. Well, Mr. Gray, were you personally acquainted with Mr. Slocum at the time?

A. Yes, sir.

Q. How long had you known him?

1127 A. Three or four years, sir.

Q. Where had you seen him?

A. When I first got acquainted with him he was connected with Warner Bros. as a salesman.

Q. Did you later see him at any of the Griffith theaters?

A. Yes, sir.

Q. When?

A. At various times.

Q. Where?

A. At Enid.

Q. What was he doing at these theaters?

A. I don't know, sir. That I can't answer. He was always with their manager.

Q. Well, now, did you have occasion to see Mr. Slocum in the fall of '37?

A. I did, sir, in September of 1938.

Q. What is that?

A. In September of 1938.

Q. And where did you see him?

A. At Enid, in front of my theater, the Rivoli.

Q. Did you have a conversation with him?

A. I did.

Q. Will you repeat the substance of it?

A. Everything, sir?

Mr. COCHRAN. Now, your Honor, I think probably
1128 while this witness is on the stand, subject to our motion to strike in the event he does not connect the matter up, probably we had just as well hear him on the testimony.

The COURT. Very well.

Mr. COCHRAN. But I am objecting to the testimony on the ground that the authority is not shown, and the Court may reserve the ruling on it until later.

The COURT. The testimony will be permitted with the understanding that it is to be connected up, and his connection with the defendants shown, otherwise it will be stricken.

By Mr. KALLIS:

Q. Well, limiting your testimony now to the conversations, if any, that related to the purchase of, or the purchase by Griffith of the equipment in your theater, will you please state whether or not you had a conversation dealing with that subject?

A. I did, sir.

Q. What did Mr. Slocum say?

A. He just inquired if I would be interested in selling. I said that I wasn't. And that's about all there was to the conversation.

Q. Was anything said by Mr. Slocum with reference to what intentions, if any, Griffith had with respect to this equipment?

A. Yes, sir.

1129 Q. If it purchased it from you?

Mr. DUDLEY. We object to that as leading and suggestive. Let him tell the conversation.

The COURT. Sustained. You can state what the conversation was. Just state the conversation.

A. Starting from the beginning, sir?

The COURT. Well, on this subject.

The WITNESS. Oh, I see.

By Mr. KALLIS:

Q. But, Mr. Gray, limit it to this subject matter.

A. Oh, I see.

Q. That was discussed.

A. He said, "John, would you be interested in selling your theater at the open market equipment price?" I said, "No, sir, I wouldn't," and that's about all there was, sir.

By the COURT:

Q. Was there anything else said about the theater business?

A. No, sir. We went and had a cup of coffee, sir.

By Mr. KALLIS:

Q. Well, now, directing your attention to any conversation with respect to what might be done,—

Mr. KALLIS. I understand, your Honor, the witness has exhausted his recollection, and now I would like to refer to specific——

By the COURT:

Q. Did he say anything else about the Griffiths or the theater business in any way?

1130 A. No, sir, he didn't.

By Mr. KALLIS:

Q. Well, did you later see Mr. Slocum?

A. At various times, but no further conversations on that subject.

Q. Are you acquainted with a man by the name of Claud Fulgham?

A. Yes, sir, I am.

The COURT. What is his name?

Mr. KALLIS. Fulgham; I believe it is spelled F-u-l-g-h-a-m, is that right, Mr. Cochran?

Mr. COCHRAN. I couldn't tell you.

The WITNESS. Yes, sir.

By Mr. KALLIS:

Q. Did you have a conversation with him in Enid?

A. Yes, sir, I did; he came over to the theater in April, as nearly as I can recall.

Q. Of what year?

A. Of '39; no, of '38, I beg pardon.

Q. Do you know what his position was at that time?

A. I understand that he was district supervisor or district manager for that particular set up of theaters there in Enid.

Q. You mean operated by whom?
A. Well, one of the many Griffiths, sir.

Mr. DUDLEY. If the Court please, we move that his
1131 answer be stricken, as to what he understood. That is a mere conclusion of the witness.

The COURT. Yes, that is stricken.

By the COURT:

Q. Do you know what his connection with them was?
A. Other than I worked with him, and, of course, later, I don't know whether he was in their employment or not; I never saw his pay check, so I couldn't honestly say whether he was connected with Griff or anyone else.

Mr. DUDLEY. We object to any conversation that this witness had with this party, no proper foundation having been laid.

The COURT. It will be sustained unless you can show or indicate to the Court that you will show his connection. If you can show his connection later, I will permit this testimony on the same condition.

Mr. KALLIS. If the Court please, the defendants' answers to the Government's interrogatories, I don't remember which company, but it is one of the Oklahoma defendants, specifically sets forth that Mr.—at page 3 of the answer of Consolidated Griffith Theaters, Inc., that Mr. C. O. Fulgham of Oklahoma City was a director from January 15, 1935, to the present, and this was, as I understand it, in 1943.

The COURT. Did the Consolidated do business in
1132 Enid? It is not shown. You just say the Griffiths.

Mr. COCHRAN. Those theaters up there were owned and operated by the Griffith Amusement Company, and the answers so show it.

Mr. KALLIS. And the testimony in the record so far shows that there was this interlocking relationship between these two Oklahoma companies, and also that the same agency did the buying and booking for all of those theaters that were operated by those two companies in Oklahoma.

The COURT. Being a director would not give him authority to speak for the company, unless he had some authorization. You may examine the witness and it will be subject to a motion to strike, if not connected.

By Mr. KALLIS:

Q. What conversation did you have with Mr. Fulgham at the time mentioned?
A. Oh, how's business, and this and that, and then he said something to me about wondering if I would be in-

terested in selling, and I told him I wouldn't, and that was about all.

Q. Was anything said at that time by him with reference to the purchase of your equipment?

A. No, sir.

Mr. DUDLEY. We object to that as leading and suggestive. He has undertaken to give the conversation.

1133 The COURT. He said no.

Mr. DUDLEY. His memory is being refreshed by counsel.

By Mr. KALLIS:

Q. Is that all you can recall now, Mr. Gray?

A. That's about all the conversation, outside of the weather, and various other things.

Q. Was there anything said by Mr. Fulgham with respect to competition among the various theaters in Enid, Oklahoma?

Mr. DUDLEY. That is objected to——

A. (Interrupting.) No, sir.

Mr. DUDLEY. As leading and suggestive.

The COURT. The answer is no.

A. Not at that time.

By Mr. KALLIS:

Q. Did you later have a conversation with Mr. Fulgham?

A. I did.

Q. When was that?

A. I approached him myself. That was in May, as nearly as I can recall, in May in a coffee shop located underneath the Griffith offices.

Q. Here in Oklahoma City?

A. Yes.

Q. May of what year?

A. '39.

1134 Q. Will you please state the conversation, in substance?

A. I approached him myself; I said, "Claud, is there anything we can do about these free tickets, double bills, and the price war in Enid?" He said he didn't have nothing to do with it, that he wasn't interested; that is, he refused to discuss it. And I said, "Well, I have stopped all of mine and went back to single bills, and I am going to try it that way awhile, and maybe the others can come about." And he never answered me, he wouldn't discuss it. Then he did say this, he says, "Well, would you be interested in selling now?" I said, "Well, I might, at my figure." And he said, "What figure is that?" so I quoted him a figure and he says, no, we—he used the word "we"

he said, "We will give you open market price for your equipment." And during the conversation evidently I irked him a little on the free tickets or something, and I got back to that subject again, sir, about eliminating all of them, and he made the remark to me, he says, "We are out to get all of you boys; you are trouble makers." And that was about all the conversation, sir.

Q. And you sold your theater then in July of 1940 to Mr. Shield?

A. Yes, sir, I did.

Q. Will you please state how much product was available to you at that time for the Rivoli Theater?

A. Do you mean in 1940, in July?

1135 Q. Yes, sir.

A. Very little left, sir.

Q. Did you observe anything with reference to the continuance of the distribution of these free passes by the Griffith Theaters after you sold your theater in July of 1940?

A. I would say several weeks later they were discontinued.

Q. Well, by several what do you mean?

A. Well, two or three or more. I don't recall the exact time because I was not interested any more.

Q. Do you know whether the Rivoli Theater was closed after you sold to Mr. Shield?

A. About a month or so later he closed it, yes, sir.

Q. What, if anything, did you observe with reference to the admission prices of the Griffith Theaters in Enid?

A. As nearly as I can recall the Cherokee raised its price up to 20 cents in the course of two months after my sale.

Q. What about the Mecca?

A. It went to 15 cents.

Q. The Arcadia?

A. I don't know about that. It was 15 all the time I think.

Q. And the Chief?

A. I don't know. They didn't reduce their prices over there that I know of.

1136 Q. That is all.

Cross-examination by Mr. COCHRAN:

Q. Just before you opened your theater in Enid, you had been operating theaters in two or three towns, had you not?

A. Yes, sir.

Q. What were those towns?

A. Covington and Marshall, Oklahoma.

Q. When did you open the theater in Covington?

A. I didn't open it. You mean when I took charge?
Q. When did you take charge?
A. December of 1934.
Q. When did acquire the theater at Marshall?
Mr. KALLIS. I object to these questions on the ground they could not possibly relate, even indirectly, to anything covered by this witness on direct examination.
The COURT. I think it is proper cross examination. It may go to the credibility of the witness or his experience in the theater business.
A. About the middle of February or June, that is the Marshall situation.

By Mr. COCHRAN:

Q. Of what year?
A. Of 1935.
Q. That was prior to the time you went to Enid,
1137 wasn't it?
A. Yes, sir.
Q. And you acquired the interest in Enid in June of 1935?
A. No, sir, July 14 is when I opened. I was there working several months before I opened.
Q. In July of 1935, and your interest in Marshall was acquired in February, 1935?
A. About the middle, yes, sir.
Q. Just prior to the time you had been employed in what capacity and by whom?
A. By the Griffith Amusement Company.
Q. At what place?
A. At Enid, at the Mecca Theater.
Q. In what capacity, manager?
A. Yes, sir.
Q. Manager of the Mecca Theater?
A. Yes, sir.
Q. Then after you left the Griffith employment in Enid you interested Roy Shield in furnishing some money which you used in connection with a small amount of your own funds, did you not, to acquire the theater at Covington?
A. I beg your pardon. I matched his money dollar for dollar and I used all my credit. He didn't use his credit.
Q. How much money did you put into the Covington situation?
1138 A. About $750 apiece.
Q. What theater did you acquire there?
A. The Covington Theater, the same name as the town.
Q. That was the only theater in the town, wasn't it?
A. Yes, sir.
Q. How long did you operate that theater?

A. Until about the first of July of 1935.

Q. Did you license any product for that theater during the time you were operating it?

A. Yes, sir, I did.

Q. From what companies?

A. Fox, Paramount, Warner Brothers, Metro, and Universal.

Q. You had product first run there, didn't you?

A. Yes, sir.

Q. And when you discontinued your operation of that theater in July, 1935, there were a considerable number of pictures on your contract for the season of 1934 for that theater which had not been played, were there not?

A. I don't recall that. I will put it this way: Mr. Weimier and Mr. Grant that bought me out, they assumed all contracts, at least they said they would, I don't know whether they did or not.

Q. Did you have a written agreement with them that they would assume it?

1139 A. Yes.

Q. Do you know whether that contract you made with Warner, and the one you made with Paramount and the one you made with Fox were either played out or paid for?

A. That I couldn't answer. I never was approached on it.

Q. Then shortly before you sold out at Covington—how much did you pay for that theater when you acquired it?

Mr. KALLIS. I think that is immaterial.

The COURT. I don't think it is material.

By Mr. COCHRAN:

Q. Did you sell that theater for a loss or profit?

Mr. KALLIS. I think that is immaterial, and I object to it.

The COURT. Overruled.

A. I didn't sell any loss, no, sir.

By Mr. COCHRAN:

Q. Did you make anything on it?

A. Yes, sir.

Q. How much?

A. That I couldn't tell you. It wasn't very much.

Q. Then your theater at Marshall, how long did you operate that?

A. To June of the same year, 1935.

Q. You operated there from February, 1935, to June, 1935?

A. Yes, sir.

1140 Q. Did Mr. Shield have an interest with you there?

A. Yes, sir.

Q. How much money did he furnish on that deal?
A. I think $100, as well as I can remember.
Q. How much did you furnish?
A. The same amount.
Q. How much credit did you put in on that? In other words, how much did that theater cost you?
A. I just don't recall, it wasn't very much, five or six hundred dollars.
Q. Did you sell that theater?
A. They assumed charge of it in the deal back.
Q. You turned that back to the people?
A. No, I beg your pardon, I did not. I made a deal with the man that owned the seats and I moved those to Enid.
Q. During the time you were operating those two theaters you had dealings with the representatives of Fox, Paramount, Warner, Metro and Universal, did you not?
A. Yes, sir.
Q. And the other major companies?
A. Yes.
Q. When you went to Enid you opened a theater that had been known as what?
A. A cafe had been there. It was a vacant building.
1141 Q. And you converted that into a theater?
A. Yes, sir.
Q. Did you remodel the front?
A. Yes, sir.
Q. What other investment did you make in the theater, you and Mr. Shield, at that time?
Mr. KALLIS. I don't see how this bears upon any of the details in this case and I object to it.
Mr. COCHRAN. It is offered for this purpose. We are certainly entitled to show that the theater was inadequately financed. It certainly is a material thing to be taken into consideration in determining the run or whether anyone is going to be licensed to this exhibitor or those exhibitors and so forth. It is just a circumstance to be considered. The financial condition of an exhibitor is recognized, even in the consent decree, as being a matter which can be taken into consideration.
The COURT. You may state what your investment was there in that theater.
A. I don't recall. I don't even have those records. Mr. Shield has all those records.
By the COURT:
Q. Do you know what the consideration was?

A. No, sir, I don't. There was very little cash involved; probably $1500 actual cash.

1142 By Mr. COCHRAN:

Q. About $1500?

A. And lots of credit, just lots of credit. That is what you wanted, isn't it? I had very good credit.

(Hereupon court adjourned until 2 o'clock p. m. this day.)

1143 AFTERNOON SESSION

May 16, 1945, 2:00 o'clock p. m.

PROCEEDINGS

JOHN GRAY, a witness on behalf of the plaintiff having been previously duly sworn, was re-called and was examined and testified as follows:

Cross-examination by Mr. COCHRAN:

Q. When the Rivoli first opened, you were managing it?

A. Yes, sir.

Q. How long did you continue to manage it?

A. Until I sold out.

Q. What was that date?

A. July 6, 1940.

Q. I evidently have the wrong theater in mind; I mean the one that you went into first with Mr. Shield.

A. Oh, the Gray's?

Q. The Gray's.

A. Do you mean when——

Q. (Interrupting) What was that theater named before you took charge of it?

A. There was no theater there, sir.

Q. Oh, it had never been used as a theater?

1144 A. No, sir.

Q. Then how long did you manage that theater?

A. Until the first of September of the next year.

Q. A little more than a year?

A. Yes, sir.

Q. What was your reason for selling that theater?

Mr. KALLIS. If the Court please, I don't think that is material under the direct examination.

The COURT. Unless it has something to do with the questions in this case. Was it a voluntary sale on your part?

A. Yes, sir.

By Mr. COCHRAN:

Q. Was there any difference between you and Mr. Shield resulting in that?

Mr. KALLIS. We object to that, your Honor.

By Mr. COCHRAN:

Q. Your partner?

The COURT. Overruled.

A. Not particularly.

By Mr. COCHRAN:

Q. Was there some disagreement? I don't care about the details, just state whether there was.

A. There could be on his part.

Q. Well, was that the reason for selling out to Mr. Shield?

A. No, sir, it wasn't.

1145 Q. Then when you sold to him he paid you with a check, did he?

A. Yes.

Q. And in that sale you agreed you would not compete further with him in the City of Enid?

A. I did not, sir.

Mr. KALLIS. I object to that. That is clearly unrelated to any of the issues in this case and does not bear in any respect upon the direct testimony.

The COURT. It might go to the credibility of the witness as to his good faith in going back into the business and so forth. Overruled and exception allowed.

By Mr. COCHRAN:

Q. Wasn't that endorsed on the check?

A. No, sir, it wasn't, at the time I accepted the check.

Q. But you had no agreement of that kind with Mr. Shield?

A. No, sir.

Q. Then after you sold Gray's Theater what did you do from that time until the time you came back in there and opened another theater?

A. Looked for another location.

Q. Had you gone into another town and made any location?

A. I sure did.

1146 Q. What town?

A. Bristow.

Q. Any other town?

A. No, sir.

Q. And then you came back to Enid?

A. Yes, sir.

Q. And you opened a theater which had been previously operated as the Rita?

A. Yes, sir.

Q. That theater was operating in Enid at the time you and Mr. Shield opened up the Grays Theater, was it not?

A. As well as I can remember, yes, sir.

Q. And continued to operate until shortly before you acquired it?

A. I believe so, yes, sir.

Q. It was operated by Mr. Max Berger for several years, was it not?

A. I believe so, yes, sir.

Q. When you opened the Grays Theater you played the product which had been previously used by Mr. Berger in his theater, did you not?

A. I don't remember. I don't think so.

Q. Do you know what product he was playing in his theater when you went into Enid with the Grays Theater?

A. No, sir, I don't.

1147 Q. You don't know what run he was playing?

A. No, sir.

Q. Or the product of what distributor?

A. No, sir.

Q. When you opened the Grays Theater, in addition to the product which you have heretofore mentioned, you also had the first run of Sach's, did you not?

A. Yes, sir. Independent.

Q. The first run of Allied?

A. No, sir, I don't know what run that was. Some of it had been run eight times there.

Q. The Allied?

A. Some of it, yes, sir.

Q. You mean by that the Allied was at that time licensing pictures which had been released by the various producers, some of which had been run in the town previously?

A. Yes, sir.

Q. Did you license some Square Deal?

A. Yes, sir.

Q. Did you license Grand National?

A. Yes, sir, first run.

Q. Monogram?

A. A few.

Q. P.R.C.

A. No, sir.

1148 Q. P.R.C. was releasing at that time, wasn't it, distributing product?

A. I just couldn't say.

Q. Astor?

A. I played a few of those, yes, sir.

Q. First run?

A. No, they seemed to have been played there before.

Q. Did you tell us the product that you licensed for the season of 1939-40?

A. At the Rivoli?

Q. Yes, for the Rivoli.

A. Yes, sir. Can I or did I?

Q. Did you?

A. Yes, sir, I did.

Q. I didn't make a note of it. '38–39 was the last that I noted. For the '39–40 season what product did you have licensed for the Rivoli?

A. Metro, Universal, some United Artists and some RKO.

Q. And you also had independent product, didn't you?

A. Just about all played then. I might have had a few left.

Q. They were independent pictures that were released during the 1939–40 season, weren't they?

A. Oh, I had not bought all of them.

Q. They were available, weren't they?

1149 A. I think so, yes, sir.

Q. At the time that you sold out your interest in the Grays Theater to Shield, that theater had a contract for RKO pictures, didn't it?

A. I had some. I don't know whether I had played them all or not.

Q. Don't you know after you had opened the Rivoli Theater that you played pictures which you had licensed from RKO for the Grays and the Rivoli Theaters?

A. I did? I didn't know that, sir.

Q. Is that a fact?

A. I don't know. You surprise me.

Q. You have no knowledge of that?

A. No, sir. I sure don't.

Q. It is a fact from that time until you sold out you were playing RKO product?

A. Yes, sir.

Q. In the Rivoli?

A. Yes, sir.

Q. And were playing it ahead of Grays?

A. I don't know whether I was playing it ahead of them or not. I didn't know they had a contract on it.

1150 Q. Anyhow, you know that they didn't play any RKO ahead of you?

A. Not that I know of; not if I could help it.

Q. When you came back into Enid after you had sold out to Mr. Shield, there was a time when the feeling between you and Mr. Shield was not very good, wasn't there?

Mr. KALLIS. We object to that, your Honor.

A. That's all right; let me answer it. I liked him, I still do; he didn't like me. That's the answer. I am very fond of him.

By Mr. COCHRAN:

Q. Feeling on his part wasn't good beginning with what time?

A. When I started to remodeling the old Rita.

Q. To go into competition with him?

A. Yes, sir.

Q. Did you at sometime about 1939 or '40 go into Kaw City to make a location for a moving picture house?

A. '36.

Q. In 1936?

A. The tail end, December, yes, sir.

Q. Did you open a theater there?

A. Yes, sir.

Q. Did you make some contracts with the film companies?

A. Yes, sir.

Q. Your answer to that was yes?

1151 A. Yes.

Q. What companies did you make contracts with?

A. Republic, Metro, Universal, and United Artists.

Q. Did you play any of those pictures?

A. I sure did, sir.

Q. How long did you operate there in Kaw City?

A. Four or five months.

Q. Did you play the contracts, complete the contracts?

A. No, sir.

Q. And then what became of that theater?

A. The theater?

Q. Yes.

A. Do you mean the entire proposition?

Q. Yes.

A. The man that built the building absorbed the contracts and took over.

Q. Did you sell out to him?

A. Yes.

Q. How many theaters were operating in Kaw City at that time?

A. That was the only one.

Q. Did you buy out a theater when you went in there?

A. No, sir.

Q. There hadn't been any operating?

A. No, sir.

1152 Q. So that was the only theater?

A. Yes, sir.

Q. You started it up and sold it out?

A. Yes, sir.

Q. Did you go into Broken Arrow with a theater?

Mr. KALLIS. If the Court please, I still object on the ground of its immateriality. I don't see how that bears on any issue in the case. It certainly wasn't covered in any respect on the direct examination.

The COURT. It goes to the credibility of the witness. Overruled.

A. I didn't go into it; I kind of represented a young boy that was working for me.

By Mr. COCHRAN:

Q. Did you then sell out?

A. I didn't sell out, sir; he did, or run off and left it, I don't know what he did with it.

Q. Did you make some contracts for that situation with the film companies?

A. I don't recall that, sir, no, sir. There is contracts existing, and I think I helped him go and book possibly two months of them.

Q. Who signed the contracts?

A. I don't remember. I think most of the contracts were existing at the time.

Q. But you did represent him in booking the pictures?

1153 A. More or less, yes, sir.

Q. And those contracts were not completed by him?

A. I couldn't say.

Q. Did you say he ran away or something?

A. He left; I don't know where he went.

Q. What became of the theater?

A. It is still running, so far as I know.

Q. Did he sell out or you sell out?

A. There was no selling. He didn't have an agreement to operate it other than verbal, and this woman took it back and operated it.

Q. It was turned back to the person from whom it came?

A. That's right, as well as I remember.

Q. Were you interested in that transaction in any way?

A. No, sir.

Q. Except the booking and managing?

A. No, not the managing, just helping him out and loaned him a little money.

Q. Helping the boy?

A. Yes, sir.

Q. Did you do any licensing of the product at all?

A. I might have, but I don't recall.

Q. Then did you go into Hollis?
A. No, sir. I would like to.
Q. Did you have any dealings about locating a
1154 theater in Hollis?
A. What kind of dealings, do you mean?
Q. Where you obtained a location for a theater?
A. Yes, sir, I did.
Q. When was that?
A. I don't remember.
Q. Well, was it about the time, in 1938, or '39?
A. It could have been.
Q. Or was it shortly after you sold out the interest in the Gray's to Mr. Shield?
A. No, it was later than that.
Q. All right, you obtained a location, and then did you make any contracts for a theater there?
A. No, sir, I didn't.
Q. Did you sell out to some one on that location?
A. No, sir.
Q. Then did you go to Woodward?
A. When?
Q. Woodward?
A. Later on, I sure did, sir.
Q. About what year?
A. It was in '38.
Q. Did you open a theater there?
A. No, sir.
Q. You sold out or rather——
1155 A. (Interrupting) We swapped dollars on the expenses.
Q. You received $250 about for not going in?
A. I believe that's right, that's about what it cost me.
Q. Griffith Amusement Company didn't operate in any of those towns, did it?
A. No, sir.
Q. Now, how about the town of Lindsey, did you have any experience there?
A. Yes, sir.
Q. When was that?
A. I believe that was in '37 or '38; I don't recall the exact time of year.
Q. What occurred in that location?
A. What do you mean?
Q. Did you acquire a theater there?
A. Sir?
Q. Did you acquire a theater there or an interest?
A. I acquired an empty building.

Q. And started to put in a theater?
A. I didn't get it started.
Q. What happened?
A. I just changed my mind.
Q. Did you sell out to some one?
A. No, sir.

Q. Did you make any contracts?

1156 A. No, sir.

Q. Along in 1939 and '40, in addition to your operation of the Rivoli Theater in Enid, you were also engaged in some kind of a vending machine operation, were you not?
A. Yes, sir.
Q. When did you start that venture?
A. In '39, I think.
Q. And did that continue until you sold out the Rivoli?
A. Yes, sir, uh-huh.
Q. You, as I understand it, said that the admission price in one of the Griffith theaters was changed immediately after the Rivoli closed. I believe you said that was the Cherokee Theater. Was that your testimony?

A. Yes, sir.

1157 Q. Mr. Gray, are you sure about your dates on that?

A. No, sir, I am not.
Q. Will you say this is not a fact, so far as the Cherokee is concerned, that that admission price was 20 cents for sometime before you made your sale of the Rivoli?
A. Sometime before, yes, sir.
Q. It was 20 cents.
A. But it finally went down to 15 cents.
Q. Between that time and the time you sold?
A. Yes, sir, and a dime for matinees to 6:00 p. m., yes, sir.
Q. When was that admission price reduced on the Cherokee from 20 cents to 15 cents and a dime on matinees?
A. I couldn't give you the definite date on it. Approximately a year after it had been opened; early '39 possibly.
Q. And isn't it a fact that admission price for the Cherokee was changed back to 20 cents on or about May 12, 1939?
A. I don't think so.
Q. You could be mistaken about that?
A. I could be but I don't think I am.
Q. That is all.

Re-direct-examination by Mr. KALLIS:

1158 Q. Mr. Gray, Mr. Cochran asked you what you played in the '39–40 season. Now, you were operating until July of 1940. Is that right?

A. Yes, sir.

Q. And during the motion picture season of '39–40 did you play any '39–40 releases?

A. Yes, sir.

Q. Regular season's deals?

A. Yes, sir.

Q. What were they?

A. Metro. You want the runs?

Q. No, I think you covered that in your direct examination.

A. Yes, sir, I did. Metro, Universal, United Artists and RKO.

Q. Were these '39–40 releases or '38–39 releases?

A. Some of them were '39–40, the Metro and I believe Universal, but I am not sure about RKO.

Q. Have you testified that during the three and a half years which you operated the Rivoli in Enid between February of '37 and July of 1940, you had for each year a third run of Universal and a third run of Metro; for the '38–39 season a first and second run of RKO. Is that right?

Mr. COCHRAN. We object to that as repetition and a summarization and so forth.

The COURT. I think it is merely repeating his testimony.

1159 Mr. COCHRAN. In other words, it means I will have to go back and pick up any inaccuracies and follow it through for each season.

By Mr. KALLIS:

Q. The question I want to ask you now is, you played this product after these various incidents which Mr. Cochran mentioned, pertaining to Woodward, Lindsey, Broken Arrow, Kaw City and Hollis?

A. Yes, sir.

Q. And during that period of three and a half years you had business dealings with every one of the eight major companies except Columbia, is that right?

A. More or less, yes, sir.

Q. You did play the product of every major company except Columbia?

A. A little from each one, yes, sir.

Q. And with reference to the theater situation in Enid since you sold out to Mr. Shield in July of 1940, has anyone besides Mr. Shield and the Griffith people operated any theaters in Enid?

A. You mean came in after I sold out the last time?

Q. Yes, sir.

A. Not that I know of.

Q. And with reference to the product which Mr. Cochran inquired about on cross examination, namely, Sacks, Allied, Square Deal, Grand National, Monogram and Astor, all of the time you were in Enid do you know whether the Griffith Theaters played any of that product?

A. I am not positive, no, sir, that they did.

Q. You don't know that they did?

A. No, sir, I don't know definitely.

Re-cross-examination by Mr. COCHRAN:

Q. When you opened the Grays Theater you were not able to obtain any Warner pictures, were you, or Vitagraph pictures?

A. I made application for it but it was rejected.

Q. They rejected your application?

A. Yes, sir.

Q. You made application for Columbia, didn't you?

A. No, sir.

Q. You didn't obtain any Columbia, did you?

A. No, sir.

Q. Did you make any application for Fox?

A. No, sir.

Q. You didn't obtain that, did you?

A. Not right away I didn't. I did a few months later.

Q. So far as Fox and Warner were concerned, you obtained very few pictures during the entire time you were operating in Enid, isn't that true?

A. I played quite a few from Fox, none from Warner or Columbia.

Q. Now, talking about playing a product, what was the date of that sale in 1940?

A. July 6.

Q. From January 1, 1940 to July 6, 1940, you played in the Rivoli Theater, major run product on the policy of three changes a week, double bill every day? Isn't that true?

A. Not every day, no, sir.

Q. That was your regular policy, wasn't it?

A. I don't understand what you mean by regular policy. My policy is different from your policy. When you say a policy you mean day in and day out continuously?

Q. I am asking about day in and day out. With very few exceptions during the period I am inquiring about you didn't play double bills?

A. With very few exceptions, I did.

Q. And that was the product of——

A. The major companies and some independents too.

By the COURT:

Q. Did you have any trouble during that period of last year, prior to July 6, 1940, in getting pictures?

A. No, sir, I didn't.

By Mr. COCHRAN:

Q. The only so-called independents you were playing during that time were the Monogram, wasn't it?

1162 A. I think so. I think maybe I played a few Square Deals too; I am not sure.

Q. You are now operating a theater at Chickasha?

A. Yes, sir.

Q. That is all.

Re-direct-examination by Mr. KALLIS:

Q. How long have you operated a theater in Chickasha?

A. A little over four years.

(Witness excused.)

Mr. WRIGHT. We offer in evidence Plaintiff's Exhibit No. 280, an agreement dated July 15, 1940, between the Griffith Amusement Company and the Texas-Oklahoma Enterprises, Inc. and Roy Shield, that has been produced by counsel for the Oklahoma City defendants, and which relates to the joint operation of Shield's theater and two of the theaters operated by Griffith.

1163 Mr. COCHRAN. What is the date of that instrument?

Mr. WRIGHT. The date is July 15, 1940. It is signed I believe, on behalf of Griffith Amusement Company by Mr. McKenna as vice-president and on behalf of Texas-Oklahoma Enterprises, Inc. by Mr. Underwood.

Mr. COCHRAN. With the understanding that I am not waiving the point that these transactions subsequent to April 1939 are not within the issues, we have no objection. In other words as stated heretofore in regard to similar matters, I think it is competent as a matter of history, showing the entire history of the transaction, but it is my contention that it is not within the issues.

The COURT. Very well, let it be admitted.

ALEXANDER A. MOULDER, called as a witness by and on behalf of the plaintiff, and being first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct examination by Mr. WRIGHT:

Q. Will you state your full name, please?

A. Alexander Moulder.

Q. Where do you live?

A. Sapulpa.

Q. What is your occupation?
1164 A. Theater manager and owner.
Q. Of what theater?
A. The Criterion Theater.
Q. At Sapulpa?
A. Yes, sir.
Q. How long have you been in the theater business there?
A. Ever since 1900.
Q. What other theaters there besides the Criterion have you operated?
A. Now?
Q. No, had you operated in the past?
A. The Empress Theater.
Q. The Empress?
A. Yes, sir.
Q. And how long did you operate the Empress?
A. Every since 1911 to 1932.
Q. Then you acquired the Criterion when?
A. Sir?
Q. When was it you got the Criterion?
A. September 12—do you mean when I opened the Criterion or when I went in there?
Q. Yes.
A. When I went into the Criterion, September 12, 1931.
Q. Now, was there always an opposition theater in the town there?
1165 A. Yes, sir.
Mr. COCHRAN. Just a minute. Give me that question and answer, will you, please?
(Last question and answer read by the reporter.)
By Mr. WRIGHT:
Q. In 1931, what was the name of the opposition theater?
A. The Yale Theater.
Q. The Yale, and who was operating it, do you know?
A. Charlie Blaine and Jimmy Zartaludes.
Q. That was in 1931; then you were operating after you opened the Criterion, the Criterion and Empress, and Mr. Zartaludes was operating the Yale?
A. Yes, sir.
Q. Can you describe generally those theaters as they existed then?
A. Well, I have always run a first run theater.
Q. I mean the physical characteristics of the theaters, the size and the kind of equipment, and so forth.
A. The Criterion Theater has 1200 seats, the Empress 450.
Q. And the Yale?

A. Around about 750, I think.

Q. And which of these theaters is the best from the standpoint of equipment and general attractiveness?

Mr. COCHRAN. If the Court please, I think it would
1166 be better just to state how each is equipped.

The COURT. Well, he might express his opinion about it, if he is not too modest.

A. Well, I wouldn't like to answer that. I think both houses are equipped very nicely.

By the COURT:

Q. You owned the Criterion and the Empress?

A. Yes, sir.

Mr. COCHRAN. He is talking about the Criterion and the Yale when he said both houses, is that right?

The WITNESS. Yes, that's right.

By Mr. WRIGHT:

Q. Then, can you tell us what pictures were playing there at those theaters for the '31–32 season, what major product, if any?

A. I think I can. Fox, Paramount, Metro, United Artists, and a few of some of the others, I just don't recall who they were, but that was my stand-by, the ones I have first mentioned.

Q. Did you have Columbia?

A. I think I played a few Columbia, not all of them.

Q. You say you were playing those first run at the Criterion?

A. I was playing part of them at the Empress.

Q. You had some at the Empress?

A. Yes.

Q. Until the Empress was closed?

1167 A. Yes, sir.

Q. When was that?

A. It was closed in the fall of 1932.

Q. And the other product, major product, was played first run by the Yale?

A. The Yale Theater, yes, sir.

Q. Those were the only theaters in the town?

A. Yes, sir, that's right.

Q. How long had you been playing Metro pictures there, since the 1931–32 season?

A. Ever since they have been in business.

Q. I will show you this contract that has been marked for identification as Plaintiff's Exhibit No. 237, and ask you if you recognize that as the Metro contract you had for the '31–32 season?

A. Yes, sir.

The COURT. 237 you say?

Mr. WRIGHT. The number is 237, yes, sir. I will offer Plaintiff's Exhibit 237 in evidence.

Mr. COCHRAN. No objection.

By Mr. WRIGHT:

Q. Do you remember when Griffith became interested in Sapulpa?

A. No, I don't recall, I don't really say that I can tell you the date; I think in '32. Maybe the spring of '32, or it might have been the fall of '31.

1168 Q. Now, were you offered first run of the Metro product for the '32–33 season?

A. No, sir.

Q. Did you make any efforts to buy Metro that year, for that year?

A. Yes, sir.

Q. Just tell us what you did as nearly as you can recall.

A. Well, we came in to Oklahoma City to buy the product. Mr. Zoellner wasn't in, hadn't been all day. We tried to catch him.

Q. Who was Mr. Zoellner?

A. He was manager of Metro, that's right, manager, MGM. So we written a letter to him later and he referred it to some one in New York, Conners I believe it was; we also written Mr. Conners in New York, who was to be in Oklahoma City and then he would call us and we was to come over to Oklahoma City and talk.

Q. Did you ever hear from him?

A. I never did. He was here but he didn't call us up.

Q. You didn't see him?

A. No, sir.

Q. Did the Metro pictures start to playing that season at the Yale Theater?

A. Yes, the season of '32–33 was sold at the Yale Theater.

1169 Q. And then after the Yale began playing them, did you do anything further to attempt to get the Metro pictures?

A. Yes, sir, we made, we made another trip or two into Oklahoma City.

Q. Did you consult an attorney?

A. Yes, sir; that was before that, that we consulted an attorney, that was the same day we was here to buy pictures.

Q. Who was the attorney you talked to?

A. Earl Foster.

Q. And after you talked to Mr. Foster, did you and Mr. Foster have a conference with the attorneys for the Griffith people?

A. We went over to D. I. Johnston's office.

Q. When was that?

A. The same day when we were here.

Q. See if you can fix the time of year as nearly as you can?

A. Well, it was during the buying season, I would say in the fall of '32, along maybe August or September.

Q. Now, who went over to Mr. Johnston's office?

A. Mrs. Moulder, Earl Foster and myself.

Q. Who did you see there?

A. Mr. Johnston, D. I. Johnston, they called him.

Q. Can you tell us what was said at that time, as nearly as you recall?

Mr. COCHRAN. We object, if the Court please, there
1170 is no proper foundation laid for this, or any showing of authorization of Mr. Johnston to act for these defendants, or any of them.

The COURT. How would you connect Mr. Johnston?

Mr. WRIGHT. Well, we expect to show that at that time Mr. Johnston was counsel for the defendant companies.

Mr. COCHRAN. It has not been shown. Even though he was attorney for them, unless he had specific authority——

The COURT (interrupting.) Why would the attorney have power to speak for the principals?

Mr. WRIGHT. I think it will appear from the conversation that he did speak for the Griffiths on this occasion.

Mr. COCHRAN. You can't prove agency by the statement of the purported agent.

Mr. WRIGHT. We expect to tie this up, of course, to show that he was speaking for them at the time.

1171 The COURT. I will let you make the offer and it will be subject to a motion to strike.

Mr. WRIGHT. You may answer.

(Question read as follows: What was said at that time, as nearly as you recall?)

A. We explained our troubles to Mr. Johnston, who we were told was the attorney for the exhibitor and the film companies, so we explained our troubles and he picked up the phone and he called the Griffith exchange or their office. In the conversation he told us we could have Columbia pictures; that he would release Columbia pictures and let us have Columbia pictures.

Mr. COCHRAN. Is that all you want to offer?

By Mr. WRIGHT:

Q. Was that all that was said then?

A. Well, there was quite a bit of conversation went on but I don't recall everything.

Q. Do you know whom he talked to at the Griffith office?

A. No, I do not.

Q. After he had talked is that what he said they would release——

A. That is what he told Mr. Foster, our attorney, and my wife and myself.

Q. That Griffith would release Columbia pictures to you?

A. Yes.

1172 Q. Then after that did you get Columbia features?

A. Yes, sir.

Mr. COCHRAN. Wait just a minute. I expected to make a motion when he finished with his offer.

Mr. WRIGHT. I take it this is being received subject to connection, isn't it?

Mr. COCHRAN. No, the Court sustained the objection.

Mr. WRIGHT. I didn't understand the objection had been sustained.

The COURT. No, I didn't sustain the objection. I said I would let him make the offer and it would be subject to a motion to strike.

Mr. COCHRAN. We move now to strike it because there is no proof of authority and there can be no proof of authority in this case. They have shown no foundation for any statement in connection with the matter so far as these defendants are concerned.

The COURT. The objection will be sustained and exception allowed. The record is made.

Mr. WRIGHT. Is the theory on which the objection is sustained that it is a matter of order of proof here because we put this witness on——

The COURT. There is no evidence here Mr. Johnston represents any of these defendants or had power to act for any of these defendants.

1173 Mr. WRIGHT. I said we expected to connect that up. The theory on which the evidence is now being excluded is one of order of proof? In other words, am I supposed to make the connection and then bring him back here?

The COURT. I will do this. I will just reserve a ruling on the objection.

Mr. WRIGHT. I think that would be preferable, and then we would not have to bring the witness back again.

Mr. COCHRAN. That makes it necessary for us to wade through this record to find out where reservations have been made, and I take it it will probably be considered as in unless we raise it again.

The COURT. The record will show that the ruling is reserved on this question. The plaintiff cannot put all of the evidence on at one time. I appreciate the scope of this case.

Mr. COCHRAN. I waived in two instances but here is a case which is so clear and apparent, that he would have no right to bind his client in a matter of this kind at all.

The COURT. I agree with you under the present status it is not competent. You may proceed.

By Mr. WRIGHT:

Q. Then were you ever offered Metro pictures on first run, after that?

A. No, sir.

1174 Q. The '31–32 season, or from that season through the '38–39 season, did you have any deal with Metro for first run pictures?

A. After '31–32, you say?

Q. Through '38–39.

A. We bought a group of 11 pictures, I think, later on.

Q. I am talking about the period '32–33 through '38–39, those seasons.

A. No.

Q. And none offered to you during those seasons?

A. No, sir.

Q. And they continued to be played during those seasons at the Yale Theater?

A. Yes, sir.

Q. When was the first occasion that you recall when you were approached by any representative of the Griffiths with respect to a purchase of your theater?

A. Well, sometime in 1937. You mean a representative?

Q. Well, the first time one of the Griffiths or anyone connected with their organization talked with you about buying your theater?

A. I think I talked to Mr. L. C. maybe, and R. E. maybe, along in different years.

Q. But you don't remember those conversations specifically until 1937?

1175 A. Yes. He might have said to us that he would like for us to come into his organization; be partners with him or something of that kind.

Q. When you say "he" whom are you referring to?

A. To me.

Q. I say whom? Who said this to you?

A. Mr. Griffith. We had talked about it.

Q. Which one, do you remember?

A. Mr. H. L. and R. E. both, both the brothers.

Q. H. J. you mean?

A. H. J., that came in later, in '37.

Q. Calling your attention to the year 1937, can you tell us what the admission price policy was for that theater, which was then the Criterion, I believe, and the Yale?

A. I think the prices on Sunday, Monday and Tuesday and Holidays were 30 cents. They may have been 25. I am not sure. There was one time there we were running 25 and then later 30; I don't recall.

Q. At the Criterion?

A. Yes, sir, and the Yale too.

Q. Charging the same price?

A. Yes, sir.

Q. Those were the only two theaters then operating in the town?

A. Yes, sir.

1176 Q. Then in 1937 you say someone from the Griffith organization talked to you about a purchase. Do you remember what month it was, the first time?

A. Well, we had Red Slocum there and we had H. J.

Q. When did Red Slocum come over?

A. Well, it was early, I believe, in 1937; maybe in April or May.

Q. Came over to see you at the theater in Sapulpa?

A. Yes, sir.

Q. Who else was present then?

A. Just me.

Q. Do you remember what he told you?

A. Yes. He came in and said he wanted to buy my theater and was going to eliminate competition in Sapulpa.

Q. What did you say?

A. I told him all right, I would sell.

Q. Did you discuss any terms?

A. Yes. I told him I wanted $75,000. He offered me $25,000. I don't know whether he made me an offer or not. I am not certain about that.

Q. At that time?

A. No, sir, I don't remember.

Q. Later on that year did you hear from anyone else in the Griffith organization?

A. Well, H. J. came in.

1177 Q. When did he come over?

A. He was there two different times.

Q. When was the first time?

A. Well, just a little bit after that. I would say in June, maybe, one time, or maybe July or August the second time.

Q. Was there anybody with him the first time?

A. Yes. I think Fulgham was with him maybe one time and Mr. McKenna the next time.

Q. You think Fulgham was with him the first time?

A. And McKenna the second time or it might have been vice versa; I don't know.

Q. Where did they see you the first time?

A. In my office.

Q. In Supulpa?

A. Yes, sir.

Q. What was said then?

A. I believe the first time Mr. H. J. was there we did talk about a partnership maybe; that we would go one-third around; a third to Mr. Zartaludes; a third to the Griffiths and a third to myself and pool the two theaters and I couldn't see it. I asked him why it should not be a fifty-fifty proposition inasmuch as I had the largest house. We could not agree. I don't know of any other conversation that I can remember that first time.

1178 Q. Then you saw him again?

A. Later.

Q. How much later was that?

A. It must have been 30 days later.

Q. That would be about when in 1937?

A. I would say July or August of 1937.

Q. Then on the second occasion was that at the same place?

A. Yes. That happened on a Saturday, whatever day that was.

Q. Was there anybody else present?

A. I believe Mr. McKenna was along at the time.

Q. You think Mr. McKenna, Mr. J. H. Griffith and anyone else?

A. My wife was there.

Q. What was said then?

A. Well, there was quite a bit of conversation went on. At that time he wanted to buy us out. He offered me $25,000 and I wanted $75,000.

Q. When you say "he," whom are you referring to?

A. How is that?

Q. Whom are you referring to by "he"?

A. Mr. Griffith, H. J., and we could not come to terms. Then I suggested to him, "How about a partnership" and he said, "Well, we don't want two partners in the

1179 same town; but we are satisfied with the one we have" and later he says, "Well, Speedy, we will lower the admission price in the Yale Theater and build another theater in the town and buy your pictures out from under you," and he says, "Where will you be then?" I said, "Well, that is for me to worry about." I believe he told me at the same time that I didn't have a good lease, and I told him that I did.

Q. The Criterion was leased from someone else, was it?
A. Yes, sir, a ten year lease.
Q. Was anything said there about the lease?
A. That was all.
Q. Then what, if anything happened with reference to the admission prices at the Yale Theater when they left?
A. Well, the admission price on Wednesday and Thursday was lowered the following week.
Q. Lowered to what price?
A. I believe it was 15 cents, or they had a bargain day or something, or a penny day, or two for one, but I think it started out as 15 cents on Wednesday and Thursday.
Q. Do you know how long that continued?
A. Yes, I think they had those bargain days until the Federal government started charging tax. Then we got together, that is, we agreed to charge the tax but the same admission price.

Q. Then after this conversation in 1937, did you
1180 notice any activity with reference to the construction of another theater there?
A. Oh, yes. They built the theater he said they would build. That was the State Theater.
Q. The State?
A. Yes, sir.
Q. Do you know about when they started that project?
A. Yes, May 31, 1939.
1181 Q. That's when it was opened?
A. I think that is the beginning of the building of it.
Q. That was when construction began?
A. That was when construction began, yes, sir.
Q. When was it opened, if you recall?
A. No, I don't remember that.
Q. Do you know what kind of policy that house was operated on?
A. Yes, sir, it was a second run house.
Q. Playing pictures of what admission price?
A. I believe it was 15 cents to start with, 10 and 15 cents.
Q. You are talking about the children and adult prices?
A. 10 cents for children and 15 cents for adults.
Q. And they were playing major product there, second run?
A. They were playing there second run that they were showing in the Yale Theater and Columbia, they bought my second runs of the Columbia pictures.
Mr. WRIGHT. You may cross-examine.

Cross-examination by Mr. COCHRAN:

Q. Mr. Moulder, at the time that you said that Columbia pictures were licensed to you for the season 1932–33,
1182 only the feature pictures were licensed to you, were they?

A. That's right.

Q. Westerns were not licensed?

A. No, we wasn't running westerns and we didn't need them.

Q. You didn't need the westerns?

A. No.

Q. And they were not licensed by you and have never been licensed by you since?

A. No, sir.

Q. For the season 1931–32 you licensed that product?

A. Yes, sir.

Q. Didn't you?

A. Yes, sir.

Q. And when time came for you to play off that contract, you refused to give Columbia any dates, didn't you?

A. No, sir.

Q. And at that time you were in financial difficulties, weren't you?

A. That's right; broke.

Q. That was in 1931?

A. '31–32.

Q. That was before Griffith came into the town, wasn't it?

A. I wasn't, I wasn't broke when he came into the town.

Q. I am talking about July 1931.

1183 A. No, sir, I wasn't.

Q. When you made this deal with Columbia?

A. I didn't make a deal with Columbia in '31; it was '32.

Q. Didn't you make a deal for the '31–32 product?

A. I may have bought some pictures, I don't know. That might have been the Empress, I might have bought some pictures for the Empress Theater.

Q. I am talking about the contract you made?

A. I don't remember it.

Q. That was made for that product for the '31–32 season?

A. I don't remember having a contract.

Q. Didn't Columbia then cancel that contract it had with you and license that product for the '31–32 season to Mr. Blaine for the Yale Theater?

A. I don't remember it.

Q. Mr. Blaine was operating the Yale Theater in the season '31–32, wasn't he?

A. Yes, sir; about '32, I don't know about that; I think Mr. Griffith came in in '32.

Q. Do you know what time that the Griffiths acquired an interest in Sapulpa?

A. No, I wouldn't say. I would say in '32 when he came in, I am pretty sure.

Q. Isn't it a fact that the Yale Theater Corporation continued to own and operate that Yale Theater until September 9, 1932?

1184

A. September, it might have.

Q. And Mr. Zartaludes continued to own an interest in that theater, didn't he?

A. Yes, sir.

Q. And operate it?

A. Yes, sir.

Q. Do you know what corporation it was that acquired an interest in the Yale Theater in 1932?

A. No, sir.

Q. What season's product was it that you say was released to you after you say Griffith had licensed it?

A. Columbia.

Q. I say what season's product?

A. That was '32.

Q. '32–33?

A. Yes, sir.

Q. And you have continued to use Columbia first run features from that time down to the present time?

A. Yes, sir.

Q. At the present time you are playing what pictures in your Criterion Theater?

A. Paramount, Fox, Columbia, United Artists, PRC and Monogram.

1185

Q. All first run?

A. Yes, sir.

The Court. What was your last question?

Mr. Cochran. All first run.

By Mr. Cochran:

Q. Are you playing single bills in your theaters?

A. Playing double features on Wednesday, Thursdays, Fridays and Saturdays.

Q. At what admission price?

A. Twenty-five cents for matinee and thirty-five cents for Sundays and holidays.

Q. Does that include the tax?

A. That includes the tax, yes, sir.

Q. The net amount is considerably less than that, is it?

A. Yes, sir, that's right; twenty-six, four, I think it is.

Q. In other words, on your 35-cents admission, your net would be 26.4 cents?

A. That's right.

Q. In the Yale Theater, is the policy double billing on the same days that you double bill?

A. No, sir; they don't double bill.

Q. They just single bill?

A. No, they use a "bank" night or something to
1186 stimulate business.

Q. And the admission price is the same as in the Criterion Theater?

A. Yes, sir.

Q. How long have those admission prices been the same?

A. Well, since the beginning of the war, I guess, when the tax was raised.

Q. Can you give us the approximate date; would you say in 1940?

A. I would say '40 or '41.

Q. Prior to that time, what was the admission price in the Criterion?

A. It was the same except on Wednesday and Thursday it was diffierent; they had 15 cents, while I charged the regular admission of 25 cents.

Q. At that time were you running double bill?

A. Later I came in with double bills, complete with "bank" night.

Q. You have a balcony in your theater, do you not?

A. Yes, sir.

Q. And you have an adult admission during that period of 15 cents there?

A. Yes, sir. Do you mean for the balcony?

Q. Yes, for the balcony?

A. Yes.

1187 Q. There is no balcony in the Yale, is there?

A. Yes, sir.

Q. There is?

A. Yes, sir.

Q. There is no difference in the price between the balcony and the orchestra, is there?

A. The same price, 15 cents.

Q. The Empress Theater was not constructed until two years after this—I mean the State Theater wasn't constructed until two years after this conversation you said you had with H. J. Griffith, was it?

A. Yes, sir.

Q. Construction was not commenced until more than two years?

A. May 31, 1939.

Q. '39?

A. Yes, sir.

Q. At the present time you have no shortage of product, do you?

A. No, sir.

Q. Mr. Moulder, since the consent decree—you are familiar with the consent decree, aren't you?

A. Yes, sir.

Q. Since the consent decree, there has been a great change in the way pictures are licensed, has there not?

1188 A. Yes, sir.

Q. Paramount and Fox, from whom you licensed, now license their product in groups of five now, instead of requiring you to take the entire season's product?

A. Yes, sir.

Q. Prior to that time it was the policy of those companies, when you licensed their product, to require you to license the entire season's product before it was produced?

A. That's right.

Q. They frequently failed to release as many as ten of the pictures that they had licensed, didn't they?

A. No, I never bought from any of them less than thirty-five to forty-five.

Q. I say, they frequently, Paramount back in those days, would license you something like seventy pictures, and isn't it a fact that frequently those distributors who licensed the entire season's product released ten or more pictures which they licensed?

A. Yes, that has happened quite a few times.

Q. You couldn't tell at the beginning of the season just what product you were going to have?

A. That's right.

Q. Or what it was going to be like, when you got it?

A. That's right.

Q. You also found, Mr. Moulder, that in licensing

1189 these pictures in the so-called top pictures, the A class pictures——

A. That's right.

Q. In the first group, and so forth, of these companies, that frequently those pictures that are classified in that group by the distributor don't live up to that classification in the box office in your theater?

A. Well, they are not as good as you expect them to be, no.

Q. And frequently you will find a so-called program picture that will be better box office attraction, even though purchased for less money, than one of the pictures they included in the upper class?

A. Occasionally we got what they call a sneak, a good picture, for little money.

Q. That's when you felt you got a break?

A. That's right.

Q. In licensing pictures from Paramount now, they are licensed after they are given a trade showing in the Oklahoma City exchange, are they not?

A. Yes, sir.

Q. Do you attend any of those showings?

A. No, sir; I go to Tulsa quite a bit and see pictures over there.

Q. They are trade shown at Tulsa as well as at Oklahoma City?

1190 A. At the Talbot Theaters, yes, sir.

Q. That's a private showing over there, is it?

A. That's right.

Q. But other than that, you do not come in to see the pictures?

A. No, sir.

Q. Do you come into Oklahoma City to do your booking?

A. No, sir.

Q. Do you do the licensing of pictures and the booking of pictures for your theater?

A. No, Mrs. Moulder does the booking, and I buy the pictures, yes, sir.

Q. Now, when that State Theater was put in as a second run house, it didn't take away any pictures that you had been playing, did it?

A. Just the Columbia pictures.

Q. Well, it didn't take away Columbia first run, did it?

A. I didn't understand.

Q. It didn't take away any pictures away from you, did it?

A. No, sir.

Q. You continued to have the same pictures?

A. That's right.

Q. And it played some pictures that you played first run, it played second run?

A. That's right.

1191 Q. On Paramount pictures, you have an availability of twenty-one days after national release dates, don't you?

A. We are supposed to have, but we are not getting them now.

Q. That's their agreement with you, is it?

A. Well, I don't seem to have an agreement now. They just tell you it isn't available until Tulsa plays them.

Q. Well, anyhow, when you speak of Tulsa playing in advance of you, you are referring to the Talbot Theaters over there, are you?

A. Yes, sir, that's right.
Q. That is an independent exhibitor, is it?
A. Yes, sir.
Q. That operates only in Tulsa?
A. Yes, sir.
Q. Relative to this statement that you say that H. J. Griffith made to you in 1937, did you have any further conversation with any one of the defendants in this case?
A. Yes, sir.
Q. With whom, and what was said?
A. Well, I have talked with Mr. Griffith there.
Q. Which one?
A. L. C.
Q. What was said?

Mr. WRIGHT. Will you fix the place and date first,
1192 if you can?

A. Well, we had a talk out to the country club, at a banquet we had out there.

By Mr. COCHRAN:

Q. How long after this conversation with H. J.?
A. It was after that.
Q. How long after?
A. I imagine a couple of months; I don't remember exactly. I wouldn't say. But the convention, it was during the motion exhibitors' convention here at Oklahoma City, the National, I believe it was.
Q. All right, what was said?
A. Well, Mrs. Moulder had talked to Mr. Griffith that same day, before.
Q. Just tell what was said.
A. All right. He says, "Speedy", he says, "I wish that you would come in with us as a partner, or something like that." I says, "H. J." I says, "you missed that opportunity. You remember I came into your office and offered to sell out to you and you asked me if I needed some money, and I told you yes, and you says I haven't got it." "Well," he says, "I have got a good many partners and they are all satisfied." I told him, I says, "Well, when the time comes when I want to sell, I will sell to you first, I will come to you first." "Well," he says, "Speedy, really to
1193 tell you the truth I am well satisfied in Sapulpa; I don't need your theater; that will just be all right. Any time you get hard up and need anything, you come to me."
Q. Did you tell him about the conversation that you say you had with H. J.

A. Yes, sir, my wife did.
Q. Were you present?.
A. No, sir.
Q. Mr. Moulder, do you recall having a conversation with Mr. Henry Griffing about two or three weeks ago?
A. Yes, sir.
Q. Where was that?
A. In my office at Sapulpa.
Q. About two or three weeks ago?
A. Yes, sir.
Q. On that occasion did you tell Mr. Griffing that the person who made that statement that you now attribute to Mr. H. J. Griffith was made by Mr. Claud Fulgham?
A. No, I don't think so. The conversation was, I told him——
Q. (Interrupting.) I just asked you.
A. No, sir.
Q. I just asked you if you didn't tell him that statement was made by——
A. (Interrupting.) No, sir.
1194 Q. By Claud Fulgham, the statement that the admission prices were going to be reduced and a new theater opened?
A. No, sir.
Q. And didn't you, at that time, tell him that you took the matter up with L. C. Griffith and that he told you that he had not authorized anyone to make any such statement, and that he wouldn't do so, and told you to forget about it?
Mr. WRIGHT. If the Court please, I think that is entirely improper. There is no testimony that was covered on his direct examination which this could possibly impeach.
The COURT. Overruled. I think it is proper cross-examination going to whether or not there was an authorized statement, or whether it was a threat.
Mr. WRIGHT. He is not asking him anything about anything that was said in the conversations he has testified to. He is asking him now about some other conversations that related to conversations he didn't testify to. How could that possibly be proper or competent?
The COURT. He is asking him about a conversation in which this witness admitted that he had talked to L. C. Griffith and told what L. C. Griffith said.
Mr. WRIGHT. Well, what possible significance has that got with what he has testified here as to these conversations?
The COURT. Well, it is very significant. Over-
1195 ruled and exception allowed. You may answer the question.

A. Mrs. Moulder talked to Mr. L. C. at the Biltmore Hotel during our convention, and she told him all the things that happened, what H. L. said.

By Mr. COCHRAN:

Q. Do you mean H. L. or H. J.?

A. L. C. she was talking to L. C. and L. C. told her, he says, "I didn't authorize any of that".

Mr. WRIGHT. Just a minute.

By the COURT:

Q. Did you hear the conversation?

Mr. WRIGHT. He is not in position to testify what was told Mrs. Moulder.

By Mr. COCHRAN:

Q. My question was if in talking to Mr. Henry Griffing about this matter, you didn't tell him that you took the matter up with Mr. L. C. Griffith shortly thereafter and told him what had been stated to you there in Sapulpa, and that L. C. stated that no one had any authority to make any such statement and that he was going to get to the bottom of it, and for you to go back to Sapulpa and forget it?

Mr. WRIGHT. If the Court please, it is perfectly——

By Mr. COCHRAN:

Q. (Interrupting.) Or any such happening?

1196 Mr. WRIGHT. It is perfectly apparent what he is trying to do is to get in through the alleged conversation between this witness and Mr. Griffing, hearsay testimony as to what L. C. Griffith might have told Mr. Maulder. It is entirely incompetent and improper.

The COURT. No, this man is on the witness stand. If he made that statement it is competent, regardless of what he said.

Mr. WRIGHT. To prove what?

The COURT. He is asking him if he made the statement. You may answer.

By the WITNESS:

A. Yes, I made that statement to Mr. Griffing.

By Mr. COCHRAN:

Q. And you also state that since that time you have had no further difficulty?

A. That is right.

Q. And that is a fact?

A. Yes, sir.

By the COURT:

Q. Let me ask you this in order to clarify this matter: You stated your wife had talked to Mr. L. C. Griffith at the hotel.

A. That is right.

Q. That evening when you talked to him at the banquet, did you and he discuss what your wife had said to him?

A. No, sir, we didn't.

1197 Q. Did he tell you that she had talked to him?

A. No, sir.

Q. Did you know she had?

A. Yes, she told me she had.

Q. Have you had a talk with L. C. Griffith at any time in which you discussed what your wife was supposed to have told him?

A. No, I didn't tell him that.

Q. You merely told Mr. Griffing what he says you told him?

A. Yes, sir.

Mr. WRIGHT. I move to strike the testimony that was given as to what he said to Mr. Griffing as to what L. C. Griffith told his wife.

The COURT. Overruled. That is perfectly competent.

Mr. WRIGHT. I think it is clear error.

The COURT. I think you do but I think it isn't. That is the difference between us and the ruling stands.

By Mr. COCHRAN:

Q. So far as the situation is concerned, at Sapulpa, your theater is getting all of the product that it needs?

A. Yes, sir.

Q. All you need and all you can use?

A. Yes, sir.

1198 Re-direct-examination by Mr. WRIGHT:

Q. During this period of 1933-34 through '38-39, would you say the Columbia product you had was as valuable a box office attraction as the Metro product of those years?

A. No, sir.

Q. That is all.

By the COURT:

Q. From 1932 up until 1938 did you get sufficient pictures to run your theater in a satisfactory manner?

A. Yes, sir.

(Witness excused.)

Mr. WRIGHT. If the Court pleases, I think we will continue now with these documents. We have no other witnesses

waiting here. I think the last one that was offered was an agreement identified as Plaintiff's Exhibit 34. Does that check with your records? The Consolidated Theaters, Inc.? '34 is the last one that is marked admitted.

The next one we will offer is Plaintiff's Exhibit No. 36. That is a memorandum agreement between Lester Dollison of Kermit, Texas, and the Griffith Amusement Company dated June 30, 1937, providing for a joint operation of the Kermit and Texas Theaters, at Kermit, with 20 per
1199 cent interest to Dollison and 80 per cent interest to Griffith, and providing for Dollison to manage the theaters and Griffith to book and license the pictures for a percentage of the gross.

The COURT. What is the date of that?

Mr. WRIGHT. June 30, 1937.

The next exhibit I offer is Plaintiff's Exhibit No. 39, which is a so-called good will contract executed on April 10, 1937, by John H. and Eudoxie Thomas of Kingfisher, Oklahoma, agreeing not to engage in the motion picture business or vaudeville enterprises at Kingfisher, Oklahoma, so long as Consolidated Theaters, Inc. or a person deriving a title or good will from it carries on a business in the city, not to exceed 10 years from May 1, 1937. I take it all of these that are marked are admitted?

The COURT. Yes, they will be admitted unless a statement is made otherwise.

Mr. WRIGHT. Then we offer in evidence Plaintiff's Exhibit No. 40 for identification, which is an agreement made by Duffy Theaters and Pat Duffy, Leo Duffy and Mary Duffy and Ruby Jones, with Consolidated Theaters, Inc., April 26, 1938, which contains an agreement by the Duffies not to operate in Mangum, or in Greer County, Oklahoma, for a period of 10 years from April 30, 1938, or so long as the Consolidated or anyone deriving title from it carries on a like business.

1200 The next exhibit we will offer is Plaintiff's Exhibit No. 42, which is a similar contract dated April 28, 1938, made by F. D. Pickrel of Ponca City with Consolidated Theaters, Inc. and covers a ten year period in Ponca City and Kay County, Oklahoma.

We offer Plaintiff's Exhibit 43 for identification, which is a so-called administration contract dated April 16, 1942, between Griffith Amusement Company, Griffith Consolidated Theaters, Inc., and James Zartaludes of Sapulpa, and reducing to writing a prior agreement for the film licensing and booking services rendered by the Griffith Amusement Company in connection with the operation of the Empress, Yale and State Theaters in Sapulpa.

1201 And Plaintiff's Exhibit 44 is offered, which is a summary contract between Griffith Amusement Company, Griffith Consolidated, George Stovall, and Mrs. H. J. Griffith, Jr., dated June 1, 1942, reducing to writing an agreement for film buying and booking services in connection with the operation of the Ute and Rio Theaters at Sayre, Oklahoma.

And Plaintiff's Exhibit No. 45, which is a contract dated June 1, 1936, between George Stovall of Sayre and Consolidated Theaters, Inc., providing for the joint operation of the Rio and Princess Theaters at Sayre, with Stovall as manager, and Consolidated booking the pictures.

Exhibit 46 which is an agreement between Griffith Amusement Company and W. J. Williams, of Tonkawa, Oklahoma, dated November 30, 1937, which contains a summary agreement not to compete by Williams—I beg pardon—this is an agreement whereby Griffith Amusement Company agrees in connection with the sale of properties at Tonkawa to Williams, to refrain from carrying on a theater business there and to refrain from buying or booking pictures for other persons, firms or corporations in said city for a period of ten years or so long within the period as Williams or any person deriving title from him carries on said business.

The COURT. The town is Tonkawa, you say?

Mr. WRIGHT. Tonkawa, yes, sir.

1202 Plaintiff's Exhibit No. 47, which is a contract between the Griffith Amusement Company, Griffith Consolidated, and W. J. Moore, whereby Griffith has been rendering bookkeeping and film buying services to the Aztec and Lyric Theaters in Vinita, Oklahoma.

The COURT. May I have that date again?

Mr. WRIGHT. November 30, 1942.

Plaintiff's Exhibit No. 48, which is a memorandum agreement between Griffith Amusement Company, Griffith Consolidated Theaters, Inc., and Foster McSwain, dated September 20, 1941, reducing to writing an agreement with regard to the Key, State and Paramount Theaters in Wewoka, Oklahoma, whereby Griffith Amusement Company books the films for a percentage of the gross receipts.

The COURT. And that is dated?

Mr. WRIGHT. September 20, 1941.

And Plaintiff's Exhibit No. 49, which is an agreement between J. B. Terry, of Wewoka, and Consolidated Theaters, Inc., dated December 30, 1937, whereby Terry sells a half interest in the State, and Key Theaters there, to Consolidated, and the provision is made for dividing profits and losses equally, and Consolidated to buy and book the films for a percentage of the gross receipts.

Plaintiff's Exhibit No. 49-A, which is an operating agreement dated May 25, 1938, between Griffith
1203 Amusement Company and Fred Morley, of Roswell, New Mexico, covering the joint operation of the Rex and Rig Theaters in Wink, Texas, and 80% interest for Griffith and a 20% for Morley, Griffith to buy and book the films for a percentage of the gross receipts.

The COURT. May I have the date again?

Mr. WRIGHT. That is May 25, 1938.

Plaintiff's Exhibit 122, which is a contract between H. T. Hodge, of Abilene, Texas, and R. E. Griffith Theaters, Inc., dated June 24, 1936, together with a supplement attached, of the same date, and a memorandum agreement dated February 1, 1938, with a supplement also attached. These agreements, all of which are put together, as one exhibit, relate to the purchase by Griffith of an interest in certain theaters in certain towns in Texas, I believe it covers theaters at Stamford, Ballinger, Winters, Odessa, Merkel, Texas. And it also has the provision for the same parties having an interest in future theaters acquired in those towns by either.

The next one that is offered is Plaintiff's Exhibit No. 123, an agreement between Texas Consolidated Theaters, Inc., Albuquerque Theaters, Inc., and Bachechi Brothers, a partnership, and R. E. Griffith Theaters, Inc., and Foster McSwain, covering the joint operation of the Kimo, Pastime, and Rio Theaters, at Albuquerque, New Mexico.

1204 The COURT. What is the date of that?

Mr. WRIGHT. That is dated July 18th—no, I beg pardon—dated January 4, 1938.

Then Plaintiff's Exhibit No. 126, an agreement between——

Mr. RICE (interrupting.) Mr. Wright, pardon me, I think you are confused on the acknowledgment. The date of the instrument is October 1, 1938.

Mr. WRIGHT. You are right.

Mr. RICE. That is No. 125.

Mr. WRIGHT. Yes. No. 125 is dated October 1, 1938, and it refers, I think, to a supplemental agreement of January 4th.

Then Plaintiff's Exhibit No. 126, which is an agreement between the same parties, except Texas Consolidated Theaters, dated July 18, 1938, providing for the joint operation of the Kimo, Pastime and Rio Theaters in Albuquerque. The agreement, Exhibit No. 125, includes not only those theaters, but the Sunshine, Chief, Mission and Mesa.

1205 Plaintiff's Exhibit No. 128 is an agreement between The New Mexico Theaters, Inc., Albuquerque

Theaters, Inc., Bachechi Brothers and R. E. Griffith Theaters, Inc., and Foster McSwain, dated January 4, 1938, providing for the booking of pictures for the Kimo, Mesa and Rio Theaters by Texas Consolidated Theaters, Inc.

Exhibit No. 129 is an agreement between the same parties dated April 30, 1935, concerning the operation of theaters at Albuquerque.

Plaintiff's Exhibit No. 130 is an agreement between R. L. Walker, H. H. Cluck and R. E. Griffith Theaters, Inc., dated June 28, 1935, concerning the operation of the Beltonian and Beltex Theaters at Belton, Texas, under which the Griffith Theaters, Inc. buys and books the film for 4 per cent of the gross.

Plaintiff's Exhibit No. 131 is an agreement between Roy L. Walker and H. H. Cluck and Westex Theaters, Inc., dated April 7, 1938, for the joint operation of the same theaters at Belton, Texas, and it provides for booking and buying by Griffith Theaters, and the option for termination, and to buy or sell by either party and the goodwill to be transferred for a period of ten years from the date of the sale.

Plaintiff's Exhibit No. 132 is an agreement between the Brady Amusement Company and R. E. Griffith Theaters, Inc., dated June 25, 1935, providing for the booking by Griffith and in return for a percentage of the gross. The agreement does not state the town nor the theaters, but I believe the Brady Amusement Company operated in Brady, Texas.

1206

Plaintiff's Exhibit No. 133 is an agreement dated November 12, 1936, between A. M. Morgan and Jack Pickens, agent for the Brady Amusement Company and Westex Theaters, Inc., and R. E. Griffith Theaters, Inc., dated November 12, 1936, conveying a lease owned by Morgan and Pickens covering the Ritz Theater at Brady, and Morgan agrees not to engage in the moving picture business or the theater business of any kind or character, directly or indirectly, in any town in the states of Texas, Oklahoma and New Mexico, in which he might be in competition with the Brady Amusement Company and so forth.

The COURT. Did you skip Exhibit 134?

Mr. WRIGHT. Yes.

Plaintiff's Exhibit No. 135 is an agreement between O. A. Engelbrecht and F. L. Wolf and R. E. Griffith Theaters, Inc., providing for management by Engelbrecht and Wolf and buying and booking of films by Griffith Theaters, Inc., dated June 28, 1935.

The COURT. Does that refer to any particular town?

1207 Mr. WRIGHT. That refers, I think, to the State and Colonial Theaters at Clarksville, Texas.

Plaintiff's Exhibit No. 136 is an agreement between O. A. Engelbrecht and F. L. Wolf and the Westex Theaters, Inc., dated May 7, 1938, covering the joint operation of the same theaters, the State and Colonial Theaters at Clarksville, Texas.

Plaintiff's Exhibit No. 137 is a contract between Charles F. Hardwick of Clovis, New Mexico, and R. E. Griffith Theaters, Inc., dated February 7, 1940, extending an agreement made on June 7, 1933, until October 29, 1963, which covers the Lyceum and Mesa Theaters at Clovis, New Mexico.

Plaintiff's Exhibit No. 140 is the next agreement we will offer between R. E. Griffith Theaters, Inc., and George A. Dowdle of Deming, New Mexico, dated the blank day of October, 1942 and apparently executed on November 12, 1942, and providing for the joint operation of the Luna and El Rancho Theaters at Deming, R. E. Griffith buying and booking the films for a percentage of the gross.

Plaintiff's Exhibit No. 141 is an agreement between R. E. Griffith Theaters, Inc., and C. C. Caldwell and M. R. Showalter, dated June 27, 1942, for the joint operation of the Rhea and Ritz Theaters at Denver City, Texas, with R. E. Griffith Theaters buying and booking the film

1208 for a percentage of the gross.

Mr. COCHRAN. Did you offer 142?

Mr. WRIGHT. No, I did not.

Plaintiff's Exhibit No. 143 is a memorandum agreement between the Gonzales Amusement Company and Westex Theaters, Inc., dated August 27, 1936, providing for the Westex to receive a percentage of the gross receipts for buying and booking of film for the Crystal Theater at Gonzales, Texas.

1209 Plaintiff's Exhibit No. 144, which is an agreement between Baker Show Company, and Westex Theaters, Inc., dated August 27, 1936, under which the Westex received a percentage of the gross from the Baker Theater at Lockhart, Texas, for buying and booking the films.

Plaintiff's Exhibit No. 148, which is an agreement between O. A. and Andrew O. Engelbrecht and Westex Theaters, Inc., dated May 7, 1938, providing for the joint operation of two theaters at Georgetown, Texas, with Westex to buy and book the films and receive a percentage of the gross.

The COURT. That is 145?

Mr. WRIGHT. That is 148.

The COURT. All right.

Mr. WRIGHT. And Plaintiff's Exhibit 149, which is an agreement between the same parties, dated June 28, 1935, relating to the same theaters at Georgetown.

I think we offered the exhibit that has been marked for identification as Plaintiff's Exhibit No. 153 by a copy that was produced by Griffith or by Consolidated under a prior number. That, as I understand it, Mr. Rice, this agreement we identified as 153 that you produced is a duplicate, is it not, of one offered in evidence as Exhibit 34?

Mr. RICE. That is my understanding.

1210 Mr. WRIGHT. Produced by the other defendants.

Mr. RICE. I have not compared them, but that is my understanding.

Mr. WRIGHT. We won't offer 153. It is nearly a duplicate of another exhibit.

We will offer Plaintiff's Exhibit No. 154, an agreement between C. C. Caldwell, of Jal, New Mexico, and R. E. Griffith Theaters, Inc., dated May 18, 1935, relating to the operation of the theater in that town, with R. E. Griffith Theaters.

The COURT. What is the name of the town?

Mr. WRIGHT (spelling.) J-a-l, New Mexico.

The COURT. That's a new one.

Mr. WRIGHT. And the next is Plaintiff's Exhibit 155, an agreement between R. L. Walker and F. T. Donnell, and R. E. Griffith Theaters, Inc., dated June 28, 1935, relating to the operation of the LeRoy Theater and LeRoy, Jr., Theater, at Lampasas, Texas, under which Griffith buys and books for a percentage of the gross.

Mr. RICE. Before we get too far, you have been introducing as to each of these towns, the original booking agreement between R. E. Griffith Theaters and the other associates. I notice you didn't introduce in the case of Gonzales the later agreement made with Westex Theaters to the same effect. Did you intend to leave that out?

1211 Exhibit 150 is the number.

Mr. WRIGHT. What is the number?

Mr. RICE. No. 150.

Mr. WRIGHT. No, that was unintentional.

Mr. RICE. It supersedes the original agreement introduced for Gonzales.

The COURT. 143?

Mr. KIME. 143.

Mr. WRIGHT. I will offer in evidence Plaintiff's Exhibit 150, the superseding agreement which counsel just referred to, dated January 6, 1937.

The COURT. Gentlemen, we will recess at this time until 10 o'clock tomorrow morning.

(Whereupon court recessed until May 17, 1945, at 10 o'clock a. m.)

1212 PROCEEDINGS

May 17, 1945, 10:00 o'clock a. m.

The COURT. You may proceed, gentlemen.

Mr. WRIGHT. I offer in evidence Plaintiff's Exhibit No. 156, which is an agreement dated April 7, 1938, between R. L. Walker and S. T. Donnell, and Westex Theaters, Inc., providing for the rental of those same theaters in Lampasas, and providing for joint operation and buying and booking by Westex for a percentage of the gross receipts.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. The next agreements will be Exhibits Numbers 158 and 159, which are between the Luling Amusement Company and Westex Theaters, Inc., No. 159 being dated August 7, 1937, and No. 158 being an extension and alteration dated January 6, 1937, both of which relate to the operation of the theater at Luling, Texas.

Then we offer in evidence Plaintiff's Exhibit No. 162, which is an agreement dated June 5, 1935, between the O. K. Theaters Corporation, and Oscar Korn and R. E. Griffith Theaters, Inc., concerning the transfer of the Palace and Granada Theaters at Plainview, Texas.

The next offer is Plaintiff's Exhibit 163, which is an agreement between Louis F. Long, and Griffith Arizona Theaters, Inc., and R. E. Griffith Theaters, Inc., dated April 27, 1938, under which R. E. Griffith Theaters books
1213 and buys films for certain theaters located in Arizona for a percentage of the gross.

And Plaintiff's Exhibit No. 164, which is an agreement between the same parties as 163 and bears the same date, setting out the respective percentages of interest that the parties have in those Arizona theaters.

And Plaintiff's Exhibit No. 165, an agreement dated December 23, 1935, between W. C. Dofflemyer and R. E. Griffith Theaters, Inc., relating to a partnership operation of the Palace Theater at San Saba, Texas, with the R. E. Griffith Company to buy and book the product.

And Plaintiff's Exhibit 166, which is a similar agreement between R. E. Griffith Theaters, Inc. and Hardwick Brothers, dated May 26, 1936, relating to theaters at Spur, Texas.

I think that completes the operating agreements produced by Mr. Rice.

Mr. RICE. Exception Exhibit No. 181. I don't know whether you want to offer it or not.

Mr. WRIGHT. I see that's right. No. 181 I don't seem to have a copy of. Was it photostated?

Mr. RICE. Yes. You have it; it is for Carlsbad.

Mr. WRIGHT. We will offer Plaintiff's Exhibit No. 181; Mr. Rice says there is a copy of it here and it will be introduced and later marked and admitted. That is an agreement dated July 1, 1940, between R. E. Griffith Theaters, Inc., and Raymond O. Barton, individually and as
1214 trustee, for the operation of the Cactus and Tower Theaters at Carlsbad, New Mexico, under which the R. E. Griffith Theaters, Inc., buys and books film for a percentage of the gross.

The next agreement that I will offer is Plaintiff's Exhibit No. 263, a good will—I beg pardon—I believe that 263 is a duplicate of a document that was offered while Mr. Vincent was on the stand.

The COURT. 263 is the lease dated February 8, 1940.

Mr. WRIGHT. I think that is 262.

The COURT. 262 is a lease also. 262, 263, and 264.

Mr. WRIGHT. I think those are all duplicates of material that was offered.

The COURT. That was offered under the witness Vincent.

Mr. WRIGHT. Yes, I think that has been received and should be marked as received in evidence, although it doesn't appear so noted on my sheet. Those have already been admitted.

1215 Mrs. JUANITA BERRY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your name and address, please.

A. Mrs. Juanita Berry, 209 East Main Street, Norman.

Q. What is your occupation?

A. We run a moving picture theater.

Q. Where abouts?

A. 209 East Main Street, Norman.

Q. What is the name of the Theater?

A. The Oklahoma Theater.

Q. How long have you been connected with the operation of the Oklahoma Theater there?

A. About 16 years.

Q. Were you formerly associated in the operation of theaters there with your late husband?

A. Yes, sir.

Q. What was his name?
A. Raymond Clyde Berry.
Q. When did he die?
A. In April, 1932.
Q. Then at that time what, if any, theaters besides the Oklahoma were you connected with at Norman?
1216 A. The Campus Theater.
Q. And was anyone else interested in the operation?
A. Yes. My mother and brother had a part interest in that.
Q. What was your mother's name?
A. Mrs. V. H. Goldman.
Q. And the Campus and Oklahoma Theaters were being operated together by you and your mother?
A. Yes.
Q. At that time what other theaters were there in Norman?
A. The Sooner Theater and University Theater.
The COURT. I didn't hear you.
A. The other two theaters were the Sooner Theater in Norman and the University Theater, owned by Griffith.

By Mr. WRIGHT:

Q. Griffith operated those theaters?
A. Yes, sir.
Q. Can you locate the four theaters for us, approximately?
A. The Sooner and University and our Oklahoma Theater were downtown. The Campus Theater was out at the University Corner.
Q. That is about how far away from downtown?
A. I should judge that is about a mile.
Q. That is Oklahoma University?
A. Oklahoma State University.
1217 Q. At Norman. Do you know what the approximate size of the four theaters was?
A. The Oklahoma and Campus each were small theaters; about 432 seats each; the Sooner and University are much larger theaters. The Sooner probably was about 1100 and the University about eight or nine hundred seats. I don't know exactly.
Q. Do you know about how large the town of Norman was then?
A. A town of about 10,000.
Q. That is excluding the University population?
A. Yes, sir.

Q. About how many were in the University?

A. Well, the university is gradually growing. You mean what years now?

Q. This is of 1932.

A. I believe there were only about, probably three or four thousand at that time.

By Mr. COCHRAN:

Q. Is that the population of Norman at that same time?

A. Yes, I think it was about 10,000 wasn't it, about that?

Q. Do you know what the 1930 census was?

The COURT. Pardon me. When you say "excluding the university" you mean not including the student body?

1218 A. The student body. The population of Norman might have been as low as 9000 in 1932. It was later on about 10,000.

1219 Q. During the 1932-33 motion picture season, do you know what, approximately what policies the theaters there were being operated on?

A. They ran first run pictures, we ran first run at the Campus and second run at the Oklahoma.

Q. In your theaters, you ran first run at the Campus and second run at the Oklahoma?

A. Yes, sir; our own product.

The COURT. What was that?

A. I say we ran our own product, first run at the Campus and second run at the Oklahoma Theater.

By Mr. WRIGHT:

Q. By your own product you are referring to what companies?

Mr. COCHRAN. We object. Let her state what she meant by it instead of leading the witness.

By the COURT:

Q. What did you mean by your own product?

A. I mean the product we showed out at the Campus, we showed down at the Oklahoma; first run at the Campus and then showed it second run at the Oklahoma. That is, the product we showed at the Campus first run and second run at the Oklahoma Theater.

By Mr. WRIGHT:

Q. What was that product, from what companies, what major companies?

A. That is in the '32, at the beginning of the '32—

1220 I mean the booking season of '32-33?

Q. Yes, the motion picture season of '32-33.

A. Let me see. May I look at my little slip?

Q. Yes, sure, if you made any notes, you may look at them.

Mr. COCHRAN. May I inquire a moment, your Honor please?

The COURT. Yes.

By Mr. COCHRAN:

Q. When was that prepared?

A. Beg pardon?

Q. When was that memoranda prepared?

A. What was it?

By the COURT:

Q. When did you prepare it?

By Mr. COCHRAN:

Q. When?

A. Just before I came up here.

Q. By whom?

A. By me.

Q. From what?

A. From our contracts.

Q. Do you have the contracts with you?

A. No.

Mr. COCHRAN. We think the contracts would be the best evidence.

The WITNESS. They are not very good notes anyway.

Mr. COCHRAN. We think the contracts would be the
1221 best evidence, your Honor.

The WITNESS. I was afraid I would answer wrong. I am sure I am right, but I wasn't sure I would remember right.

The COURT. You may use that merely to refresh your memory.

The WITNESS. That was all. I just had the various years, and it is easy to forget that. In '32-33 we had Paramount product, first run, at the Campus.

By Mr. WRIGHT:

Q. And Columbia?

A. And Columbia.

Q. Then you played those same companies second run at the ——

A. (Interrupting.) Oklahoma.

Q. And the other major first run was played where?

A. Beg pardon?

Q. And the other major first run pictures were played where?

A. Were played at the Sooner and the University Theaters.

Q. Did they play second runs?

A. No, they didn't.

Q. Both of those houses were first run policies?

A. Yes, sir.

Mr. WRIGHT. Would you mark these contracts as plaintiff's next exhibits?

1222 (Plaintiff's Exhibit 281 for identification and 282 for identification were marked by the reporter.)

Q. I will show you these documents that have been marked for identification as Plaintiff's Exhibits 281 and 282, respectively, and ask you if this No. 281 is the Columbia second run contract for the '32-33 season to which you referred?

A. Yes, it is.

Q. And 282 is the first run contract, Columbia deal, for the '32-33 season?

A. Yes, sir.

Q. I show you these photostats that have been previously marked as Plaintiff's Exhibit P-42 for identification and Plaintiff's Exhibit P-44 for identification, and ask you if you recognize those as the first and second run Paramount contracts for the same season in the Campus and Oklahoma Theaters?

A. Yes, they are.

The COURT. The second is Paramount?

Mr. WRIGHT. Yes, sir, first and second run, Paramount.

The COURT. 281 and 282, Columbia?

Mr. WRIGHT. Those are first and second run Columbia. We will offer in evidence Plaintiff's Exhibits Nos. 281 and 282 and Plaintiff's Exhibits P-42 and P-44.

1223 Mr. COCHRAN. No objection.

By Mr. WRIGHT:

Q. Then for the next season, '33-34, do you recall what, if any major product you had on first run there?

A. We had Paramount. For '33-34, yes, we had Paramount.

Q. You had Paramount first and second run again?

A. Yes, sir.

Q. How about Columbia?

A. We didn't have Columbia.

Q. Were you offered any Columbia for '33-34?

A. No, sir.

Q. Did you have any other major first run besides Paramount that season?

A. No, no contract. The cutbacks were the only thing.

By Mr. COCHRAN:

Q. What was your last answer?

A. No other first runs unless they were cutbacks; no other contracts.

By Mr. WRIGHT:

Q. No other season contracts?

A. No other season contracts.

Q. Calling your attention to the '34-35 season, can you tell us what major product you had for that season?

A. I believe we had RKO and United Artists in 1934-35.

Q. You had no Paramount for that season?

A. No, sir.

Q. First or second run?

1224 A. No, we didn't.

Q. Was it offered you on third run?

A. No, it wasn't.

Q. I show you 228 and 229, both of which are dated September 4, 1934, and ask you if you recognize those as the first and second season contracts made with RKO for the '34-35 season?

A. Yes, sir.

Q. And then I will show you this RKO contract marked as Exhibit 214, dated June 19, 1935, and ask you if you recognize that as a contract you made for some third run, RKO pictures for that season.

A. Yes, sir, I do.

Mr. WRIGHT. We will offer in evidence Plaintiff's Exhibits 212, 213, and 214.

The COURT. Then you said 228 and 229.

Mr. COCHRAN. 212, 213 and 214.

The COURT. You said 228 and 229.

Mr. COCHRAN. He probably did because these contracts are numbered 228 and 229. Those are the contract numbers.

Mr. WRIGHT. I may have given out the wrong number but they are exhibit numbers 212, 213 and 214, respectively.

Mr. COCHRAN. No objection.

1225 By Mr. WRIGHT:

Q. Did you have the RKO, first run, for the '35-36 season?

A. No, we didn't.

Q. Was it offered to you for that season?

A. No, sir.

Q. What, if any, first run major product did you have for the '35-36 season?

A. United Artists and Universal, I believe.

By the COURT:

Q. What was the first one?

A. United Artists and Universal.

By Mr. WRIGHT:

Q. You also had second run Universal for that year?

A. Yes, sir.

Q. Can you recognize these contracts marked for identification as Plaintiff's Exhibits 283 and 284 respectively, as the first and second run deals you had with Universal for the '35-36 season?

A. Yes, sir.

Mr. WRIGHT. I offer in evidence Plaintiff's Exhibits Nos. 283 and 284.

By Mr. WRIGHT:

Q. Can you tell us what, if any, major first run product you had there for the '36-37 season?

A. United Artists.

Q. Did you have some Universal too?

A. I don't believe we did.

1226 Q. I will show you these contracts marked for identification as Plaintiff's Exhibits 285 and 286, and ask you if you recognize those as the second run contracts made with Universal for the '36-37 season?

A. Yes, sir.

Q. Those contracts call, I believe, for twenty-four features?

A. Yes, sir.

Q. Do you know whether all of the features released by Universal for that season were offered to you first run?

A. I don't believe they were.

The COURT. What is the answer?

A. I don't believe they were.

By the COURT:

Q. Do you know?

By Mr. WRIGHT:

Q. Do you know whether or not you were offered a full season's deal with Universal for the '36-37 product, or whether you were just offered the features that are covered by these agreements marked as Plaintiff's Exhibits 285 and 286?

A. I do know we were offered those features that are covered by that agreement. I don't think that was all—I mean I don't believe that was all the product.

Q. It wasn't a season's deal?

A. It wasn't a season's deal.

Q. What I am asking whether you were offered a
1227 season's deal?

A. No, we took all we were offered, because we ran short of pictures.

Q. You took all you were offered?

A. Yes, sir.

By the COURT:

Q. Did you get any other pictures for '36-37? You stated you had United Artists.

A. Yes, sir, United Artists, and this Universal.

By Mr. COCHRAN:

Q. You don't mean to say that was all the pictures you got for that year, do you?

A. All major product.

Q. On a season's deal?

A. On the season's deal.

Q. You don't mean to say you didn't license other pictures?

A. Beg pardon?

Q. You don't mean to say you didn't spot any?

A. There wasn't very many others that you could spot.

Mr. WRIGHT. I think we can proceed more orderly if we have the cross-examination in due course.

Mr. COCHRAN. Excuse me; I just had that in mind.

The COURT. Proceed.

By Mr. WRIGHT:

Q. Then, you also played United Artists' pictures that you play first run at the Campus on a succeeding run at the Oklahoma?

1228 A. Yes, sir.

Q. And during the years 1935 and '36, did you play any major product that the Griffith Theaters had in Norman, on first run?

A. No.

Mr. COCHRAN. Are you going back to '35-36?

By Mr. WRIGHT:

Q. I am talking about the years '35 and '36, the calendar years.

A. No, we didn't.

Q. Did Griffith, during those years play the major product that it used on first run there on a second run in either of its theaters?

A. No.

Mr. COCHRAN. What was the answer?

The COURT. No.

A. No, unless it was just—I mean not as a policy, unless it was just one or two, or something like that, but not—— (hesitating).

By Mr. WRIGHT:

Q. And was a season's deal for any of that product second run offered to you during those years?

A. No, sir.

Q. And did you make any efforts to secure that product second run for your theaters?

A. Oh, yes. Yes, we did.

Q. Can you tell us in a general way what you did
1229 to try to get it?

A. Well, with each buying season we would contact all major companies.

Mr. COCHRAN. Talk a little louder.

The COURT. Talk a little louder. These attorneys are entitled to hear you.

A. Each buying season, we would contact all the film companies to try to buy pictures. Each season we would do that, we would step in and ask them when they were going to sell us product, when they were going to sell us second run. We have done that ever since we have been in business.

By Mr. WRIGHT:

Q. And during those years did they ever take an application from you for second run, a second run deal?

A. No, sir.

Q. Then, calling your attention to the year 1937, can you tell us what, if anything, happened with reference to the opening of another theater there?

A. In 1937 the Varsity Theater was opened.

1230 Q. That was opened by whom?

A. Griffith.

Q. Where was that located?

A. Across the street from the Sooner.

By the COURT:

Q. Was that downtown?

A. Yes, sir.

By Mr. WRIGHT:

Q. Was that a new theater or an old one that had been remodeled?

A. It was an old theater remodeled.

Q. Do you know what the former name of it had been?

A. I believe it had been the University before and they built the larger house down the street and named it the Varsity.

Q. Do you know how long it had been approximately, it had been operated since it was opened as the Varsity?

A. It opened in 1937 and they closed the Varsity in 1929 when they built the University; probably '29 or '30; '30 is probably nearer right.

Q. It had been closed for several years prior to the reopening in 1937?

A. Yes.

Q. Do you remember when the remodeling began?

A. For the Varsity?

Q. Yes.

A. In the summer of '37.

1231 Q. Do you remember when it opened?

A. I believe in '37.

Q. During the year '37 were you able to secure any second runs of the major product that Griffith was playing first run?

A. Yes, we were, in '37.

Q. That was the first year?

A. That was the first year we had ever been able to.

Q. Then when the Varsity opened what sort of a policy did it play on?

A. The first run pictures and B pictures.

By Mr. COCHRAN:

Q. I can't understand you.

A. They ran first run pictures at the Varsity.

By Mr. WRIGHT:

Q. Then after the Varsity was opened did the other Griffith houses get to play any major product, second run?

A. Yes. Then they began to play the A's second run after we had started the A's.

Q. The A pictures?

A. Yes, sir.

Q. By that you mean what?

A. Big pictures.

Q. The best box office attractions?

A. The best box office attractions.

Q. Now, during the year 1937, who was your at-

1232 torney in Norman?

A. Mr. T. R. Benedum.

Q. During that year did he report to you a conversation that he had had with one or more of the Griffiths?

A. Yes, sir.

Q. That was with reference to what subject?

A. Well, his report was——

Mr. COCHRAN. We object to that. Mr. Benedum probably will be available.

Mr. WRIGHT. This is laying the foundation. Mr. Benedum, I think, will testify at a later date. Don't undertake to say what he told you. I just wanted to get the subject matter.

By the COURT:

Q. Was that with reference to the theater business in Norman?

A. Yes, sir. That we wouldn't have product if we didn't go in with them.

The COURT. Don't state the substance of it.

Mr. DUDLEY. We move her answer be stricken out.

The COURT. The motion will be sustained and the answer will be stricken as not responsive and hearsay.

By Mr. WRIGHT:

Q. For the '37-38 season—by the way, during all of these seasons you have continued to operate both the Oklahoma and the Campus Theaters?

A. Yes, sir.

1233 Q. And the Griffiths operated the other theaters you have named in addition to the Varsity in 1937?

A. Yes, sir.

Q. So, during the '37-38 season there were five theaters operating?

A. Yes, sir.

Q. Can you tell us what, if any, major first run product you had during that season?

A. That is '37-38?

Q. Yes.

A. United Artists.

Q. Do you know whether you had all or only a part of United Artists?

A. I believe we only had a part of it.

Mr. COCHRAN. They have introduced the contracts for these other companies but I notice they have not introduced any United Artists.

Mr. WRIGHT. The United Artists contracts are 15 or 20 for each season.

Mr. COCHRAN. It makes a big difference. I don't care whether he introduces the contract in evidence just so he produces them and shows what she had there instead of having this witness try to say from memory, because United Artists licenses its product separately, so it is hard for any witness to say what they had of United Artists.

1234 Mr. WRIGHT. I will have this document marked Plaintiff's Exhibit No. 287.

Mr. COCHRAN. For the benefit of the record, the objection is made in regard to United Artists which goes to each of the years she has testified to about here, for the reason counsel has under stipulation in this case, United Artists contracts which show just what product the witness had instead of leaving it up to the witness to try to remember back to '32 and '33, as to whether she had part or all of that product. It is just not the best evidence.

The COURT. Overruled for the present.

By Mr. WRIGHT:

Q. Mrs. Berry, I will show you this tabulation marked for identification as Plaintiff's Exhibit 287, and ask you if that is an accurate listing of the major contracts that you had for the Campus and Oklahoma Theaters there in Norman during the seasons of '34-35 through '38-39?

A. Yes, this is. We have a copy of all this. These are contracts for the Oklahoma and Campus.

1235 Q. By referring to that document there can you tell how many United Artists first run pictures you bought for the '37-38 season?

A. Yes, sir, you could.

Mr. DUDLEY. If the Court please, we object to that question in that form, asking her to take that document.

The COURT. Now, gentlemen, what we want are the facts. Can't you examine those documents and if they meet with your requirement that it complies with the stipulation, I don't see any necessity for encumbering the record.

Mr. COCHRAN. Your Honor please, the difficulty is this. You must remember we don't have possession of these documents. Counsel produced such documents and pulled such documents as they wanted and had them photostated; we examined those before the trial and stipulated in regard to those documents, but that doesn't cover the various documents that she has referred to here, and the best evidence will be the stipulation on those covered by the stipulation, and where they are not covered by the stipulation, to produce the contracts, such as these. We don't care anything about having them introduced, but they can be referred to and checked, instead of having a tabulation that somebody made.

The COURT. Do you have any objection to submitting the contracts for inspection?

Mr. WRIGHT. To the extent that she has them, we

1236 have no objection to them being submitted at all. All I am attempting to do at the moment is establish the absence of certain contracts. I don't know how we can do that by submitting the others.

By the COURT:

Q. Let me ask a question. This exhibit which you hold in your hand, does that contain a complete tabulation of all the product that you had beginning with 1934 and ending with the 1939 season?

Mr. WRIGHT. I think she previously identified that as being a list only of the major product.

The WITNESS. Yes.

Mr. WRIGHT. I don't think it purports to show all the contracts that were made with all companies, only the major companies.

The WITNESS. Just major companies.

The COURT. Does your stipulation cover the major contracts or all contracts?

Mr. COCHRAN. The stipulation covered the contracts of eight companies that they pulled and presented to us and asked us if we would stipulate without having them bring the witnesses to prove those. That is the only thing we have to check by. This is a tabulation here prepared by somebody, we don't know who, and we have no way of checking those with the contracts because the contracts are not in our possession.

1237 The COURT. At this time, gentlemen, we will take a short recess, and I suggest that you check those and see if you can't stipulate these things. I don't see the necessity of taking the time to introduce in evidence those on which you can all agree.

Mr. DUDLEY. Your Honor, before a stipulation on those matters can be arrived at, the contracts would have to be here and made available to us so we can check them against the compilation.

Mr. COCHRAN. Another thing——

The COURT. (Interrupting.) You check those during the recess.

Mr. COCHRAN. We will be glad to check it.

The COURT. Check it during the recess period and then we will see where we are. We will take a short recess.

(At the conclusion of the recess the witness resumed the stand and the following proceedings were had and recorded:)

Mr. COCHRAN. Your Honor, I have gone through this list, and the only material against which I could check that is in the photostats which were taken from the United Artists' files, and the Government didn't see fit to select a single United Artist contract, and, therefore, there is nothing that I can check this against. The Government had access

to the distributors' files and still have access to
1238 them, and that would be the best evidence, and the only thing that I could stipulate to is that it is simply a typewritten tabulation and it is not the best evidence.

Mr. WRIGHT. It doesn't make any difference whether counsel wants to stipulate this or not. All I was using it for was to refresh the witness' recollection to clear up the fact as to whether or not she had a full season deal with United Artists for the '31-38 season.

By the COURT:

Q. Do you have any record yourself which will show the contracts with the various distributors which you had during this period from '32 to '38?

A. Well, of course, we have those contracts in '32 to '38, the ones we have shown.

Q. Well, have you any other than those that have been introduced? What does your own record in your own office show?

A. We have some more contracts.

Mr. WRIGHT. This is her record.

A. That is our record.

Mr. WRIGHT. 287 is ours.

The COURT. Did you make that up yourself?

A. I had my son make it up.

Mr. DUDLEY. The trouble about that record, it is a typewritten record. It deals with certain years but it
1239 certainly could not be binding upon us. It is some memorandum of hers taken from purported contracts which she evidently had which should be presented here so we can check them against her memorandum.

Mr. WRIGHT. I am not offering the memorandum in evidence. I merely used it for the sole purpose to refresh her recollection on this '37-38 United Artists deal. I think if she was permitted to go ahead and answer the question——

By Mr. WRIGHT:

Q. Mrs. Berry, can you tell us whether or not you had a full season's first run deal with United Artists for the '37-38 season?

A. For the '37-38 we had United Artists.

Q. I don't think you got the question. I asked you whether you had a full season's deal with United Artists for that season or just some pictures.

A. Just some pictures.

Q. Do you recall whether you were offered a full season's deal from them for that season?

A. No, sir.

Q. You were not?

A. No, sir.

By the COURT:

Q. Do you know how many pictures you got from United Artists for the '37–38 season?

A. Offhand I don't remember. I can find out by
1240 looking at the records but offhand I don't remember.

By the COURT:

Q. Do you have a record of that?

A. Yes, sir, I should think we would have.

By Mr. WRIGHT:

Q. Now, during the '37–38 season, as I understood your testimony, the only product you had first run was from United Artists pictures, is that right?

A. Yes, sir.

Q. Did you have during that season some major product, second run, that had played first run at the Griffith houses?

A. In '37–38, yes, sir.

Q. Calling your attention to the year 1938, can you tell us what, if anything, happened then with reference to your occupancy of the Campus Theater?

A. Our building was leased out from under us.

The COURT. I didn't hear you.

A. The Campus Theater was leased.

By Mr. WRIGHT:

Q. By whom?

A. To Griffith.

Mr. COCHRAN. We move to strike that as not being the best evidence, and the witness can state what the facts were in regard to that transaction. The records disclose what happened in regard to the matter and when her lease and so forth expires. As I understood her, she said
1241 that it was leased out from under her. Now, we submit that is a conclusion and she should state what happened in regard to the matter.

The COURT. Just state what the facts were in regard to that matter.

Mr. COCHRAN. And the transactions with the various parties. She had no transaction with Griffith in regard to that at all.

The COURT. Just state what happened between you and your landlord.

By Mr. WRIGHT:

Q. You may state first when the theater closed. How long did you operate the theater in 1938, the Campus?

A. The Campus closed when the University closed. We closed the Campus Theater for the summer. We have always done that.

Q. You had always done that?

A. We had been out there for ten years and during the Easter vacation and during Thanksgiving and summer vacation we closed the theater because it would not pay to operate it as we had only been able to obtain a lease from year to year on the building because there had been rumors of oil there and so forth, so that was the best lease we could get. We had been there for 10 years and our lease was up in August, and I don't remember the exact
1242 date, but before time for our lease to be up we got notice to move.

By the COURT:

Q. You were not able to re-lease the property?

A. No, sir.

By Mr. WRIGHT:

Q. Then what happened to the Campus Theater after that lease expired? Was it operated?

A. No. Our equipment was still there until October.

Q. Until October, '38?

A. Until October, '38.

Q. Then you removed your equipment?

A. We removed our equipment and stored it.

Q. Was it operated then?

A. No.

Q. How long did it remain closed?

A. I am not positive about the date it opened. I believe it was dark for three years.

Q. Do you remember approximately the year it reopened? You think it was either '40 or '41?

A. It was either '40 or '41 but I don't remember which year.

Q. Then when it was reopened it was operated by whom?

A. By Griffith.

Q. Under the same or another name?

A. Under the name of the Boomer Theater.

1243 Q. So that at the beginning of the 1938–39 season, you had only one theater in operation?

A. Yes, sir.

Q. And that was the Oklahoma?

A. That was the Oklahoma.

Q. And Griffith was then operating, was it the Sooner, and what else?

A. '38–39?

Q. Yes.

A. The Sooner, the Varsity, and the University, and then the Boomer.

Q. Well, in '38–39?

A. Excuse me, not the Boomer, no. It was closed.

Q. Then during that season, what, if any, major first run product do you have for the Oklahoma?

The COURT. '38–39.

Mr. WRIGHT. '38–39.

A. RKO.

By Mr. WRIGHT:

Q. You had RKO?

A. Yes, sir.

Q. You also bought it second run?

A. Yes, sir.

Q. Did you have any other major first run product?

A. No, sir.

Q. Then were you playing major second runs af-
1244 ter the first runs in the Griffith houses?

A. Yes, sir.

Q. Was that the same product that you played second run after them in '37–38, or was there any difference?

Mr. DUDLEY. If the Court please, that is highly leading, and we object to the leading questions. Let her state the facts.

The COURT. Read the question.

(Question read by reporter.)

The COURT. Overruled and exception allowed. You may answer.

A. There was a difference.

The COURT. I can't hear you.

A. There was a difference in the product. When we first began to get second runs that they had run first run, we had some good product; within a short time afterward we got second runs but they were B product.

By the COURT:

Q. They were what?

A. They were lower class pictures, B product, second run; we didn't get the A second run.

Mr. COCHRAN. If the Court please, that answer just shows the inaccuracy of permitting this type of testimony instead of requiring the production of the contracts. Now, the
contracts for those various years will show the
1245 product she got, and it will show whether they were A pictures or B pictures. That is, that information will be disclosed. Here we have an answer to the question that is not the best evidence, and it is a material question in this case, according to the Government's contention, and

we move to strike that answer of the witness because the contracts are the best evidence, and they will disclose what she got during each of those years.

A. Well, we would have all of these contracts, we would have every one of those.

By the COURT:

Q. Do you have those contracts?

A. We would be able to produce those contracts.

Q. Do you have them with you?

Mr. WRIGHT. If the Court please, I don't think the contracts, as counsel suggests, will disclose the quality of the pictures. They will simply say so many pictures with certain production numbers, from these companies. There is no dispute, of course, that she got the product. The only question here is as to the quality of the second runs that she did get, and that is something, I think, that may only be elicited from the witness. I don't think that will be established by offering in evidence these contracts.

The COURT. I will overrule the objection on this condition, that you submit the contracts covering that
1246 to counsel for the defendants.

Mr. COCHRAN. If the Court please, that doesn't answer the proposition, because the contracts are in the stipulation, and we know from those contracts that during the years 1936–37 and '37–38, and so forth, that she says she commenced to get second run contracts, we know that on certain of those major companies, if not all, that she was not licensed the full run, and it is the same situation that was explained by Johnny Jones at Shawnee, where she was licensed, for instance, by Metro, she was licensed twenty-two pictures, second run, and there are certain numbers, then they have contracts already in evidence showing what was licensed to Griffith that year, also for Fox, if any pictures were licensed, it will show the number of the pictures, but those contracts will definitely show she was not licensed any differently in the first years to those in the second year from Metro, Fox, Paramount, certainly those three, and Warners, certainly those three and, therefore, this is highly incompetent evidence, and not only that, but misleading and places a burden on us that we are not required to carry. Counsel pursued a method which was not objected to by us, in examining the witnesses from Shawnee. That showed what the situation was from the contract form. Now, he attempts to eliminate a situation which was unfavorable to him there by having
1247 the witness supply the data.

Mr. WRIGHT. There is no dispute, if the Court

please, what the contracts show. For the purpose of cross-examination he can have all the contracts she has. I am merely attempting to show something that the contracts do not show on their face.

Mr. COCHRAN. It is not for me to make his case on cross-examintion or to cross-examine on something that he has developed in a proper way. This witness is attempting to show that she didn't obtain in '38–39 the same type of contract on the major product that she obtained in '37.

The WITNESS. May I say something?

The COURT. Objection overruled at this time, because I think you can get the information on cross-examination. Perhaps you are right. But as to whether or not a picture is an A picture or a B picture, I don't know. I assume that one in the business will be in a position to know.

The WITNESS. That is what we have contracts on, but I was going to say, when they sell you pictures, they don't say they are any good; you have to know that.

Mr. DUDLEY. Now, if your Honor please, we object to her voluntary statement about it, and move to strike it.

The COURT. It will be stricken. You may proceed.

Mr. WRIGHT. What was the last question?

1248 Mr. COCHRAN. And I would like to have the answer that I objected to shown, to show the type of answer she was making.

The COURT. Read the question.

(Previous questions and answers read by the reporter.)

The COURT. She answered the question and you moved to strike it. Overruled and exception allowed.

By Mr. WRIGHT:

Q. With reference to Metro-Goldwyn-Mayer specifically, did you play all of the Metro product, second run, there in your theaters in '38–39, and the succeeding seasons, or just a part?

A. Just a part of them.

The COURT. A little louder, please.

A. Just a part of them.

By Mr. WRIGHT:

Q. You had what was called a split?

A. A split contract.

Q. With the companies?

A. Yes, sir.

Q. Of the second run Metro pictures?

A. Yes, sir.

Q. Can you tell how the split was made?

A. Let's see, you are talking about '38-39?

1249 Q. Yes.

A. They would take part of them—let me see—wait—I believe that is the time we would take part of them and they would take part of them.

Q. As the pictures were released they would pick one and you would get the next one or how was it?

A. I am not positive about that, as far back as '38-39. I haven't done the booking and buying, I have just been there and know what we have.

Q. You know it was split?

A. Yes.

Q. But you don't know just how it was split. Then as to Warner and Fox and Paramount second run—strike that—as I understand it, you didn't have a full deal with the second runs of any of those companies?

Q. No, sir.

Mr. COCHRAN. We object to the leading questions. The witness seems to be able to answer.

The COURT. It is slightly leading but I think she has covered it in her testimony.

By Mr. WRIGHT:

Q. Do you know how the particular part of the product you were to play there was determined as to those companies?

A. Well, as I say, along about '38-39 they got the A's, they got the upper bracket and we got the lower bracket.

1250 Q. Were you offered any of the upper bracket?

A. No, or we would have taken them.

Q. By those companies. You may cross examine.

By the COURT:

Q. You dealt entirely with the distributors, didn't you?

A. Yes, sir.

Q. Had no dealings with the Griffiths?

A. No, sir.

Q. You don't know anything about what their contracts were except what somebody told you?

A. Well, only I know—we know our pictures and we try to get the best we can and what we can and I know we can't get them, and of course we watch what is being shown. I mean we know what product is being shown.

Mr. WRIGHT. I don't think I offered Plaintiff's Exhibits 285 and 286. Those were Universal contracts. I offer those now.

Mr. COCHRAN. No objection.

By the COURT:

Q. In 1935-36 season you said you had the first and second run of Universal. Did you have any other pictures that year? Did you have United Artists that year?

A. '35–36 we had United Artists.

Q. Was that first or second run?

A. First and second run.

1251 Q. And in '36–37 you had United Artists first and second?

A. Yes, sir.

Q. And the same thing in '37–38?

A. Yes, sir.

Q. Did you have any Universal in '37–38?

A. I believe we had some Universal in '37–38; part of a contract. I am not positive.

Q. Did you have any United Artists in '38–39?

A. No United Artists in '38–39. The pictures we ran at the Oklahoma were the '38 contract. I mean left over from the Campus, second run.

Q. Did you try to get first run for your downtown theater?

A. Yes, we did.

The COURT. You may cross examine.

Mr. WRIGHT. There is one more question I want to ask you.

By Mr. WRIGHT:

Q. When the Campus was reopened by Griffith as the Boomer, what sort of policy did it play on?

A. Oh, they ran A, second run, at the Boomer when they opened it.

Q. Of the major companies?

A. Of the major companies.

Q. That is all.

1252 Cross-examination by Mr. COCHRAN:

Q. How long since you have licensed and booked pictures for your theater in Norman?

A. How long since I have myself?

Q. Read the question.

(Question read.)

A. You mean how long since I have done it myself?

Q. I asked you how long since you have done it?

A. I haven't made contracts for sometime. I have not contracted for the pictures myself. I usually have had someone else do that.

Q. How long since?

A. Not wholly by myself, no.

Q. Did you ever participate with anyone in doing it?
A. Yes.
Q. In the licensing of the pictures?
A. Yes.
Q. How long since?
A. I think in '37–38. I have always talked it over with them. I think as late as '37–38 I did.
Q. You talked it over with whom?
A. Between '35 and '38 Mr. Letherman was our manager.
Q. I asked you with whom did you talk the matter over and you said you talked the matter over with someone. Did you negotiate with any distributor yourself?
1253 A. Oh, no.
Q. You negotiated none of the contracts with the distributors?
A. I did with RKO. I talked to them.
Q. Did you carry on negotiations with any of the other distributors?
A. Well, I think some of them. I couldn't name which ones. I think with RKO, when my son was with me.
Q. How was that?
A. I think the last time I was in the office I talked with them on this last contract we had with them.
Q. In 1945?
A. No. The last contract we had from RKO, first run, I think was in '41. I probably was in the office then to sign the contract and my son was with me, I think, if I remember.
Q. You spoke of not having licensed any pictures from United Artists' product full season product after a certain period. Don't you know, Mrs. Berry, that United Artists never did license a full season's product at any one time but they licensed product and pictures separately?
A. Yes, I knew they licensed separately.
Q. And contracts you made from the beginning with the United Artists were made at the various times during the year?
1254 A. Yes, I knew that.
Q. So at no time from the time you started operating the theater at Norman did you at any time license a full season's product of United Artists?
Mr. WRIGHT. Are you asking whether she licensed it at one time or whether she had the full product?

By the WITNESS:

A. If we had the full product, you mean, by United Artists?

By Mr. COCHRAN:

Q. Yes, for the full season.

A. I am quite sure we did in the early years we were there. In the show business we felt like United Artists was ours because we ran their product. That was our product, and I think we had all their contracts along at first.

Q. Do you have the United Artists contracts, any of them?

A. I don't have them with me.

Q. Have you preserved them?

A. I will have to ask my son about that. I don't know. He files those things away. We probably have some of them or all of them.

Q. Who has kept the books for your theater?

A. The last few years my son has. I used to.

Q. How long has it been since you kept them?

A. I believe he has been doing most of the book
1255 work since '38.

Q. When Mr. Letherman was manager did he keep the books?

A. I kept the books then.

Q. You spoke of playing in 1938 and 1939, playing some United Artists pictures from the previous year's contracts. Now don't you recall that in the playing of the pictures which you licensed from United Artists in '37–38, there were a number of pictures which you did not play?

A. Yes,. because you see we closed down. They were not released in time for us to run them before we closed that spring. We always had that situation.

Q. Is it not a fact that delinquency went along until United Artists sent its claim against you to its attorney in Norman?

A. No.

Q. You know Mr. Grimm down there, do you not, an attorney?

A. I do.

Q. Don't you know he took up with you the claim of United Artists for that unplayed product?

A. No, I don't know that.

Q. For the '37–38 season?

A. I didn't know that.

1256 Q. Mr. Benedum was your attorney during that period, wasn't he?

A. Yes, sir.

Q. Don't you know he at that time was handling the claim of several of these distributors for unplayed delinquent product for you?

A. Not several.

Q. Beg your pardon?

A. If any of this United Artists product was not run it was because it was not released. You see we were closed during Easter and during the summer season. If it wasn't released we couldn't run it.

Q. How did you close at Easter? How long did you close?

A. The Campus was closed during the Easter vacation and during the summer vacation.

Q. You were still running the Oklahoma, weren't you?

A. Yes, sir, but we had paid too much for those first run pictures. Our admission prices at the Campus were more than they were downtown, and we had paid too much for those pictures to run them at a second run house, where we had a second run policy.

Q. But you didn't attempt to change your policy downtown and run the pictures first run down there?

1257 A. Not at that minute because we had to have other pictures to go with it before we could change our policy.

Q. Don't you know it is a fact, on those '37–38 pictures that were not played that you made a settlement with United Artists on a basis of 50 cents on the dollar, after the claim had been placed in the hands of an attorney?

A. No. I didn't know the claim had really been placed in the hands of an attorney.

Q. Don't you know that on February 26, 1938, United Artists took up with you at your theater the matter of your delinquency on eleven first run pictures and eight second run pictures?

A. No, I don't know.

Q. Weren't you delinquent on February 26, 1938, on product which you had licensed in '36–37?

A. I didn't know that, but one thing——

Q. Just answer my question, please.

A. No.

Q. Will you say you were not delinquent on United Artists?

A. We were delinquent on some of their product. I will say that.

Q. Between '36–37 season and February, '38?

A. '36–37—aren't you talking about '37–38 product that we were delinquent on?

1258 Q. I am talking about '36–37 product, eleven first run and eight second run.

A. Probably one of those was the '36. We were delinquent on '37–38 product because, as I say, we were

closed down and the prices were too high, and then when we were pondering what to do about it——

Mr. COCHRAN. We object to the voluntary statement.

The COURT. Well, let her make the explanation.

A. When we were wondering what to do about it, we knew we were delinquent, and what we could do at that price, Griffith began running United Artists pictures at their houses. We were released we felt like then. They were running the high priced pictures and we felt like we were released then from our contract. As far as them having anything in the hands of an attorney, I never dreamed of any such thing.

Q. Talking about Griffith playing United Artists A pictures at their theater, the pictures which they were playing were pictures for the '38–39 season, weren't they?

A. They were probably playing them that season, current season, after they ran pictures we had under contract when we were pondering what to do about it.

Q. What pictures did they run which you had under contract?

A. I would have to look that up to be sure. I know they ran pictures we had under contract.

1259 Mr. COCHRAN. I move to strike that answer.

A. We can find out easily. We can look back at the books.

Mr. COCHRAN. We can't check a thing of that kind.

The COURT. No, but she can check it. Her books are not far away.

By Mr. COCHRAN:

Q. Do you know that on May 10, 1939, that Vitagraph had a claim against you in the amount of $531.50 for product that you had received to date or play or pay for?

A. No. How would anyone else know and we would not? I didn't know that, no.

Q. Do you recall receiving a letter from the attorneys for Vitagraph, Keaton, Wells & Johnston, addressed to you dated May 10, 1939, calling your attention to that delinquency and requesting payments?

A. No, I don't.

Q. Do you have the correspondence which you received during the year 1939?

A. I should have but I don't remember anything like that.

Q. Were you familiar with the operation of the theater at Norman during the year 1931?

A. Yes, I should say. Of course, I didn't know everything about it.

1260 Q. Are you familiar with the fact that in that year a suit was filed by Universal for an amount which was alleged to be due for product which had been licensed and which had not been played or paid for, that suit being filed in the County Court of Cleveland County, Oklahoma?

A. You see Mr. Berry was living then. I did try to help around the theater but I didn't handle any of the business end then.

1261 Q. What was the date that your husband died?

A. April 11, 1932.

Q. He had operated the Oklahoma for how long?

A. He opened the Oklahoma in July of '30.

Q. When did he open the Campus Theater?

A. Well, the Campus had been operating, I mean he operated the Campus from '38, began that—in '28, I mean.

Q. Do you mean the Campus was opened before the Oklahoma was?

A. Yes, sir.

Q. When he opened the Oklahoma in July of 1930, who was operating theaters in Norman at that time?

A. When he opened the Oklahoma in 1930?

Q. The Campus in 1928.

A. I think Griffith, that was the year, I am not sure, I wasn't there in 1928, but Mr. Berry was; I think the Griffiths went in that year, didn't they?

Q. Where were you in 1928?

A. I lived in Oklahoma City.

Q. When did you go to Norman?

A. The fall of '29.

Q. So you are not familiar with the situation until the fall of '29, is that correct?

A. Yes, not too much, I am not.

Q. When you first became acquainted with the
1262 theater situation in Norman, what were the names of the theaters that were then operating?

A. The Sooner, the University, and the Campus.

Q. Now, the University that you speak of at that time was located where?

A. Across the street from the Sooner, I believe, in '29.

Q. That isn't the University that you speak of in later years?

A. No.

Q. And the Sooner was located where?

A. In its present location.

Q. That is, on Main Street?

A. Yes, sir.

Q. Now, in July of 1930, your husband opened another theater known as the Oklahoma, located where, with reference to the Sooner?

A. On Main Street.

Q. With reference to the Sooner.

A. Well, the Sooner is on Main Street and the Oklahoma is on Main Street, I mean downtown in Norman.

Q. Are they on the same side of the street?

A. Yes, sir.

Q. How far are they from each other?

A. About, let me see, a block and a half.

1263 Q. Do you recall that in 1930 Griffith opened a new theater which had just been built, called the New University?

A. Yes.

Q. Where was that located?

A. About a half a block, not a half a block, east of our theater, the Oklahoma. It isn't a half a block.

Q. Now, you spoke of the old University then being vacant for a time, is that right?

A. Yes, sir.

Q. Now, do you know whether or not that was vacated and abandoned for theater purposes and the Griffiths' lease wasn't renewed on it?

A. No, I wouldn't know. I——

Q. You wouldn't know?

A. No.

Q. Do you know whether or not the Griffiths acquired the title to the real estate on which that theater was located at a foreclosure proceeding on July 6, 1937, do you know anything about that?

A. No; I guess I heard they did at the time.

Q. Well, was it about July of 1937 that you say that theater was opened again?

A. It was under construction, I mean being remodeled, in July, and opened sometime in the fall.

Q. It was remodeled and opened up in the fall of 1937?

1264 A. Yes, sir.

Q. Under what name?

A. Under the name of the Varsity.

Q. So, after that theater was opened Griffith was operating the Sooner, the new University, and the old University under the name of Varsity?

A. Yes, sir.

Q. Could you tell us the type of pictures that were being played in each of those Griffith theaters after the Varsity

was reopened, I mean, after the Varsity was opened? The Sooner was their A house, wasn't it?

A. Yes, sir.

Q. That was their best theater?

A. Yes, sir.

Q. The University after, the new University after the Varsity was opened, first operated under what kind of policy, if you know?

A. Well, before the Varsity was opened, they ran first runs.

Q. B pictures?

A. At the University.

Q. That was a B house?

A. Yes, of course, it would be a B house.

Q. Operating on B product and runs?

A. Yes, sir.

1265 Q. And then after the Varsity was opened, what policy did the Varsity follow immediately after it opened?

A. Well, they, of course, they ran their B pictures; they ran some awfully good ones, and they ran their B pictures, and they had enough B's, good B's, to run at the University. Of course, they ran good westerns at the University Theater too.

Q. Isn't it a fact that after the Varsity was opened that in either the University or the Varsity some second run pictures were played?

A. It was very few—let's see—they began to pick out some A's after he opened the Varsity and ran them, I will say that.

Q. Wasn't the Varsity originally opened on a second run policy?

A. Do you mean their opening picture was a second run?

Q. I mean when they started to running it, as their regular policy they played second run pictures immediately after opening?

A. I didn't think they opened up, I mean make a second run policy, I don't believe so. Of course, they have run some second runs there, some A second runs, or some reissues.

Q. Then wasn't that policy changed and the Varsity became their B house and the University their second

1266 run house?

A. That was probably the case after they got to running more second run pictures, that was the case after they got to really running second run pictures, that was the case.

Q. Wasn't that the season of '37–38?

A. Yes, sir, I will say yes; that was their policy then in that season. But you see, that was after they got to running more second runs.

Q. Now, this lease which your husband had on the Campus Theater was with Mr. S. C. Ambrister, he owned the property, didn't he?

A. Yes, sir.

Q. That lease was for how long originally, do you know?

A. Well, I, I don't know when Mr. Berry was living how the lease stood; after he died it was a year to year lease. That was the only way he would lease it, because there were rumors of oil, and just from one year to the next.

Q. Well, along in 1938 your lease was expiring in August of that year, was it not?

A. Yes, sir.

Q. And isn't it a fact that you had had considerable difficulty with Mr. Ambrister for a period of more than a year about that piece of property?

A. Well, I wouldn't consider it difficulty, only
1267 that he had promised to fix the roof, the leaks, and various things.

Q. You had a lawsuit about it, didn't you?

A. Prior to that time? No.

Q. Yes, didn't you have a lawsuit in which he sued you for the rent?

A. Not before our lease was up, not before the building was leased.

Q. Prior to 1938?

A. Beg pardon? No.

Q. You were delinquent in your rent prior to the expiration of your lease, were you not?

Mr. WRIGHT. If the Court please, that calls for a conclusion.

A. No, sir.

Mr. WRIGHT. As to whether she was delinquent.

The COURT. If she knows.

By Mr. COCHRAN:

Q. All right, there was rent that had not been paid, wasn't there?

A. Well, you see when our lease expired there was rent that hadn't been paid; you see we closed down in May, and of course, we paid rent during the summertime, and that rent wasn't paid; we would usually pay that all for the summer.

Q. Isn't it a fact that long prior to the summer
1268 you had had unpaid rent and that Mr. Ambrister agreed with you that he would make a settlement and deduct a part of the amount that was due, if you would go ahead and keep the rent paid up in the future, and that you paid after that settlement was made, you paid for a couple of months, and then failed to pay up promptly; isn't that a fact?

A. I—I don't, I, I don't remember about any settlement, but I do know we were trying to get him to fix the roof, and that was the only trouble I ever had with him at all. We had spent about——

Q. (Interrupting.) Don't you know that Mr. Ambrister during a period of months prior to August 1938 contacted you frequently, and would make appointments with you to see him about that rent, and when he would come down there to see you you would not be there, don't you know that?

A. No.

Q. And didn't he, long prior to August, tell you repeatedly that when the contract was up for renewal, he would not consider renewing it?

A. No, sir.

Q. At all?

A. No, sir, he didn't tell me that.

Q. When the lease was up, he didn't renew it, is that correct?

A. No.

1269 Q. And at that time you owed a considerable amount of rent, did you not?

A. Not considerable, no, nuh-huh.

Q. Do you remember how much it was?

A. I think it would be probably the summer, probably two or three summer months; it wasn't so very much.

Q. How much was the rent per month?

A. I believe it was a hundred and a quarter, wasn't it? I don't remember those things exactly. I believe it was a hundred and a quarter.

Q. Wasn't that matter placed in the hands of attorneys and finally Mr. Benedum made a settlement of that claim by getting them to agree to take your note?

A. That wasn't until way after our building was leased and way after we had our notice to move, and before that we had spent two thousand dollars remodeling the building, the show, and had the equipment, had workmen out there going over the equipment, before we got our notice to move, and then away after that got our notice after our lease was up, I met that attorney.

Q. And gave a note for the rent that had not been paid prior to that time?

A. Yes, sir.

Q. Isn't it a fact that prior to August 1, 1938, that you had moved out of that building?

1270 A. No.

Q. And that all of the equipment had been taken out, and that you had also had the wiring in the building torn out?

A. Before when?

Q. Before August 1, 1938?

A. No, we didn't move anything until October, until way after we had our notice to move, we didn't move a thing. I had a man out there all summer, and he was then out there working after we had our notice to move and our lease wasn't up until August.

Q. Do you now say that Mr. Ambrister hadn't notified you prior to the expiration of that lease that he would not consider renewing your lease under any circumstances?

A. No, he hadn't. We got a notice thirty days before time, or something like that, and Ambrister didn't deliver that. That was the first I knew of it. We had been there for ten years.

Q. Beg pardon?

A. We had been there for ten years. Sometimes we almost starved.

Q. The relation between you and Mr. Ambrister for that period, during 1938 up until August 1st, wasn't good at all, was it?

A. Why, yes, I would say it was all right. The only

1271 thing, I hadn't talked to Mr. Ambrister very much, only the last talk I had, he agreed to fix the roof, to remodel—to repair the building, and that is the only unpleasant conversation I had ever had with him.

Q. Then you were not having difficulties all the time?

A. No.

Q. During 1938, about the payment of the rent?

A. No.

The Court. At this time, gentlemen, we will recess until two o'clock p. m.

(Whereupon, court recesses until two o'clock p. m.)

1272 Proceedings

2:00 o'clock p. m.

Mrs. Juanita Berry, recalled, further testified:

Cross-examination (con't by Mr. Cochran):

Q. When was the Boomer Theater opened?

A. In the fall of 1940, I believe.

Q. After it opened were the theaters that were operating in Norman, the Sooner, University, the Varsity, the Boomer and the Oklahoma?

A. Yes, sir.

Q. Are all of those still operating?

A. Yes, sir.

Q. What was your statement about the product of the United Artists which you licensed for the season of '36–37?

A. We had United Artists in '36–37.

Q. I asked you, what did you say about how much of it you had.

A. You mean did I say whether or not we had the whole contract?

Q. Did you say how many pictures you had first run?

A. I didn't say because I don't have that in my mind, the exact number, no.

Q. You don't have it on your memorandum?

1273 A. Yes, we do; not on this memorandum. We have it on that information you have there.

Q. Will you take that folder and produce for us the United Artists contracts which you had for the 1936–37 season.

A. Look through this and find the United Artists contracts for '36–37?

Q. Yes.

A. I hope these are in order.

Q. Mr. Wright says they are in order. I think that is true.

A. Are these yours you put together?

Q. Mr. Wright put them together and he says they are in chronological order and I am satisfied that is true.

Mr. WRIGHT. Those contracts are merely all of those that were produced. I don't know that those are all the contracts.

A. Look through each one of these and tell you whether each one of these are ours?

The COURT. I think if you will take them one at a time you will get along faster.

1274 Mr. COCHRAN. Please marked these as exhibits. Here are several on one date, they are placed together; shall we mark them separately?

Mr. WRIGHT. I don't care; you may put them all together, if you want to. Do these go on that date?

Mr. COCHRAN. They are another date.

(Defendant's Exhibits 12 to 29 for identification, inclusive, were then marked by the reporter.)

By Mr. COCHRAN:

Q. Defendants' Exhibit 12, consisting of four contracts, with United Artists, and ask you if those are contracts which the Oklahoma Theater had with United Artists, played in the year 1936?

The COURT. For what season?

Mr. COCHRAN. I can't tell the season, but I assume it would be the '36-37 season, but I can't tell. We will see when we offer them.

Mr. WRIGHT. What is the date of the application?

Mr. COCHRAN. January 4, 1936, but some of them are first run and some are second run.

Q. Are these contracts which the Oklahoma Theater had with United Artists, dated that date?

A. Yes, sir, they are.

The COURT. I can't hear the witness.

A. Yes, sir, they are.

Mr. COCHRAN. We offer in evidence Defendants'
1275 Exhibit No. 12, the first page of which is a contract with United Artists for one picture, "Thunders in the East", for the Oklahoma Theater, Norman, for three days, and preview, dated 1-4-36. That's the date of the application, and the approval is written so I can't tell what it is, it is perforated, and you would have to be able to see it, or read it through a glass, I imagine, for second run. It doesn't show on its face the season. The second page is for the picture "Splendor" at the Oklahoma Theater, four days and preview; the date of the application is the same as the preceding one for second run. The third page is for the picture "Barbary Coast" four days and preview, dated January 4, 1936, second run; the fourth page is for the picture "Dark Angel", four days and preview, second run, dated January 4, 1936, for the Oklahoma Theater.

Mr. WRIGHT. No objection.

1276 Mr. COCHRAN. I hand you Defendants' Exhibit No. 13 and ask you if that is a contract which was made with United Artists in January, 1936? Is that your signature?

A. Yes, by Mr. Letherman.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 13.

Mr. WRIGHT. What is it?

Mr. COCHRAN. It is a picture, "Escape Me Never" dated January 23, 1936, for four days and preview, first run, for the Campus Theater, Norman, Oklahoma. I offer that in evidence.

Mr. WRIGHT. No objection.

Mr. COCHRAN. I hand you Defendants' Exhibit 14 and ask you if that is a contract with United Artists dated May 2, 1936, on the picture "The Ghost Goes West" for first run?

A. Yes.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 14.

The COURT. What is the date?

Mr. COCHRAN. The date of the application is January 23, 1936, "The Ghost Goes West" for four days and preview, first run, Campus Theater.

Mr. WRIGHT. No objection.

Mr. COCHRAN. I hand you Defendants' Exhibit 15,
1277 and ask you if that is a contract with United Artists for the picture "Conquest of the Air" second run, the date of application being January 23, 1936?

A. Yes, it is.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 15.

Mr. WRIGHT. No objection.

The COURT. It will be admitted.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 16 and ask you if that is a contract with United Artists for the picture "Les Miserables" third run, date of application January 23, 1936.

A. Yes, it is. All these contracts are signed by Mr. Letherman and he signed my name.

Q. They are the contracts you had with United Artists for that season about which you were testifying this morning. Is that right?

A. I suppose it is.

Q. I just want to know if that is true. You testified you had certain contracts.

A. Are these the contracts that came from my files? They were supposed to be put together. My son is gone. I think these are the ones.

By Mr. COCHRAN:

Q. Do you know Mr. Letherman's signature?
1278 A. That looks like his signature.

Q. Was he your manager at that time?

A. Yes, sir.

Q. Was the Oklahoma your theater at that time?

A. Yes, sir.

Q. Were those contracts left with the attorney general?

A. Yes.

Q. You will say that is your contract?
A. I will say that is my contract.

By the COURT:

Q. Did you run that picture?

A. I don't know all the pictures we ran. In fact, today I can't remember anything. The only way I could be sure about those things would be to look back over the books. I know we ran them because we had always been short of product.

Mr. COCHRAN. We move to strike that answer as not responsive, about being short of product.

A. How are you going to explain those things?

The COURT. That is a voluntary statement.

Mr. WRIGHT. It is not clear to me what the purpose of this is. She testified she had this product and putting in these contracts merely confirms the fact.

The COURT. She said she didn't know how many.

Mr. WRIGHT. Putting these contracts in one by one still won't tell how many she had since there isn't any
1279 representation these were all the contracts that were made. These are all the contracts she was able to produce at the time.

Mr. COCHRAN. This was for one picture third run.

The COURT. Exhibit 17?

Mr. COCHRAN. Exhibit No. 16, your Honor. The date of the application is January 23, 1936.

The COURT. It will be admitted.

1280 Mr. COCHRAN. We might shorten this in this way, Mr. Wright, if you are willing to state that these documents that I am now presenting are contracts with United Artists which this witness has presented, and which are taken from her files.

Mr. WRIGHT. Surely.

Mr. COCHRAN. And it isn't necessary to further identify them.

Mr. WRIGHT. I shouldn't think so.

Mr. COCHRAN. Then, we offer in evidence Defendants' Exhibit No. 17, which is a contract for one picture "Call of the Wild", dated January 23, 1936, third run, for the Oklahoma; Defendants' Exhibit No. 18, one contract for the picture "House of Rothschild", third run, dated January 23, 1936, for the Oklahoma.

Defendants' Exhibit No. 19, a contract dated 1-23-36, for the picture, "Looking for Trouble", third run, Oklahoma Theater.

Defendants' Exhibit No. 20, contract dated 1-23-36, for the picture, "Mighty Barnum", third run, for the Oklahoma.

The COURT. United Artists?

Mr. COCHRAN. All of these are United Artists, your Honor. Defendants' Exhibit No. 21, dated January 23, 1936, the picture, "Bulldog Drummond Strikes Back,"

1281 third run, Oklahoma Theater;

Defendants' Exhibit No. 22, dated 1-23-36, for the picture "Let 'em Have It", third run, Oklahoma;

Defendants' Exhibit No. 23, dated 1-23-36, the picture "Red Salute", third run, Oklahoma.

Defendants' Exhibit No. 24, dated 1-23-36, for the picture "Transatlantic Merry-Go-Round", third run, Oklahoma.

Defendants' Exhibit No. 25, dated 1-23-36, for the picture "Count of Monte Cristo", third run, for the Oklahoma;

Defendants' Exhibit No. 26, dated 1-23-36, for the picture "I Cover the Waterfront", third run, Oklahoma.

Defendants' Exhibit No. 27, dated 1-23-36, for the picture "Melody Lingers On", third run, Oklahoma.

The COURT. The same date?

Mr. COCHRAN. The same date. Defendants' Exhibit No. 28, contract dated May 2, 1936, for the picture "Amateur Gentleman", first run, Campus Theater.

Defendants' Exhibit No. 29, contract dated June 17, 1936, picture "Modern Times", second run, Oklahoma Theater.

(Defendants' Exhibits 30 to 33 for identification, inclusive, were marked by the reporter.)

Mr. COCHRAN. Defendants' Exhibit No. 30, contract

1282 dated March 18, 1936, for the picture "Strike Me Pink", second run, Oklahoma.

Defendants' Exhibit No. 31, dated June 17, 1936, picture "These Three", second run, Oklahoma.

Defendants' Exhibit No. 32, dated June 17, 1936, the picture "Modern Times", first run. I thought we had that awhile ago.

The COURT. First run?

Mr. COCHRAN. Yes, sir, first run, "Modern Times".

Mr. WRIGHT. The other one was second run.

Mr. COCHRAN. All right. Oklahoma Theater.

Defendants' Exhibit No. 33, dated June 17, 1936, on the picture "These Three", first run, Oklahoma.

1283 Mr. COCHRAN. Defendants' Exhibit 34 is a contract dated, the application is dated December 4, 1936, covering six Korda productions. It does not show the year or season for the Campus or Oklahoma Theater, second run.

Defendants' Exhibit 35 is a contract, the date of the application being December 4, 1936, covering six Selznick pictures for the Campus and Oklahoma, second run.

Defendants' Exhibit No. 36 is a contract, the application being dated December 4, 1936, for one picture, "The Last of the Mohicans" second run for Campus or Oklahoma.

Defendants' Exhibit 37 is a contract, application date December 4, 1936, one picture, "Dreaming Lips" second run, Campus or Oklahoma.

Defendants' Exhibit 38, is a contract, application dated December 4, 1936, two pictures; "Pickford-Lasky" productions, second run, Campus or Oklahoma, the pictures being the "Gay Desperado" and "One Rainy Afternoon".

Defendants' Exhibit 39 is a contract, the application dated December 4, 1936, covering seven Walter Wanger second run for Campus or Oklahoma.

Defendants' Exhibit 40 is a contract, application dated December 4, 1936, for two pictures, "Accused" and "Forever and Forever", second run; Campus or Oklahoma.

Defendants' Exhibit No. 41, the same date, two pictures, "Accused" and "Forever and Forever", first
1284 run; Campus or Oklahoma.

Defendants' Exhibit No. 42, application, dated December 4, 1936, "Gay Desperado" and "One Rainy Afternoon"; first run, Campus or Oklahoma.

Defendants' Exhibit No. 43, December 4, 1936; one picture, "Dreaming Lips"; first run, Campus or Oklahoma.

Defendants' Exhibit No. 44, application dated December 4, 1936, five Samuel Goldwyn productions, second run; Oklahoma.

Defendants' Exhibit No. 45, December 21, 1936, five Selznick Internationals, first run, Campus or Oklahoma.

Defendants' Exhibit No. 46, December 21, '36, seven Walter Wanger productions, first run; Campus or Oklahoma.

Defendants' Exhibit No. 47, December 21, '36; six Alexander Korda productions, first run, Campus or Oklahoma.

Defendants' Exhibit No. 48, December 21, 1936, five Samuel Goldwyn productions, first run; Campus or Oklahoma.

Defendants' Exhibit No. 49, January 4, 1937; "Thunder in the East", first run, Campus. I believe that is a duplication, but if it is it will show up.

Defendants' Exhibit No. 50, January 23, 1936; the "Conquest of the Air" first run, Campus.

1285 (Defendants' Exhibits 51 to 60, inclusive, for identification marked by the reporter.)

Mr. COCHRAN. Defendants' Exhibit No. 51, dated August 31, 1936—I withdraw that; that isn't for feature pictures; it is for Disney cartoon, so 51 is withdrawn.

No. 52 is not offered because it likewise covers Disney.

Defendants' Exhibit 53, contract application dated March 25, 1937, for one picture "Fire Over England", second run, Campus or Oklahoma; March 25, 1937.

Defendants' Exhibit No. 54, is the same date, for the same picture.

The COURT. What date?

Mr. COCHRAN. First run, in the Campus or Oklahoma.

Defendants' Exhibit No. 55, application date May 8, 1937, covering the picture "Love From a Stranger".

The COURT. That is No. 55?

Mr. COCHRAN. That is No. 55.

The COURT. What date?

Mr. COCHRAN. May 8, 1937, second run, Campus or Oklahoma;

Defendants' Exhibit No. 56, the same date, one picture "Dark Journey", second run, Campus or Oklahoma;

Defendants' Exhibit 57, the same date, one picture "Dark Journey", first run, Campus or Oklahoma;

1286 Defendants' Exhibit No. 58, dated 5-8-37, one picture, "Disney Review", Campus or Oklahoma. And also under the same exhibit number, on the same date, is a contract on the picture "Love from a Stranger", first run, Campus or Oklahoma;

Defendants' Exhibit No. 59, dated October 18, 1937, covering four pictures, first run, Campus or Oklahoma, "Over the Moon", "Mutiny in the Mountains", "Four Feathers" and "Gayety Girls";

Defendants' Exhibit No. 60, contract application dated October 18, 1937, for six pictures, first run, Campus or Oklahoma, "Storm in a Teacup", "Diamond Trust", "Action for Slander", "South Riding", "The First and Last", and "Paradise for Two".

The COURT. That is six pictures.

Mr. COCHRAN. Yes, sir.

The COURT. First run.

Mr. COCHRAN. First run.

BY MR. COCHRAN:

Q. Can you tell us, Mrs. Berry, whether you had any other contracts which were made for the 1937, or during the 1937-38 season, for United Artists' pictures, either first or second run, other than those which have been produced here; do you know?

A. Well, I don't know. I mean, we are supposed to have the contracts. Now, I don't remember, and you
1287 don't either, surely, each picture that we have called off.

Q. Well, you can't tell the Court how many pictures you had licensed that year from United Artists, can you?

A. Not offhand. I can tell you by our records.

Q. What kind of records?

A. By our books, how many, exactly how many pictures we had, and how many we ran and everything.

Q. Do you have your play-off record here?

A. Do I have it, Jack? No.

Q. You don't have it?

A. No.

(Defendants' Exhibit No. 61 was marked by the reporter for identification.)

1288 Mr. COCHRAN. I hand you Defendants' Exhibit 61 and ask you if that is the contract which you had with Universal for second run product which was dated in October of 1935?

A. Yes, it is. It shows the number of features offered 30, number of features sold 12, for the second run for the Oklahoma Theater, dated October 10, '35, for the season of '35-36.

Q. There has been introduced here some Universal contracts covering first run product for the '36-37 season. You recall that, do you?

A. Yes, sir.

Q. How many pictures was that, first run? Do you have that on your memo?

A. No, I don't.

Q. Let it go. The contract will show for itself. I do not find in your contracts which you have produced here any contract for Universal for the season of '37-38, first run. Did you license any Universal pictures, first run, for the '37-38 season, feature pictures?

A. From Universal, you mean?

Q. Yes.

A. No, I don't think so.

Q. Isn't it a fact there were offered to you all of the feature product for the '37-38 season except the top 12?

1289 A. First run, all but the top 12, you say?

Q. Yes, for the '37-38 season.

A. Well—

Q. Just state whether you know or not.

A. I don't know for sure. I am not real positive. They probably were but I am not positive. If the top 12 were taken off I wouldn't want them.

Q. Either first or second run?

A. I wouldn't want it either first or second run without the top 12. Mixed up why you couldn't use them.

Q. We read into the record there a number of those United Artists pictures which were licensed, and with the application date in 1936. Wasn't it out of that group of pictures that were licensed during the year 1936 that you had a controversy with United Artists because you had not played 11 of them first run and eight of them second run?

A. No. The only controversy we could have, they couldn't understand why we didn't run them in the summertime. That is the only trouble that we had. They were not released by the time school was out and we had to wait until fall to open up. That was the only trouble.

Q. You know Mr. Homer Caldwell, an attorney in Oklahoma City?

A. Yes, I do.

Q. After your husband's death, do you recall em-
1290 ploying Mr. Homer Caldwell to represent you in a lawsuit filed in the County Court of Cleveland County by Universal Film Exchanges, against Ray C. Berry?

A. Now wasn't that just before Mr. Berry died, or something?

Q. I asked you——

A. I don't remember. I know Mr. Caldwell but I don't remember ever talking about the film business with him.

Q. Wasn't that case disposed of after his death and Mr. Caldwell represented you in that proceeding?

A. No. I never have employed Mr. Caldwell as an attorney. I have always had Mr. Benedum.

Mr. WRIGHT. What could that litigation possibly have to do the issues here? It was long before these Universal contracts that are in evidence were made.

The COURT. The only purpose, I assume, would be to show that the distributor would have some hesitancy in making this sale if he had a bad account?

Mr. WRIGHT. It is perfectly obvious. These sales which are in evidence were at a later date.

The COURT. She said she didn't know anything about it. She has answered the question.

By Mr. COCHRAN:

Q. In order to refresh your memory, I hand you this carbon copy of a letter and will ask you to examine it

and state if you recall the incident referred to in
1291 that letter.

(Witness reads letter).

Q. Do you recall receiving that letter?

A. I don't recall. I suppose we did. If we did, Jack went in and talked to them about it. I haven't handled any of that——

By the COURT:

Q. Do you recall that letter? Answer the question.

A. No, I don't.

By Mr. COCHRAN:

Q. I will ask you to examine another letter from the same attorneys to you, dated May 10, 1939, and ask you if you received that letter.

A. I don't recall it. I really don't. You see this was right after Mr. Letherman——

The COURT. You don't recall it?

A. No. When we changed managers the new one just took hold of things so I don't recall it. That was probably it. When one manager would let go the other one had to book in the product, and he had to book in some of those probably.

By the COURT:

Q. From 1932 until 1939, were you able to buy pictures sufficient to run your theater?

A. No. We have run trash. We have run third run and we searched for pictures; ran our own pictures third run to make them spread around enough. We are amazed that we have been able to operate for 16 years.

1292 Q. You operated on a change of three changes a week, did you?

A. Out at the Campus, two changes a week, part of the time, I believe.

Q. What number of changes are you operating on now?

A. Three changes a week.

Q. Single bill or double?

A. Single bill.

Q. And you are operating on major product?

A. Yes.

Q. Now, in 1936-37, you were operating the Oklahoma on three changes a week, were you not?

A. '36-37, yes.

Q. And in '37-38, is that correct?

A. Yes.

Q. And '38-39?

A. Yes.

Q. And in each of those years you had pictures sufficient to operate on your full program that you had?

A. Well, by bringing them back third and sometimes fourth run.

Q. Did you have any Monogram pictures?

A. Yes.

Q. And Allied?

A. Yes.

1293 Q. And Sach?

A. Yes.

Q. And Republic?

A. Republic. We haven't had——

Q. (Interrupting.) And Grand National?

A. I suppose so. I have almost forgotten what Grand National was. Yes.

Q. PRC?

A. Some, yes.

Q. And you also, during 1937-38 and '38-39, had a number of second run pictures from major distributors, and also you had your choice of the so-called independent product, didn't you?

A. Our choice of the independent, no.

Q. Of the independent?

A. I thought you were leading up to that. No, not through '39.

Q. I said '38-39?

A. '38-39; no.

Q. Beg pardon?

A. No, I would say we didn't.

Q. Well, you had all of the PRC's you wanted, didn't you?

A. Who wants any of those?

Q. I didn't ask you that. You said you didn't have your choice of the independent product.

1294 A. I can say—let me see—'39?

Q. '38-39.

A. Let me see; I would say through '38 we didn't have PRC, as poor as it was.

Q. You didn't have PRC in '38? Do you know? Do you know what product you had of the independents that season?

A. Let me see; '38-39? Let me see—I don't know whether we had PRC, or not.

Q. Do you know what independent product you had?

Mr. Wright. If the Court please, it seems to me a lot of time is being wasted on an immaterial issue. There are no allegations in the complaint concerning independent product.

Mr. COCHRAN. The only purpose of it, your Honor, if she says she didn't, that will end the thing. She left the impression——

The COURT (interrupting.) I think it is competent cross-examination, as far as that is concerned. The point is just this, was the market sufficient to provide the pictures that were necessary to the various exhibitors.

A. No, that you could exist on. Who wants PRC? No one wanted it.

The COURT. I don't know; in fact, they all look alike to me.

A. I know they would to you or to anyone that is
1295 not a showman, or you wouldn't go in and see them when you see the bill out in front.

The COURT. I don't know.

Mr. COCHRAN. We move to strike that as not responsive.

The COURT. Yes, and the Court's remarks maybe withdrawn too. I don't want to reflect on the industry or the importance of this litigation. I will say by way of parenthesis, however, that I have seen A's that didn't look like the first letter of the alphabet to me. Anything further with this witness?

Mr. COCHRAN. That's all.

(Plaintiff's Exhibit No. 288 for identification was marked by the reporter.)

Re-direct examination by Mr. WRIGHT:

Q. Do you recognize these four sheets attached together here, marked Plaintiff's Exhibit 288 for identification, as the second run deal that you made with Metro in October or in November of 1937, for second run of the '34-35, and '35-36, '36-37, and '37-38 features?

A. Yes, sir.

Q. I call attention to the last page which is the '37-38 contract, and the reference to two in the fourth
1296 group, twelve in the fifth group, and the balance in the sixth group. Do you know what those group designations refer to?

A. Yes, sir; that is when we began, when we divided them.

Q. Do you know what the group refers to with reference to quality or rental terms?

A. Yes, sir; they are in the lower brackets, I mean not A pictures.

Q. The A pictures were in the first three groups?

A. Yes, sir.

Q. And those were the ones that were not offered to you?

A. You see, these were in the lower groups, the fourth, fifth, and sixth, the lower brackets.

Q. And the first three groups were the ones that were not offered to you?

A. The first three groups were not offered to me; they are like the PRC we had. Monogram he said we could get.

Mr. COCHRAN. Objection as not responsive.

Mr. WRIGHT. I offer that exhibit in evidence. I will ask one more question.

Q. On your cross-examination, Mrs. Berry, you referred to some two thousand dollars that was spent remodeling the Campus.

A. Yes, sir, just before.

1297 Q. When was that spent?

A. During the Christmas holidays before we closed in the spring, before they, just before, I mean, they got our lease.

Q. That would be in 1937?

A. Yes, sir.

Mr. WRIGHT. That's all.

By the COURT:

Q. Did you think it was hazardous to make that kind of an expenditure on a one-year lease?

A. Well, after we had been there ten years, we just expected to keep on operating, and, of course, in keeping on operating you want to keep your building up, and that was just the way he had it leased to us. Everything is hazardous in the show business.

Mr. WRIGHT. That's all.

Mr. COCHRAN. That's all.

The COURT. The exhibits are admitted.

(Witness excused.)

1298 PAT DUFFY, was thereupon called as a witness by the plaintiff, and being first duly sworn, testified as follows:

Direct examination by Mr. KIMP:

Q. State your name.

A. Pat Duffy.

Q. Where do you live?

A. Here in Oklahoma City.

Q. When did you first start in the motion picture exhibition business?

A. 1926.
Q. Where was that?
A. At Lone Wolf, Oklahoma.
Q. Where did you go from Loue Wolf?
A. To Mangum.
Q. And started the operation of a theater there?
A. Yes, sir.
Q. What year?
A. 1927.
Q. What theater was that?
A. The Rialto.
Q. What other theaters were there at that time?
A. The Empress and the New Show.
Q. Who ran those?
A. Mr. Fringer.
1299 Q. Are both of those theaters still in operation?
A. When I went to Mangum?
Q. No. They were in operation then. How long did they remain in operation?
A. The Empress remained in operation until 1929. I believe it was, in 1928 or 1929 when the Temple was built.
Q. What about the New Show?
A. The New Show was in operation then.
Q. When was the Temple built?
A. Either in 1928 or '29; I am not sure.
1300 Q. Who operated that?
A. Sam Fringer.
Q. Did you continue in the operation of the Temple for some time?
A. Until 1932.
Q. What happened to it then?
A. The National Theater Supply Company foreclosed on the equipment.
Q. And some one else continued the operation of it?
A. It remained closed for a couple of months, and a fellow by the name of Ortman from Hennessey bought the equipment from National Theater Supply Company.
Q. How long did Ortman operate it?
A. Until 1933, about eleven months.
Q. Did you acquire the Temple sometime after that?
A. Yes, 1933.
Q. And you still had the Rialto?
A. Yes, sir.
Q. How did you operate the Rialto after you acquired the Temple?
A. Mostly on Friday and Saturday.
Q. And that was in what year?
A. I opened the Temple in September, 1933.

Q. And you continued the operation of both of those until 1935?

1301 A. Yes—until 1938.

Q. Well, in 1935 you were operating both of those?

A. Oh, yes; yes.

Q. And who was operating in opposition to you in '35, if anyone?

A. No one.

Q. Now, in 1935, did you have some conversation with some one by the name of Spears?

A. Spears from Altus.

Q. What is his first name?

A. I really don't know what his first name is.

Q. Who was he?

A. He was Griffith's partner in Altus.

Q. At Altus?

A. Yes, sir.

Q. Did he come to see you?

A. Yes, sir.

Q. And you had some conversation with him?

A. He came over to buy the shows.

Q. What happened there?

A. I asked him $50,000 and he thought that was too much.

Q. Did you have another meeting, or any other meetings, in '35 or '36 with anyone with relation to the acquisition of your theaters?

1302 A. Mr. Spears came back again and wanted to buy an interest for Griffith Brothers.

Q. What happened then?

A. Well, then he wrote me a letter and wanted me to meet them in their office in regard to that.

Q. In their office where?

A. Here in Oklahoma City.

Q. About when was that?

A. It was sometime in 1935.

Q. And was there a meeting held?

A. Yes, sir.

Q. In Oklahoma City with what people?

A. Well, L. C. Griffith, and H. J., I believe; I am not sure whether Mr. McKenna was in on that meeting or not; I am not quite sure about that.

1303 Q. But do you say L. C. Griffith and H. J. Griffith were?

A. Yes.

Q. And what happened at that meeting?

A. They wanted to buy an interest in the theater; even though a small interest, 25 per cent.

Q. And was that all that happened at that meeting?

A. Well, yes. That was all. I wouldn't sell it to them.

Q. Were any statements made by either one of the Griffiths at that time?

A. Yes. L. C. told me I needed them for protection and they needed the theaters for their protection.

Q. Was that all of any consequence that was said at that time?

A. At that time, yes, sir.

Q. Was there a sale made as a result of that meeting?

A. No.

Q. When was the next meeting you had with anyone?

A. It was '36, along about the first part of '36, E. R. Slocum, employed by Griffith Brothers in the expansion department, came to see me about buying a half interest in the theaters.

Q. Came to Mangum to see you?

A. Yes.

1304 Q. About the first part of '36?

A. Yes, sir.

Q. About buying an interest?

A. Buying an interest, 51 per cent.

Q. Is that the first meeting you had with Slocum in 1936?

A. Yes, sir. He used to sell films for Warner Brothers and I had several meetings with him.

Q. Then he wanted to buy 51 per cent?

A. Yes, sir.

Mr. COCHRAN. Objected to as leading.

Mr. KIMR. He just stated he wanted to buy 51 per cent.

Mr. COCHRAN. Objected to as repetition then.

By Mr. KIMR:

Q. What else happened in that meeting of any consequence?

A. I refused to sell 51 per cent but I told him I would if the film rental didn't exceed 25 per cent of the gross receipts.

By the COURT:

Q. Told him what?

A. If the film rental didn't exceed 25 per cent of the gross receipts I would sell him 51 per cent.

By Mr. KIMR:

Q. What was his reply to that, if anything?

A. He said they wouldn't go for that; that I would

1305 have to have complete confidence in them.

Q. Was that all of any consequence that was said at that meeting?

A. Yes, sir.

Q. Did he come back again?

A. He made several trips to buy the theaters for almost a year.

Q. Did he come back at some time and tell you anything about gas meters and telephones?

A. Yes. He told me he checked up on all the telephones and gas meters and everything in town; that that was his job.

Q. What else did he tell you at that meeting?

A. Well, that is about all he told me at that meeting.

Q. Did he say anything about a "spot"?

A. Yes.

Mr. COCHRAN. Objected to as leading.

The COURT. Sustained

A. Well, he made several trips during the year down there and he told me on one of those occasions that I was on the spot; that I was slated to go and better make the best deal I could.

By Mr. KIME:

Q. Can you place the time of that meeting?

A. It was sometime in '36. I couldn't exactly place the time. He made several trips to Mangum.

1306 Q. Then were there any more meetings in 1936 that you recall?

A. Yes. H. J. and C. R. Slocum came down to see me about buying theaters in '36.

Q. What part of '36?

A. The last part of '36.

Mr. COCHRAN. The witness seems to be reading from some memorandum.

By Mr. KIME:

Q. What are you reading from?

A. Some dates I put down, options and dates of those meetings.

Q. Do you want to show it to Judge Cochran?

The COURT. Are you just refreshing your memory from it?

A. Yes.

The COURT. It is all right. Proceed.

1307 By Mr. KIME:

Q. H. J. Griffith and Red Slocum then came to see you about the last part of '36?

A. Yes, sir.

Q. What happened at that meeting?

A. H. J. made an offer for the theaters of $20,000.

Q. What did you say to that offer?

A. I said I couldn't accept it.

Q. What happened then, if anything?

A. He said they wanted a theater in the town and if they couldn't get, couldn't buy mine, they would have to put one in.

Q. And you refused the $20,000?

A. Yes, sir.

Q. Was that all that happened at that meeting?

A. That was all at that meeting.

Q. Was there another meeting shortly after that?

A. Well, I came to Oklahoma City shortly after that and met them in their office. They came down and got me and brought me up here, and offered me $22,000. That was on January 5, 1937.

Q. Whose office was that?

A. Griffith's office, here in Oklahoma City.

Q. Here in Oklahoma City?

A. Yes, sir.

Q. And where were you when they came to get you?

1308 A. In the Film Exchange Cafe on the ground floor of that building.

Q. And when you got up to the office, who did you find there?

A. H. J. and E. R. Slocum; I am not quite sure—Mr. McKenna was there.

Q. You are sure he was there, are you?

A. Well, I am pretty sure he was, yes.

Q. To the best of your recollection he was there?

A. Yes, sir.

Q. What happened at that meeting in their office?

A. I accepted—I gave them an option for $22,000. We went to Keaton, Johnston & Wells' office and drew up the option.

Q. And that was on what date; do you have any record of that date?

A. January 5, 1937.

Q. Was that option ever exercised?

A. No, it wasn't.

Q. In that year 1937 was there any change in the theater situation in Mangum?

A. In '37 Griffith built a theater down there and named it the Greer.

Q. And after the Greer began operation was there another meeting between you and any of the Griffith representatives?

1309 A. Yes, sir.

Q. Where was that?
A. That was in Oklahoma City, in their office.
Q. What happened there?
A. They offered me $16,000.
Q. Was there anything said as to why they were offering you $16,000?
A. Well, Mr. H. U. Bailey of Princeton, Illinois, had a loan on the Temple Theater building and they were making some kind of deal where they could own the building, and wanted me, he wanted me to sell to him for $16,000, Mr. Bailey did.
Q. Did anything else happen in that meeting?
A. No, sir; I refused the offer.
Q. You accepted the $16,000 offer?
A. No, I didn't accept it; I refused it.
Q. You refused it?
A. Yes, sir.
Q. Did anyone representing the Griffith organization see you again after that?
A. No, I don't believe there was any of them came to see me after that.
Q. Was there any reason advanced as to why they were then offering you $16,000 instead of the $20,000, or $22,000 that they had offered you a short time previously?
1310 A. Yes, sir.
Q. What was that?
A. Because I had competition.
Q. And you finally sold for how much?
A. $12,000.
Q. When was that?
A. That was in April 1938.
Mr. KIMM. That's all, take the witness.

Cross-examination by Mr. COCHRAN:

Q. Mr. Duffy, Mangum is in the western part of Oklahoma, isn't it?
A. Yes, sir.
Q. Several years during the ten-year period beginning with 1930, there were very bad crop conditions in that part of the state, were there not?
A. From 1930?
Q. During that ten-year period?
A. Well (hesitating).
Q. For several years?
A. Some years were bad and some were good.
Q. What about—what were the bad crop years?
A. What were the bad crop years?

Q. The exceptionally bad crop years?

1311 A. '37 was.

Q. '37.

A. Yes.

Q. Wasn't '36 also a very dry year, and poor crops?

A. '35?

Q. '36?

A. '36, yes, it was poor, but not as bad as '37.

Q. And '35 was also poor, wasn't it?

A. Yes, sir.

Q. How about '34?

A. '34, I believe, was very good. I don't quite remember now.

Q. You went into Mangum, I believe you said, in 1927?

A. Yes, sir.

1312 Q. Would you say the years '27-28, '29-30 were good crop years out there?

A. They were, yes.

Q. That section of the state over the years has had cycles of dry years and wet years, hasn't it?

A. From '30 on, yes.

Q. And even prior to that, going back in the early 20's, there were a series of dry years then, weren't there?

A. Yes.

Q. Then along in the late '20's you had rain and good crops there?

A. That is right.

Q. When does that dry cycle commence in the 30's, can you tell?

A. I can't recall it; along about the time the depression started.

Mr. KIMB. May I inquire the purpose of this historical background? I don't quite see the point.

The COURT. I think it is to show conditions in that country at that time.

By Mr. COCHRAN:

Q. You made money in the operation of your theaters in 1933 and 1934, didn't you?

A. That is right.

Q. 1935 was rather a poor year in your theater business?

A. It was, yes.

1313 Q. And 1936 was worse?

A. Well, I believe it was better than 1935.

Q. And 1937 was the worst year you had?

A. That is right.

Q. Business was terrible at that time?

A. Business was terrible when Griffith opened up that theater, yes.

Q. It was terrible before they opened that theater, wasn't it?

A. Yes.

Q. Even before they opened that theater you were writing to the various distributors that you were broke, weren't you?

A. I don't think I said I was broke. I tried to get a reduction on the pictures, yes.

Q. Weren't you writing to each one of them telling them of the terrible condition you were in financially?

A. I don't recall writing that, but I was trying to get a reduction on pictures. When Griffith threatened to put a theater in pictures went up and I was trying to get a reduction from them. They increased the film rental.

Q. Griffith went in in 1937, didn't he?

A. That is right.

Q. Did they build the Greer Theater?

A. It was formerly a theater, made into a store building.

Q. And they remodeled it?

1314 A. Yes, sir.

Q. And opened it up?

A. Yes, sir.

Q. It was known there in Mangum they were going to open that theater for some time before they did open it, wasn't it?

A. Not very long.

Q. Well how long would you say?

A. I would say about three months.

Q. It was generally known?

A. Yes.

Q. For the season of 1937-38—first, for the season of '36-37 what product were you using in your theaters?

A. Well, I was using practically all of the major companies'.

Q. You were using Paramount?

A. I was using Paramount.

Q. And Metro?

A. Yes.

Q. And Fox?

A. Yes.

Q. And Warner?

A. Yes.

Q. And RKO?

A. Yes.

1315 Q. And Vitagraph?

A. Right. Warner and Vitagraph were the same.

Q. First run?

A. Yes.
Q. You were using all of these first run pictures?
A. That is right.
Mr. Kmrs. I didn't check on product in direct examination. I don't see the applicability of it here.
The Court. It is cross examination.

By Mr. Cochran:

Q. In 1937-38 what product did you license?
A. In '37-38?
Q. Yes.
A. All of those companies.
Q. The same companies, didn't you?
A. I believe so, yes, sir.
Q. First run?
A. That is right.
Q. What did Griffith have?
A. Well, Griffith had United Artists, Universal and some pictures of Warner, of the '36-37 season.
Q. In other words, they had pictures of '36-37 you had not played?
A. That is right.
1316 Q. Cutbacks?
A. I didn't cut them back.
Q. You didn't cut them back?
A. No.
Q. How did they get them if you didn't cut them back?
A. They got them. I don't know how they got them.
Q. You mean they were pictures you licensed in '36-37 and it was more than a year and you had not played them?
A. I bought '36-37 pictures late in the season. I bought the '36-37 at the same time that I bought the '37-38 from Warner, the same day.

By the Court:

Q. Did you get plenty of pictures for the '37-38 season?
A. Yes, sir, I had all I needed.

By Mr. Cochran:

Q. The fact of the business is you had all of the pictures of Paramount, Metro, Fox, Warner, RKO and Vitagraph you wanted?
A. That is right.
Q. You had the choice of them?
A. Yes.
Q. Notwithstanding the fact that Griffith was there?
A. Well, I had them bought before Griffith went in there.
Q. You bought pictures for the '37-38 season?
1317 A. Yes.

Q. And they came in and started to remodel their theater in July of 1937, didn't they?

A. Started to build the theater.

Q. Started remodeling that building?

A. Sometime about then, yes, sir.

Q. It was known three months before that they were going to open a theater?

A. That is right. I had those pictures under contract before then, though.

Q. I will get to that. You licensed the pictures of Warner for '37–38 season on May 30, 1937, didn't you?

A. Somewhere about that time, yes.

1318 Q. Do you remember, Mr. Duffy?

A. Somewhere about that time, yes.

Mr. KIME. What season was that, Judge?

A. 1936–37.

By Mr. COCHRAN:

Q. And you licensed some Fox pictures for the '37–38 season on July 7, 1937, didn't you?

A. I can't recall the exact date. I had them bought.

Q. And you licensed some Metro pictures on June 17, 1937?

A. Yes, the selling season of 1937, '36–37.

Q. You said that is true?

A. The best I can recall; I don't know the exact date, but I bought the pictures that year.

Q. Now, that season, those season's releases commenced in September 1937, didn't they?

A. That's right.

Q. You sold out to Griffith in May of 1938, is that right?

A. That's right.

Q. What time in May?

A. Well, I sold to them in April, but they taken over the first of May, 1938.

Q. At the time you sold out to Griffith, of the Metro pictures which you had licensed, you had thirty which were unplayed, didn't you?

1319 A. How many?

Q. Thirty?

A. I don't recall how many.

Mr. KIME. We object to that, your Honor, because the contracts are the best evidence. We have been forced to the position of producing the contracts, and they have them all right in front of them, and I suggest that they be introduced.

The COURT. Is there any disagreement as to the number of Fox pictures he had on hand?

Mr. COCHRAN. I am asking him whether they were played or not.

The COURT. Overruled, and exception allowed.

By Mr. COCHRAN:

Q. Didn't you have thirty Metro pictures which were unplayed when you sold out?

A. In '38, I don't know the number.

Q. You had a large number of Metro pictures, didn't you?

A. I did, yes.

Q. They had been trying to get you to date those pictures for months, hadn't they?

A. Metro?

Q. Yes.

A. No, sir.

Q. Didn't you, at the time you sold out, have fifty
1320 Paramount pictures of the current season, '37–38, unplayed?

A. I might have had.

Q. Hadn't they been trying to get you to give them dates on the pictures for months, and you would not give them to them?

A. I tried to get a reduction on them.

Q. I asked you if they hadn't been trying to get you to do that?

A. Yes, sir.

Q. And you wouldn't do that because they wouldn't give you a reduction?

A. That's right.

Q. Didn't you at that time have on hand thirty-one pictures of RKO of the '37–38 season that you hadn't dated?

A. I don't know the number.

Q. There were a large number, you know that, don't you?

A. There was some, yes.

Q. Wasn't there a large number of them?

A. I don't know.

Q. Out of forty-nine pictures you licensed, weren't there thirty-one pictures that were unplayed when you sold out?

A. I don't know.

1321 Q. You do know that they had been trying to get you to date those pictures and you wouldn't do it?

A. They did that every year.

Q. Of the Fox pictures, weren't there fifty-one of those pictures which you licensed for them of the 1937–38 season that were unplayed?

A. The best I can recall, I was up on dates on all of the companies except Paramount.

Q. What was your answer?

A. I was up on the playing arrangement except on Paramount, on all except Paramount.

Q. So it isn't a fact that there were a large number of pictures of each of these distributors, in fact, two-thirds or more, of the pictures of each of these companies for the current season that hadn't been played, or never played or paid for?

A. I don't know about that.

Q. Don't you remember that of the Warner pictures that you licensed, that you licensed sixty of them, and you had only played one of them?

Mr. KIMR. May I inquire when that Warner contract you are referring to was dated?

Mr. COCHRAN. It is supposed to have been dated in May 1937.

Mr. KIMR. For what product?

1322 Mr. COCHRAN. '37–38.

A. I have the Warner contract with me, 1936–37.

By the COURT:

Q. Was your business being operated at a profit in the '37–38 season?

A. 1937, no, no it wasn't.

By Mr. COCHRAN:

Q. The same is true in 1936, wasn't it?

A. It was operated for a profit in 1936, in 1936 when Griffiths tried to buy me out or was going to put in a theater there, the film rental went up to where I couldn't make a profit on it.

Q. In other words, after you got competition in the town, the distributors charged you more for the pictures than they had previously?

A. The year before they went in, yes, not afterward but before, in '36–37.

Q. In other words, your contention is that when the distributors heard of the competition going in, then you were required to pay greater rentals?

A. That's right.

Q. I will ask you if, on January 19, 1938, you didn't write to Loew's, Inc., in Oklahoma City a letter about the reason you couldn't take up the pictures that you were due to play at that time?

A. To who?

1323 Q. To Metro or to Loew's at Oklahoma City?

A. Wrote a letter about what?

Q. About the reason you couldn't take up the pictures that were being shipped to you C. O. D.?

A. I don't recall that.

Q. And didn't you advise at that time that business was worse then at that place than it had ever been?

A. I might have, yes.

Q. Or was business worse at that place at that time than it had ever been?

A. That's right.

Q. What were the conditions?

A. The conditions at that time?

Q. Yes, January of 1938.

A. '38?

Q. Yes.

A. Or '37?

Q. January 1938.

A. Business was bad; I had competition then too.

Q. I am talking about the general business conditions.

A. It was bad.

Q. What was the trouble?

A. Short crops, short cotton crops.

Q. Mangum is an agricultural town, isn't it?

A. That's right.

1324 Q. You spoke of one of these theaters which you had operated on Friday and Saturday. Out in that cotton country, or agricultural country, in small towns, it is frequently the case that operators will operate two theaters, one of them being operated all the time, and the other one operating on Friday-Saturday for the benefit of the country trade, that's right, is it?

A. That's right.

Q. And that was the way you operated one of your theaters during part of that period, at least?

A. Yes, sir.

Q. Isn't it a fact that in 1937 Metro was checking your box office receipts on certain of the pictures which you were playing on percentage for it and you had considerable difficulty with Metro at that time about the fact that they were checking your receipts?

A. I have never had any difficulty with Metro. They were satisfied and sold me the '38–39 pictures in advance.

Q. In other words, you had, at the time you sold out to Griffith, you had pictures of Metro, not only for the 1937–38 season, but you had their pictures for the '38–39 and the '39–40 season?

A. Not '39–40; '38–39.

Q. '38–39?

A. Yes, sir.

1325 Q. Did you have any of the other pictures under contract for more than one year in '38–39?

A. No. That was all, that one contract.

Q. Then you say you never had any difficulty with Metro. On September 4, 1937, did you write Mr. Zoellner of Metro complaining about his checking and double checking the picture "Broadway Melody," and as a result the cashier, your daughter, was called a crook and was getting away with money? Did you take that matter up with Metro and write that letter?

A. I recall something about that. There was a checker that accused the girl of getting away with the box office receipts.

Q. Weren't you complaining?

A. I complained to Bill Zoellner to that extent, yes.

Q. And there were several instances in which you complained of the companies checking your box office?

A. I never have complained to anybody about checking the box office only at that time, about that checker.

Q. On that same date didn't you write to Mr. Zoellner, "There are three or four things that caused this picture not to go over. The first of these is there is no more money here than there was a month ago." Now that was in September of 1937. Was money very scarce in Mangum

1326 at that time?

A. That is right, it was.

Q. So there is no question but what you had ample product at the time you made the sale to Griffith.

A. I had all the product I needed, yes.

Q. And in March of 1938 you were playing the very first choice pictures in the town?

A. Playing what?

Q. The choicest of the pictures that were being produced, you were playing them first run in the town?

A. All except the United Artists, yes.

Q. You had not even tried to get United Artists, had you?

A. Yes.

Q. Had you licensed United Artists in any of the years in the past?

A. Yes.

Q. When?

A. Nearly all the years.

Q. You never made a season contract where you bought all the pictures they released, did you?

A. No, not all of them.

Q. Their pictures were very high priced, weren't they?

A. No, not so very.

Q. You were operating two houses and Griffith was

1327 operating one?

A. That is right.

Q. Now, in March of 1938, didn't you write Mr. Curry of Paramount that you were out of money and could not continue to operate much longer?

A. I might have.

Q. Was that a fact?

A. I don't recall it but I might have.

Q. Were you out of money in March of 1938?

A. March of 1938, yes.

Q. And were not able to continue your business?

A. I did continue it until May, '38, yes.

Q. There were numerous pictures that were coming in that were shipped to you C. O. D. that you were not able to take out. Isn't that true?

A. No, there never was a picture I didn't take out; not one.

Q. On March 9, 1938, didn't you write Mr. Sam Brunk of Paramount "In reply to yours of the 8th in regard to 'Hold Them Navy' in which you state you are going to ship the film, this will only result in you paying the express charges. I said I did not have the money to play this picture now."

A. I cancelled the date.

Mr. KIMB. Wait just a minute, Mr. Duffy, If that
1328 is the whole of that letter why I submit——

The COURT. No, he asked him if he wrote that letter.

Mr. KIMB. He read a portion of it. Whether that is all of it I have no way of knowing. I submit your Honor has no way of knowing, and there might be other statements in there that we would like to have read.

The COURT. I will give you an opportunity to do so.

By Mr. COCHRAN:

Q. The point I am making is, at that time if you were not out of money and if you were not advising not only this company, but the others, not to ship you product, that you could not and would not pay for it.

A. I had all the product I needed to run the theater but I refused to play Paramount because they would not reduce the pictures when they were out of line.

Q. I will further ask you if it is not a fact you were out of money at that time and did not have the finances to pay the rentals on further pictures.

Mr. KIMB. We object to that because whether he was out of money is immaterial here. He might have been using that out of money argument as a bargaining agent to these people when they were charging him these exorbitant prices for these films. Whether he was out or not has nothing to do with this lawsuit as I see it.

1329 The COURT. Overruled. Exception allowed. Under your evidence the Court can't see any other theory but that the defendant in this case made some contribution to this man's sale of his property. In other words, he was forced to sell. I want to see what caused it; what the reason for it was. I think that is entirely competent.

By Mr. COCHRAN:

Q. Isn't it a fact you were out of money at that time and were unable to go ahead and carry out your contracts with the film companies?

A. I never was really out of money, no.

Q. Did you have sufficient funds at that time——

A. (Interrupting.) I was trying to get a reduction on all the pictures and did get a reduction from Metro.

Q. After you obtained a reduction from Metro, isn't it a fact you then did not play the pictures?

A. I played the pictures nearly always as released. They were so well satisfied they sold me the '38–39 pictures.

Q. Your '38–39 pictures were sold to you at the same time the '37–38 were sold, weren't they?

A. No.

Q. When were the '38–39 sold?

A. They were sold about the same time after January, 1938; in 1938, I think it was.

Q. At that time what was your indebtedness to the newspaper at Mangum for advertising, at the time you
1330 sold out to Griffith?

A. Well, I don't remember just exactly the amount.

Q. Were you indebted in a large amount?

A. Not so very large, no.

Q. Weren't you sued for $1200 and garnisheed by the newspaper at Mangum?

A. Yes. They sued me but there was a dispute about what I owed them. I have the checks that show I had paid them most of it and the suit never did come up. They never did bring it up.

Q. You have testified to a number of conversations you had with various persons representing some of the Griffiths about either selling an interest in your theaters, or wanting a partnership arrangement or something of that kind. Do you recall that you testified in the case of A. B. Momand versus Griffith Amusement Company in the District Court of the United States for the Western District of Oklahoma about January 19, 1943?

A. Yes, I testified in that case.

Q. Isn't it a fact that you were asked about your conversations with representatives of the Griffith Amusement Company?

A. Yes. In that case?
Q. Yes.
A. I didn't testify very much.
1331 Q. You were asked about the conversations which you had with representatives of the Griffith Amusement Company, weren't you?
A. I think so, yes.
Q. I will ask you if it is not a fact that at that time you made reference to only two conversations, one a conversation which you had with Mr. Slocum and the other a conversation which you had in 1936 when H. J. Griffith and Red Slocum came down to Mangum?
A. I don't recall the conversation I referred to then because I didn't testify very long. The Judge wouldn't let me testify much in that case.
Q. He permitted you to testify fully about those conversations, didn't he?
A. I don't think so.
Q. What conversation do you now say you had with Slocum and H. J. Griffith in 1936 when they came to Mangum to see you?
A. When they tried to buy the theater in '36?
Q. The conversation you had with him in '36 at Mangum.
A. H. J. offered me $20,000 for the theater and told me they wanted a theater in the town, and if they couldn't buy mine they would have to put one in. That was the conversation.
Q. You testified to that in the Momand case, didn't you?
A. I don't recall whether I did or not.
1332 Q. Then you also testified in the Momand case that Mr. Spear in 1935 came over to see you in regard to making a partnership deal?
A. That's right.
Q. That's right, is it?
A. Yes, sir.
Q. And that you told him that you would not consider a partnership deal, and they asked how much you would take for the theaters and you told them $50,000; you testified to that, did you?
A. (No answer.)
Q. Then you testified——

By the Court:

Q. What was your answer?
A. Sir?
Q. Did you so testify?
A. I don't recall whether I did in that case or not, I don't know.

By Mr. COCHRAN:

Q. Well, you also testified "in the first part of 1936 Griffith Brothers had an expansion man known as Red Slocum or E. R. Slocum and he spent the bigger part of 1936 in Mangum trying to make a deal with me, first on a partnership deal, and then trying to buy the theaters," you testified to that, didn't you?

A. I don't remember what I testified to over there. I wasn't on the stand very long; I couldn't have testi-
1333 fied to very much.

Q. Those are the only conversations that you detailed in your testimony in the Momand case, are they not?

A. Probably that was, I don't know; I wasn't on the stand very long.

Q. I am just asking you if you made any of these statements which you have detailed from the stand today, about conversations which you had with various Griffith representatives, in regard to the acquisition of those theaters, or an interest in your theater?

A. In that case?

Q. Yes, sir.

A. I don't remember what I testified to over there, because I wasn't on the stand very long; I don't recall what it was, I don't know.

Q. Now, you stated that you gave the Griffith Brothers an option; do you have a copy of that option?

A. Yes.

Q. Let us have it, please.

A. Which one, both of them?

Q. If you have two, let's have them.

The COURT. Gentlemen, we will recess at this time until Monday morning at ten o'clock.

(Whereupon at four-thirty o'clock p. m. court recessed until Monday, May 21, 1945, at ten o'clock a. m.)

1334 PROCEEDINGS

May 21, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. MALCOLM MCKENZIE. May I make a statement in this suit? I represented United Artists Corporation, Columbia Pictures Corporation and Universal Film Exchange until the suit was dismissed as to them. They later shipped to me their records, except Universal. Universal sent their records to the exchange here. I think on the 15th it was, of this month, I got copies of the subpoenas duces tecum in this case on all three of the people that I represent. I have the records of United Artists and Co-

lumbia, and in response to the last subpoena duces tecum I have gone through and delivered to Mr. Wright for the Government all of the contracts called for on these two subpoenas as to Columbia and United Artists and I communicated with Mr. Gibbs and Mr. Holstein of Universal, and I understand those contracts will be delivered to the Government this morning from the exchange here. In that connection, the subpoena also calls for the first three items having to do with the matter of film rentals covering a series of towns under Item 1 and the film rental paid by what is designated as the "Griffith circuit" and also the title and national release dates of the feature pic-
1335 tures of the '34-35 through '39-40 seasons. Those three items of the duces tecum subpoena I do not have. I have discussed the matter with Mr. Wright, and as I understand from him, that phase of the subpoena duces tecum is dormant right now, because, as he explained to me, that probably would be worked out during the interim recess. However, I called his attention to the fact and also mentioned it to Mr. Griffing, representing some of the defendants, that in the answer to interrogatories filed in this case, as I understood it, the information requested is covered by those answers. I do not know whether the interrogatories have been made available or will be made available in this case. They may not, but I want to say to the Court that is all the information that I have been able to furnish since the subpoenas were issued, and they were returnable this morning and I wanted to make that statement to your Honor.

1336 The Court. Is it agreeable to the plaintiff for the matter to take the same course as we suggested on the other information?

Mr. Wright. Surely.

The Court. And it may be that during this recess you will be able to secure that information without a formal reply as requested in the subpoenas. If not, then, I think Mr. McKenzie will just file a response to the subpoena stating the facts that you have stated with reference to that.

Mr. McKenzie. I will be very glad to do that, your Honor.

The Court. Let the matter await the further pleasure of the parties, and see if they can agree on that themselves.

Mr. McKenzie. We wanted to report to the Court the true facts.

The Court. Very well, you may proceed, gentlemen.

(Defendants' Exhibit No. 52 for identification was marked by the reporter.)

1337 PAT DUFFY, a witness called by and on behalf of the plaintiff, was recalled and was examined and testified as follows:

Further Cross-examination by Mr. COCHRAN:

Q. I hand you Defendants' Exhibit No. 62 for identification and ask you if that is the option agreement which you testified about when you were last on the stand?

A. Yes, sir, it is.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 62.

Mr. KIMB. No objection.

The COURT. State what it is; what is the exhibit?

Mr. COCHRAN. Defendants' Exhibit No. 62. It is signed by Duffy Theaters, Inc., by Pat Duffy, President, and Consolidated Theaters, Inc., by B. J. McKenna, vice-president, and bears date January 5, 1937, and is an option for the purchase of the theater furniture, fixtures, equipment, and all other personal property located in and used as a part of the Temple Theater and Rialto Theater in Mangum. It recites that Duffy Theaters, Inc., is occupying the premises where the theaters are located under month to month leases. The option is for a period of thirty days; the agreed price is $22,000.

The COURT. Who is the other party besides Duffy?

1338 Mr. COCHRAN. Consolidated Theaters, Inc.

The COURT. All right; it will be admitted.

By Mr. COCHRAN:

Q. It is true that at the time that option agreement was exercised that you were renting the building in which your two theaters were located on a month to month basis, is that right?

A. That's right.

Q. Now, then, this was located in the Masonic Temple, was it not?

A. That's right.

Q. How much rent were you paying on that building, that space?

A. $150 a month.

Q. How much?

A. $150 a month.

Q. You understood that at the time that option agreement was made that the exercise of that option by Consolidated depended on whether a lease contract could be obtained on the Masonic Temple space at a certain rental, did you not?

A. At the same rental?

Q. Either the same or some rental that was mentioned between you?

A. I understood they were trying to make a deal for the rental, yes.

Q. Was that to be at the same rental?

1339 A. No, I don't know, I don't know what.

Q. Well, if a satisfactory deal could be made for the rental of the space?

A. Yes, sir.

Q. And that option, do you know that that option was not exercised because the Masonic organization insisted on an increase in the rental?

A. I don't know what was the reason for it.

Q. What was it?

A. I don't know what the deal was they had with the Masonic.

Q. Weren't you advised by representatives of Consolidated that they couldn't exercise the option, that they wouldn't exercise it, because the rental was increased?

A. I was advised that they would not exercise the option; as to the reason why, they didn't.

1340 Mr. COCHRAN. I see.

By Mr. COCHRAN:

Q. I will ask you to examine Defendants' Exhibit No. 63 and will ask you to state if that is your signature on that.

A. That is right.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 63.

Mr. KIMB. No objection.

Mr COCHRAN. On the letter head of Duffy Theaters, Inc., dated April 3, 1936, by Pat Duffy, Manager, to W. B. Zoellner, Metro-Goldwyn-Mayer, Oklahoma City.

(Counsel reads the above exhibit.)

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit No. 64, dated January 4, Pat Duffy to Loew's, Inc., and ask you if that is your signature on that letter.

A. Right.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 64.

Mr. KIMB. No objection.

(Hereupon counsel reads the above exhibit.)

By Mr. COCHRAN:

Q. I show you Defendants' Exhibit No. 65 and ask you if that is your signature.

A. The signatures on all of these are my daugh-
1341 ter's signatures.

Q. They were signed for you?

A. Yes.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 65.

Mr. KIMB. No objection.

Mr. COCHRAN. Defendants' Exhibit 65 is a letter dated March 3, 1938, from Pat Duffy to Loew's Incorporated.

(Counsel here reads letter.)

Q. I show you Defendants' Exhibit No. 66, and ask you if that letter was written for you by your daughter?

A. Yes, sir, and signed by me.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 66, which is a letter dated March 24, 1938, to Loew's Incorporated by Pat Duffy.

(Hereupon counsel reads Defendants' Exhibit 66.)

1342 Q. Now, in regard to that Temple Theater, you had sometime prior to the execution of that option agreement had a lease contract on that theater, hadn't you?

A. Yes, I did.

Q. When did that lease expire?

A. Well, it expired about January, in January, I think, 1936.

Q. You were unable to obtain a renewal of that lease?

A. I tried to get a renewal, yes.

Q. But they declined to give you a renewal?

A. Yes.

Mr. COCHRAN. That is all.

Re-cross-examination by Mr. KIMB:

Q. Mr. Duffy, after the Greer Theater was built and the Temple taken over by Griffiths, what theaters operated there then?

A. The Greer and the Temple.

Q. How did they operate?

A. Well, they operated the Temple, I believe, all the time, and the Greer on Friday and Saturday.

Q. How long did that continue?

A. I think it still continues that way.

Q. Up to the present time?

A. I think so. I am not sure about that.

1343 Q. I hand you what has been heretofore identified as W-1, B and C, and ask you if that is your signature, if that was signed for you?

A. That is right.

Mr. KIMB. We offer in evidence the contract for the 1937-38 product of Warner Brothers. The contract was dated

February 19, 1937, and it has been heretofore stipulated as to its identity.

The COURT. What is the number of the exhibit?

The REPORTER. W–1, B and C.

Mr. COCHRAN. No objection.

Mr. KIMR. That's all, your Honor.

The COURT. Stand aside.

(Witness excused.)

P. E. SMITH, called as a witness by and on behalf of the plaintiff, and having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct examination by Mr. WRIGHT:

Q. Would you state your name and address, please?

A. P. E. Smith; Lubbock, Texas.

Q. And what is your occupation?

1344 A I am in the theater business in Lubbock.

Q. What theater?

A. The Tech.

Q. You are also a member of the Texas Legislature, are you?

A. Yes, sir.

Q. You began with the Tech Theater there in 1936, did you?

A. Yes, sir.

Q. In partnership with Mr. Bearden?

A. Yes, sir.

Q. Now, calling your attention to the year 1940, can you recall when the Tower was built there?

A. Yes, sir.

Q. That was when?

A. That was August 22, 1940, the date that it opened.

Q. And can you tell us what, if any, efforts you made in trying to secure major film product for the Tech on a run ahead of the Tower?

A. Yes, sir.

Q. What did you do?

A. We wrote letters to Metro, Warner, Paramount, Fox, Universal, RKO, Columbia.

Mr. COCHRAN. Just a minute. Will you read those over, Mr. Reporter?

(Last answer read by the reporter.)

A. And United Artists.

1345 Q. Did you also see any of the exchanges?

A. Yes, sir.

Q. Did you get a run ahead of the Tower Theater from those companies for your Tech Theater?

A. We got a run ahead of the Tower of Metro-Goldwyn-Mayer and have held that run. We got a run ahead of the RKO for the '40-41 season.

Q. How about any others?

A. No, sir.

Q. Did any of the others take an application from you for a run ahead of the Tower?

A. Only one.

Q. Which one was that?

A. Paramount.

Q. Do you remember when that application was taken?

A. That application was taken on or about June 10, 1940.

Q. Do you know who the Paramount representative was that took it?

A. Yes, sir.

Q. Who was that?

A. Walter Weems.

Q. He was the salesman?

A. Yes, sir.

Q. From what office, what branch?

A. The Dallas office, Dallas, Texas.

1346 Q. Then after the application was taken did you hear anything further from him?

A. Yes, sir.

Q. When was that?

A. On or about July 1st or 2nd, 1940.

Q. Did you ever talk to him on the telephone?

A. I talked to him on the telephone. He called me from Dallas.

Q. What did he say with reference to the application?

A. He said that unless——

Mr. COCHRAN. We object to the statement as hearsay.

The COURT. Sustained and exception allowed. He can state what was done

Mr. WRIGHT. If the Court please, what I want to show at this time is that he asked for the higher percentage terms than were called for by the application. He told them he could not get it through——

The COURT. You may offer that under the arrangements heretofore made.

Mr. WRIGHT. Go ahead and answer.

The COURT. He may answer.

A. That unless our second allocated group pictures were increased to 12 at $40 against percentage, the application would be rejected.

Q. Then what did you do——

1347 Mr. DUDLEY. Before you leave that, we move the answer be stricken from the record.

Mr. COCHRAN. It was not admitted.

The COURT. He just offered that.

Mr. DUDLEY. We object to the offer as tendered.

The COURT. Objection sustained. You may proceed.

By Mr. WRIGHT:

Q. Then what did you do?

A. We cancelled the contract.

Q. I will show you this exhibit, Plaintiff's Exhibit 289 for identification, and ask you if that is a copy of a letter you wrote with respect to your application on or about the date it bears there.

A. Yes, sir.

Mr. WRIGHT. We offer in evidence Plaintiff's Exhibit No. 289 for identification.

Mr. DUDLEY. We object to Plaintiff's Exhibit 289 for the reason it is incompetent, irrelevant and immaterial and hearsay and no proper foundation laid.

The COURT. To whom was the letter addressed?

Mr. WRIGHT. Paramount Pictures Corporation, Dallas, Texas.

The COURT. Objection sustained. Exception allowed.

By Mr. WRIGHT:

Q. Now that application calls for the fourth run in the City of Lubbock does it?

A. Yes, sir.

1348 Q. And at that time had Paramount ever asked you for rentals that were as high as those?

A. No, sir.

Q. About how much higher were these rentals that had been asked there in comparison with any prior rentals for the same run?

A. About one-third.

1349 Q. Then after that letter was written which has been marked for identification as Plaintiff's Exhibit No. 289 for identification, were you offered a run ahead of the Tower by Paramount at any time?

A. No, sir.

Q. And you later made a deal in 1941 with Paramount for a run after the Tower, did you?

A. Yes, sir.

Q. Now, calling your attention again to the year 1940, did you have any conversation with any representatives of

the Griffith companies with reference to the sale or purchase of your theaters?

A. No, sir.

Q. During the year 1940?

A. Yes, sir; we did have.

Q. With whom?

A. With Claud Motley.

Mr. COCHRAN. How do you spell that?

A. M-o-t-l-e-y, I suppose.

By Mr. WRIGHT:

Q. And where was this conversation?

A. In Owen McWhirter's office, in Lubbock, Texas.

Q. Who else was present?

A. W. O. Bearden and myself.

Q. What was said then?

Mr. COCHRAN. We object to that conversation
1350 because there is no showing of any authority on the part of Mr. Motley to bind or speak for any of the defendants in this case.

By the COURT:

Q. Who was Motley?

By Mr. WRIGHT:

Q. Do you know who Mr. Motley was?

A. I think he was the manager, the general supervisor of Griffith Amusement Company in that area.

Mr. WRIGHT. We will expect to show, your Honor, that he was in the employ of one of the defendants at that time.

The COURT. Overruled and exception allowed, but unless it is shown that he was connected, and with sufficient authority, a motion to strike will be in order.

By Mr. WRIGHT:

Q. Now, can you tell us what was said at that time?

A. We were interested in disposing of the Phillips Theater at Phillips, Texas, or purchasing the Griffith Amusement Company's theater at Phillips, Texas.

Q. Was that what you said?

A. Yes, sir.

Q. What was said by Mr. Motley, if anything?

A. He asked if we were interested in also making a deal with Griffith in connection with the Tech and Arcadia Theaters in Lubbock, Texas.

Q. What did you say to that?

A. We told him we were not interested in making
1351 a deal in connection with the Tech and Arcadia Theaters at Lubbock.

Q. Was anything further said?

A. Yes, sir.

Q. What else?

A. He said that he would arrange a meeting for us with some Griffith Amusement Company representatives in Oklahoma City to discuss the Phillips deal.

Q. Did you have such a meeting?

A. Yes, sir.

Q. Now, when was that?

A. That was in the late summer of '40, or early fall.

Q. Whereabouts in Oklahoma City was that?

A. In Mr. Griffing's office.

Q. Was that Mr. Henry Griffing?

A. Yes, sir.

Q. And who else was present then?

A. As I remember, Brownie Akers, Henry Griffing, Allen Seal, W. O. Bearden and myself.

Q. Who was Mr. Seal?

A. He was our general manager at Phillips and owned a third interest in the Phillips Theater.

Q. And Mr. Akers?

A. He was a representative of the Griffith Amusement Company.

Q. What was said then?

A. We told them that the Phillips Theater was
1352 not operating on a profitable basis, and we would like to sell them this theater at what we had invested, or we would pay them what they had invested, because we thought that one theater would do business in Phillips.

Q. What did they say to that?

A. They asked about, what about a deal for the Tech and Arcadia Theaters at Lubbock also.

Q. And what did you say?

A. We told them we were not interested in making a deal in connection with the Tech and Arcadia Theaters at Lubbock.

Q. Was anything further said about the Phillips deal?

A. Yes, sir.

Q. What?

A. They said that Mr. Brownie Akers would be in Phillips the next Thursday, and if a satisfactory lease could be made with the man we had our lease from, that they would take the deal.

1353 Q. Did you ever hear anything further from that afterwards?

A. No, sir.

Q. When was it this Theater in Phillips that was referred to in the conversation was operated by you or opened?

A. We opened that in March of 1939; March of 1940, I believe; March 12, 1940.

Q. When did you make a lease?

A. December of 1939.

Q. When you made the lease in Phillips was there any other theater there?

A. No, sir.

Q. How large a town was that?

A. It is hard to say but I would say approximately 6000 people.

Q. When did you start construction of your theater there?

A. Along the first of January of 1940

Q. Did you build a new theater or convert another property?

A. We built a new theater.

By the COURT:

Q. Where was that?

A. Phillips, Texas.

Q. You didn't own the property?

1354 A. Not the lot. We leased the lot.

By Mr. WRIGHT:

Q. You made a lease for how long?

A. Fifteen years.

Q. Then after you started construction of your theater was another theater begun there?

A. Yes, sir.

Q. About how long afterward?

A. About two or three weeks afterward.

Q. And that theater opened when?

A. It opened in March, 1940.

Q. When with reference to the opening of your theater?

A. About a day before our theater opened.

Q. What was that theater called?

A. The "66".

Q. And the name of your theater was what?

A. The Phillips Theater.

Q. Who operated the "66?"

A. The Griffith Amusement Company.

Q. Can you tell us what efforts were made to get pictures for the Phillips Theater prior to the time it was opened?

A. Yes, sir.

Q. What did you do?
A. Immediately after we signed our lease——
Mr. Cochran. We object to this testimony for the
1355 reason that Phillips is not one of the towns named in the complaint. It is not one of the towns named in any of the responses to the bill of particulars which we requested, and it has never been in this case until this morning. We object to going into any issue in regard to Phillips. We had no notice. We attempted to get the Government to specify what they were going into——
Mr. Wright. If the Court pleases, Phillips, of course, is not mentioned in the pleadings because the situation didn't develop until after the complaint was filed. We did, however, give notice to the defendants that we would go into the Phillips situation with the Lubbock witnesses sometime before the trial started, and it is necessary, I think, to develop the Phillips picture because it was closely tied to the Tech and Arcadia situations in Lubbock, and it is also related to the Griffith situation at Borger, one of the towns named in the complaint which is near Phillips.
The Court. Overruled. Exception allowed.
(Question read.)
A. Immediately after we signed our lease we wired Columbia, Warner, Paramount, Metro-Goldwyn-Mayer, Universal, RKO and Twentieth Century Fox for first run pictures, Phillips, Texas.
Q. Did you call on any of the exchanges?
A. Yes, sir.
1356 Q. Where?
A. In Oklahoma City.
Q. Is that where Phillips was served out of?
A. Yes, sir.
Q. Did you call on any in Dallas in that connection?
A. Yes, sir.
Q. For what company?
A. United Artists.
Q. Did United Artists serve Phillips out of Dallas?
A. Yes, sir.
Q. When the theater opened had you made any first run contracts with any of those companies you mentioned?
A. Yes, sir.
Q. Which one?
A. Warner Brothers.
Q. You had a season deal, first run with Warner?
A. Yes, sir.
Q. Any others?
A. We had a partial deal with Metro-Goldwyn-Mayer.

Q. When you say "partial deal" what do you mean?
A. Well, the lower allocations of that season's product.
Q. You had those first run in Phillips?
A. Yes, sir.
Q. Were you offered any first run deal for Phillips by any of the other film companies?
1357 A. No, sir.
Q. How large was the Phillips Theater?
A. We had 556 seats, I believe.
Q. Do you know about how large the "66" theater was?
A. About 300 seats.
Q. How far away from the town of Borger is Phillips?
A. Two miles.
Q. Do you know whether the Griffith Amusement Company operated any theater at Borger?
A. Yes, sir.
Q. They did?
A. Yes, sir.
Q. Now can you tell us how the films that you got and that you played in Phillips were made available to you with reference to the time they were played in the Griffith houses at Borger?
A. Warner Brothers' contract was made available thirty days after the first run, Borger, if available.
Q. In making the prints available——
A. If they had the prints.
Q. In making the prints available were you served after the first run had been completed in Borger or did you sometimes have to wait until after they had been run twice in Borger?
A. In most instances we had to wait until after they had played twice in Borger.
1358 Mr. COCHRAN. Are you referring to the Warner contract?
A. Yes, sir.

By Mr. WRIGHT:

Q. Now, how long did you keep the Phillips open there?
A. Until July 21, 1942.
Q. What happened then?
A. We closed the theater.
Q. Why did you close it?
A. Because it was losing money; it was not a profitable investment.
Q. During the time it was opened there, were you offered a season's deal of any major film product, other than Warner and Metro product you have referred to?

A. Not first run.
Q. Then what was done with respect to your lease?
A. The lease was dissolved, in late 1942 or early '43, I am not sure of that date.
Q. How about the building?
A. The building was sold for $250.
Q. Sold to whom?
A. Mr. Ostrum, the man who owned the lot.
Q. What had it cost you?
A. Sixty-one——

Mr. COCHRAN (interrupting.) We object to that as
1359 immaterial.

A. $6100.

The COURT. Overruled and exception allowed.
Mr. COCHRAN. What was the answer?
A. $6100.

By Mr. WRIGHT:

Q. Do you know what happened to the building after that?
A. Yes, sir.
Q. What?
A. It was leased to the Griffith Amusement Company.
Q. And they are operating the Phillips Theater there now?
A. I don't know the name of the theater, whether they operate under the name of Phillips Theater or not, but they operated in that building.
Q. Is the theater known as the "66" still running?
A. No, sir.

By the COURT:

Q. What is the population of Phillips at this time?
A. I haven't been there in two years, but I presume about 7500.
Q. What is the population of Borger?
A. I would say about 12,000.
Q. And they are just two miles apart?
A. Yes, sir.

1360 By Mr. WRIGHT:

Q. Going back to the situation at the Tech at Lubbock, can you tell us what major product you had there in the 1941-42 season?
A. Yes, sir.
Q. As I recall you and Mr. Bearden dissolved your partnership in the fall of '41, did you not?
A. Yes, sir.

Q. And then what did you have there for the '41-42 season?

Mr. COCHRAN. If the Court please, just for the record, I again make an objection to the witness using the memoranda, which is not shown to have been made contemporaneously with the happening of the events, and therefore not proper to refresh his memory, and the contracts would be the best evidence to reflect what was actually done.

The COURT. Overruled and exception allowed.

By Mr. WRIGHT:

Q. You may go ahead and answer. Read the question.

(Last question read by the reporter.)

A. We had pictures from Columbia, Warner, Paramount, United Artists, Metro-Goldwyn-Mayer, Universal, RKO, and Fox.

Q. Were you able to play any of those clear of the Tower?

1361 A. Metro-Goldwyn-Mayer.

Q. How about RKO?

A. I don't remember. In 1941-42 I am sure we didn't have a full contract with RKO; we did buy one block of pictures.

Q. '41-42 was the season when RKO began selling pictures in small blocks, was it?

A. I don't know. I suppose.

Q. You say you think you got one block ahead of or clear of the Tower?

A. We got five pictures first run in Lubbock, Texas, from RKO out of that season's product.

Q. Since that time have you been offered any product by RKO on a run ahead of the Tower?

A. No, sir.

The COURT. What was the question?

(Last question read by the reporter.)

By the COURT:

Q. How large a town is Lubbock?

A. The last federal census shows it as approximately 50,000 people.

Q. How many theaters are in the town?

A. Oh, at present, I believe there is ten, not counting the little Mexican theater there.

Q. Where is the Tower located with reference to your theater, the Tech?

1362 A. The Tower is approximately two blocks north of the Tech Theater.

Q. Is that in the business district?
A. No, sir.
Q. Where is it located?
A. That is out near the Texas Technological College, approximately one and a half miles or two miles west of the business section.

The COURT. Isn't this the situation that you went into last week?

Mr. WRIGHT. Yes, sir, your Honor, we covered the situation with Mr. Bearden in Lubbock in the Tech Theater up through the '40-41 season. You will recall that he testified that he dissolved partnership with Mr. Smith in 1941 and had no interest in the Tech after that date, and I am simply completing the picture as to the Tech with Mr. Smith.

The COURT. Very well.

By Mr. WRIGHT:

Q. Then, since 1941-42 season have you followed the Tower on all of the major product that you have run there with the exception of the Metro?
A. Yes, sir.
Q. Have any of those companies except Metro offered you a run clear of the Tower?
A. Since the '41-42 season?
1363 Q. Yes.
A. No, sir.
Mr. WRIGHT. That's all.
1364 Mr. WRIGHT. I just want to ask you one more question.
Q. Mr. Smith, with reference to that conference at Oklahoma City was Mr. McKenna also present?
A. Yes, sir.
Mr. WRIGHT. That's all.

Cross-examination by Mr. COCHRAN:

Q. You stated that you had approximately $6,000 invested in the theater building at Phillips?
A. Yes, sir.
Q. Now, isn't it a fact that your investment for the building and the equipment was slightly less than $6,000?
A. No, sir.
Q. I beg pardon.
A. No, sir.
Q. In the conversation that you had in Mr. Griffith's office, which you have attempted to detail, when inquiry was made in regard to your investment there, didn't Mr. Bearden say "Here is the figures we made out, what we have spent and what we owe" and Mr. Griffing said, "You

have a cash outlay of $5,823.21," Mr. Akers, "That includes the building and equipment." and Bearden said, "That's right, that's what we have actually spent there in
1365 cash, and there is what we owe", did that conversation take place?

A. I don't recall exactly that conversation, but our equipment cost more than $6,000.

Q. I just asked you if that conversation took place?

A. I don't remember.

Q. You have stated that you sold the building that you stated cost you $6,000 for $250, is that right?

A. Yes, sir.

Q. That theater was closed at what time?

A. It was closed permanently on July 21, 1942, or thereabouts.

Q. How long after that before that theater burned?

A. It didn't burn after that.

Q. How long was it before that?

A. Well, sir, I just don't remember.

Q. It did burn?

A. Yes, sir.

Q. It wasn't rebuilt prior to the time you sold it?

A. Yes, sir. It burned twice, if you remember.

Q. Well, when did it burn the first time?

A. Oh, about six months after we opened, approximately.

Q. And then you rebuilt it?

A. Yes, sir.

Q. Then it burned again?

A. Yes, sir.

1366 Q. When did it burn the second time?

A. Oh, in 1941 sometime; I have forgotten.

Q. And then you say it was rebuilt after it burned the last time?

A. I don't believe it was.

Q. You collected the insurance on that building, didn't you?

A. Just the damage.

Q. Just the damage to it?

A. Yes, sir.

Q. And it was the salvage that you sold, is that right?

A. Well, the part that wasn't burned was sold.

Q. Yes. Now, you didn't intend to leave the wrong impression when you said that that building was sold, without having told about it having been destroyed by fire, when you testified on your direct examination, did you?

A. That question wasn't asked me.

1367 Q. You were sworn to testify the whole truth, weren't you?

A. Yes, sir.

Q. You stated that the theater at Lubbock, the Phillips Theater, seated 556 people. Is it not a fact there were 439 seats in that theater?

A. No, sir.

Q. You know there were 556?

A. I know there were more than 500 seats in it.

Q. On your direct examination you stated there were 556. Is that right.

A. About that. I wouldn't know exactly how many I have got.

Q. How did you arrive at that figure of 556?

A. Well, it was in my contract with the National Theater Supply and he usually makes some connection there. We brought those seats from Temple and the best I remember it was 556 seats. I don't have the contract with me.

Q. And that is the way you arrived at your figures?

A. Yes, sir.

Q. You spoke about Griffith later acquiring a lease on that property and opening a theater where the Phillips Theater had previously been operated by you. Don't you know, as a matter of fact, that the theater which they had previously operated was closed in by a refinery ex-

1368 pansion of the Phillips Petroleum Company and had to be abandoned for that reason?

A. No, sir.

Q. Do you know there was a refinery expansion at the location of that theater?

A. No, sir.

Q. You don't know, you mean?

A. No, sir, I do not know that.

Q. When were you in Phillips last?

A. In September of '42, I believe.

Q. You have not been there then subsequent to the time the original Griffith was abandoned?

A. Restate that. I don't know the contents of it.

(Question read).

A. What do you mean by "subsequent"?

The Court. After.

A. No, sir.

By Mr. Cochran:

Q. Your information about what transpired there subsequent to the time you abandoned your theater is purely hearsay?

A. Yes, sir.

Q. In this conference which you had in Mr. Griffing's office which you have heretofore referred to, did the representatives of the Griffith Amusement Company offer to sell you their theater in Phillips?

1369 A. I don't recall exactly, but that was the interest on which we were there, was to acquire theirs or sell ours.

Q. Did they offer to sell you theirs?

A. No, sir.

Q. In that conversation did Mr. Bearden say "Well, I will tell you what we thought we would do; we thought if you fellows wanted it for exactly what we have in it we thought we would let you have it" and Mr. Griffing said: "Well, we would make you the same deal." Mr. Bearden said, "Well, I wouldn't be surprised the way it has turned out anyway." Did that conversation take place?

A. I don't remember. That has been too long ago.

Q. Will you say it didn't take place?

A. I say I don't remember the exact conversation.

Q. Also in that conversation didn't Mr. Griffing later on say, "I want you to give consideration to whether you are interested in buying us; we would like for you to make us a proposition to buy us."

A. I don't remember that.

Q. Isn't it a fact that the Arcadia and Tech Theaters at Lubbock, Texas, were not mentioned in that conversation at all by anyone?

A. No, sir.

Q. You say they were mentioned?

A. I say they were mentioned.

1370 Q. By whom?

A. I suppose all of us.

Q. Well, who said what about the Arcadia and the Tech at Lubbock?

A. I have no record of the conversation.

Q. Yes, but you are telling us in that conversation that there was something said about the Arcadia and Tech, and you attempted to tell us what it was in your direct examination.

A. There were several of the Griffith Amusement Company's men there and I don't remember which one said what.

Q. What did any representative of that company say about the Tech and Arcadia?

A. They said if we would be interested in making a deal in connection with the Tech and Arcadia in Lubbock.

Q. And you said you would not?
A. Yes, sir.
Q. Speaking of Phillips, Phillips was not a town, was it?
A. Yes, sir.
Q. Isn't it a fact it was merely a camp that grew up around the Phillips Refinery which was located a mile and a quarter from the town of Borger?
A. No, sir.
Q. That is not true?
1371 A. No, sir.
Q. Prior to the time you and your associates, and the Griffith Amusement Company opened theaters in Phillips in 1940, there was no theater there, was there?
A. Not at the time we opened up. Now prior, I don't know, but as I understood it, approximately——
Q. Just tell us what you know.
A. Well, I will just have to say no, sir.
Q. When were you first in Phillips individually?
A. In the fall of 1939.
Q. At that time there was no theater there, was there?
A. No, sir.
Q. How long had that camp which you designated a town been in existence, if you know?
A. I don't know.
Q. Getting back to the town of Lubbock, what did you say the population of Lubbock was in 1940?
A. Well, I said approximately 50,000, but I believe that is for the entire county. I think Lubbock itself is only about 31,000.
Q. That is what the 1940 census shows, isn't it?
A. Yes, sir. I believe that is right.
Q. Your efforts along in 1940 were to attempt to obtain a specific run for the area in which your Tech Theater was located as distinguished from a run in the town
1372 of Lubbock; is that true?
A. Yes, sir.
Q. In other words, it was your contention that the distributors should license the Tech Theater which was located out near the campus of the Technical College separate from the runs which it was licensing in the town of Lubbock?
A. No, sir, I would not say that.
Q. And you wrote separate letters to the various distributors of motion pictures, didn't you?
A. Yes, sir.
Q. In an effort to convince them that instead of licensing the Tech Theater for a run in the town of Lubbock it should be licensed separately on a first run basis for that area?

A. No, sir. Can I make a statement there?

Q. You were insisting that you had a contract permitting you to play the product of the several distributors in the Tech Theater, first run, notwithstanding you had always licensed the product of the several distributors prior to that time on a certain run for the town of Lubbock?

A. We asked that——

Q. Just answer that question.

A. We stated: (Question read.)

A. Yes, sir, with modifications.

1373 Mr. WRIGHT. If the Court please, the question is pure argument. I don't see how that advances any of the issues here.

The COURT. I think it is proper cross-examination.

Mr. WRIGHT. It is clear what he wanted. You can phrase it in a dozen different ways. I don't see that it is any clearer.

The COURT. Proceed.

By Mr. COCHRAN:

Q. In 1939 when you learned that a competitive theater was going in out near the campus, you at that time made an application for product with Paramount did you not?

A. Yes, sir.

Q. That was along in March of 1939, wasn't it?

A. That was for the 1939-40 deal?

Q. I don't know what deal it was; I just asked you if it wasn't one in which you——

A. (Interrupting.) We made contracts every year with Paramount.

Q. That first location that had been selected for the competitive theater was out at Second and Broadway, wasn't it?

A. Was where and Broadway?

Q. I beg pardon?

A. Was where and Broadway?

Q. Second and Broadway?

1374 A. I don't know.

Q. Do you know where Second Street is in Lubbock?

A. No, sir.

Q. Is there a Second Street there?

A. I don't know.

Q. Don't you live in Lubbock?

A. Yes, sir.

Q. Do you remember that lot on which the sign was erected in 1939 saying that some theater was to be built there?

A. No, sir.
Q. You don't know anything about that?
A. I remember a sign in '38.
Q. All right, in '38 then, what was the location of that lot?
A. It was in the 2400 block on Broadway.
Q. Would that be Second and Broadway, do you know?
A. I think Broadway is 12th Street, isn't it?
Q. I don't know; I am just asking you.
A. Well, I don't know anything about Second Street.
Q. Do you have a copy of the application that you filed with Paramount on March 21, 1940?
A. I didn't sign a contract with Paramount in March of 1940.
Q. The application?
1375 A. I didn't sign an application that I recall.
Q. When was that application signed that you said was later cancelled?
A. In June of 1940.
Q. Do you have a copy of that application?
A. No, sir.
Q. Isn't it a fact that that application which was filed with Paramount in 1940 contained a clause which provided that the Tech Theater would have clearance over the proposed theater on Broadway?
A. Yes, sir.
Q. And that was the application which you say was later cancelled?
A. No, sir.
Q. Isn't it a fact that the application that you have just mentioned, that after it was sent in to Paramount, that you refused to pay the prices which Paramount insisted should be paid for the product under that application?
A. Which contract are you speaking of?
Q. I am talking about this one which gave you clearance over the proposed theater on Broadway.
A. The contract that was signed June 10, 1940?
Mr. Wright. If the Court please, this is not proper at all. There was only one such contract; he told you he had the contract for the 1939-40 season.
1376 By Mr. Cochran:
Q. June 10, 1940, how about that?
A. Restate the question.
The Court. Read the question.
(Last question read by the reporter.)
A. We refused to pay the prices as asked by Paramount.

By Mr. COCHRAN:

Q. And cancelled the application?

A. After they telephoned us.

Q. After you refused to pay the price?

A. Yes, sir; they insisted on a raise.

Q. You spoke of the contract sometime, some subsequent year, with Paramount which called before the run in Lubbock; do you have that?

A. No, sir.

Q. The five pictures which you said you licensed from RKO for the 1941-42 season were licensed after RKO had commenced to license its product under the consent decree, was it not?

A. As best I remember, that's right. That has been several years ago.

Q. And you understood that under the consent decree that you had a right to arbitrate runs with RKO?

A. Yes, sir.

Q. Isn't it a fact that in the 1941-42 season that you were licensed three groups of five each of RKO pictures?

1377 A. No, sir, not first run.

Q. I mean, that was in the Tech, you mean?

A. Yes, sir.

Q. Do you have the RKO contract in which you say you were licensed first run?

A. No, sir, not with me.

Q. What year do you say that was?

A. As best I remember, it was the '41-42 season.

Q. The '41-42 season?

A. I can name the pictures.

Q. That was the first contract that you had with RKO for first run?

A. No, sir.

Q. Well, when was the first contract that you had with RKO first run?

A. In 1939 and '40, and 1940 and '41, we had first run on College Avenue and third run in Lubbock.

Mr. COCHRAN. We move to strike that answer as not responsive.

A. That was the first run contract.

Q. All right, you said 1939-40. Do you have that contract?

A. No, sir.

Q. You brought some of your contracts, did you?

A. Yes, sir, over there. I was in Austin and I didn't go by my show and pick up all the contracts.

1378 Q. You don't have the contract for the five pictures for the '41-42 season that you said you had first run?

A. Not with me, no, sir.
Mr. COCHRAN. That's all.

Re-direct-examination by Mr. WRIGHT:

Q. Now, Mr. Smith, in connection with this question that was asked you about the right to arbitrate under the consent decree, do you know what could or could not be done by way of arbitration under that decree?
A. No, sir, I do not.
Q. I take it you are not a lawyer?
A. No, sir.
Q. You don't, as a matter of fact, know what rights, what your rights are under the decree in connection with any particular run, is that correct?
A. That's right.
Q. Now, the RKO deal, I believe you say you had previously enjoyed, that is, during the 1939-40 and '40-41 seasons, what was called a first run on College Avenue?
A. Yes, sir.
Q. And that first run on College Avenue, however, was a third or fourth run in Lubbock, was it?
A. Third run Lubbock.
1379 Q. And in your negotiations with the distributors, even in those—strike that. In the Metro runs which you enjoyed first on College Avenue, those have all actually been fourth or fifth run Lubbock, have they not?
A. Third or fourth run Lubbock.
Q. Third or fourth run Lubbock?
A. Yes, sir, and first run on College Avenue.
1380 Q. Yes, but that was the kind of a run that you were trying to get from the other major distributors, is that right?
A. Yes, sir.
Q. Getting back to this Paramount deal you referred to, this application you signed in 1940, for a run ahead of the Tower, now was that the first Paramount application that had that provision in it, or had you had that kind of a provision the year before?
A. The provision the year before did not specify the name of the theater.
Q. What did it specify?
A. The new proposed theater by Griffith.
Q. That is in the '39-40 Paramount deal?
A. Yes, sir.
Q. That just provided for the run ahead of the proposed theater?
A. Yes, sir.
Q. But there was no theater there during the period of that contract?

A. No, sir, there was not.

Q. And this application that was taken in 1940 for the '40-41 pictures, as I understand it Weems took that application and those terms that were written into the application were agreeable to you, weren't they?

1381 A. Yes, sir.

Q. And the only terms you objected to were the increases that Mr. Weems wanted over the application as written; isn't that right?

A. Yes, sir.

Q. Now, with respect to this theater in Phillips. Can you tell us just what the fire damage there was. You say there was a fire there after it had been operating six months. There was a fire in the Phillips Theater you testified on your direct examination, after you had been operating six months. How extensive was that damage or how long was the theater closed there?

A. It was closed, I would say, eight weeks, but I am not exactly certain.

Q. About how long?

A. About 60 to 90 days.

Q. It was then rebuilt and reopened?

A. Remodeled and reopened, yes, sir.

Q. Then the second fire was when?

A. It was in the spring of 1942, I would say.

Q. That was just before you closed. Is that right?

A. Yes, sir.

Q. Was it operated after the fire or did it close at the time you had the fire?

A. It was not operated after we had the fire.

1382 Q. So actually it was closed then sometime in the spring rather than July?

A. That would be right, I believe.

Q. What was the July date?

A. Well, that has been two years ago and I am not certain. It is possible that the fire was in July. It was in the first part of '43 or along in the summer; I don't remember exactly.

Q. And that was when you moved your equipment out and closed it. At any rate, it was when the second fire occurred?

A. We moved our equipment in 1942, in the late summer or early fall. I am not sure but that was when we moved it.

Q. Without regard to the amount, it is a fact that you lost or gained there on the investment you made in Phillips?

A. I lost.

Q. A substantial amount?
A. Yes, sir.
Q. That is, after making all allowances for whatever you received from the insurance company?
A. Yes, sir.
Q. That is all.

Re-direct-examination by Mr. DUDLEY:

Q. When you had the first fire at Phillips did you
1383 have coverage both on the building and the equipment?
A. Yes, sir, I believe we did.
Q. Was the building totally destroyed?
A. No, sir.
Q. Was your equipment destroyed?
A. Partially.
Q. And you collected insurance both on the damage to the building and the equipment?
A. Yes, sir.
Q. Do you remember how much?
A. No, sir.
Q. Small or sizeable?
A. Well, whatever the damage was; I don't remember.
Q. Then when you had the second fire you had coverage both as to the building and your equipment?
A. I don't remember.
Q. Don't remember about that?
A. No, sir.
Q. What was the extent of the damage to your building at this second fire, was it small?
A. Yes, sir, it wasn't very much.
Q. You recovered insurance for that?
A. I don't know; I don't remember.
Q. Was your equipment destroyed also at the second fire?
1384 A. Not all of it.
Q. Most of it?
A. No, sir.
Q. Do you know how much?
A. That in the booth was burned pretty bad.
Q. But you recovered insurance for the damage to your equipment?
A. Yes, sir.
Q. Then after that you sold this theater, the building and your equipment?
A. No, sir, just the building.
Q. And got $250 for the building?
A. Yes, sir.

Q. What did you do with the equipment?
A. I moved it to Lubbock.
Q. That equipment was damaged in some respects as a result of that fire, wasn't it?
A. Yes, sir.
Q. And you moved it to Lubbock?
A. Yes, sir.
Q. What did you do with it?
A. I still have it. I have it stored in Lubbock.
Q. That equipment is still stored in Lubbock?
A. Yes, sir.
Q. What did the equipment cost in the first place?
1385 A. Oh, approximately $7000.
Q. That is all.
(Witness excused.)

WILLIAM NAGLE, was thereupon called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your name and address.
A. Gallup, New Mexico.
Q. What is your occupation?
A. Motion picture theater proprietor.
Q. What theater?
A. El Morro Theater at Gallup.
Q. How long have you operated that theater?
A. Since 1928.
Q. Was the theater built then, in 1928?
A. Yes, sir.
Q. At the time you built the theater in Gallup were there any other theaters there?
A. Yes, sir, two.
Q. What were they?
A. I believe the names were the Cairo and Rex.
Q. Who operated them?
A. Mr. Masters.
1386 Q. He was a resident of Gallup?
A. Yes, sir.
Q. Can you describe the theater that you built there? Could you be a little more specific?
A. Describe it in what manner?
Q. As to size and general character of the equipment and so forth.
A. We employed a very good architect in Los Angeles and we had quite a modern theater. The size is 877 seats.
Q. How did it compare when completed with the other theaters there?

A. It was far superior to the other theaters.

Q. Then after you built that theater, what, if any, major film product did you play there?

Mr. RICE. The complaint covers the period from 1934, April 28, to 1939. There has been some evidence regarding the product, contracts prior to that time but in every case the product contracts that were introduced carry over into the period under survey, and I think it is proper to include that, and we therefore object to all testimony regarding the product situation in Gallup, New Mexico, prior to April 28, 1934, unless it comes within that restricted class where the contracts carried over as franchises or equipment.

The COURT. What is the object?

1387 Mr. WRIGHT. This is merely background.

The COURT. Well, you may proceed. We are going to get a pretty good history of the Louisiana Purchase by the time we get through.

Mr. RICE. Note our exception.

The COURT. Exception allowed.

By Mr. WRIGHT:

Q. Can you just name the major companies whose product you were using there in 1928, '29, '30?

A. During those three years we had Metro-Goldwyn-Mayer, Paramount, Warner Brothers, Twentieth Century Fox, or I believe it was just Fox at that time, and I believe RKO, and during one of those years, United Artists, and maybe I had Columbia, I believe, one of those years.

1388 Q. Do you recall when the R. E. Griffith Theaters Company came into the town?

A. In the year 1930.

Q. About what time in that year?

A. I cannot be quite positive on that date, but I believe it was mid-summer.

Q. Of 1930?

A. Yes.

Q. Did they build a theater there?

A. Purchased.

Q. They bought the theaters Masters was running?

A. They bought one from Mr. Masters.

Q. Which one was that?

A. The Cairo.

Q. Was the other one then operating?

A. No, the other theater had been turned into a store.

Q. So that at the time they came in, the only theaters operating there were the Cairo and the El Morro?

A. Yes, sir.

Q. Then was the name of the Cairo changed when they took it over?

A. I don't recall whether it was changed when they took it over or at a later date. It seems to me it was changed possibly during a remodeling period, some years later.

1389 Q. The name was later changed to what?

A. The Chief.

Q. The Chief?

A. Yes, sir.

Q. How large a town was Gallup then?

A. At what period?

Q. This is along in 1930.

A. Approximately 6,000.

By the COURT:

Q. There were just two theaters there in 1930?

A. Yes, your Honor. There were three at the time we opened the El Morro Theater, then one was closed and turned into a store room in 1929.

Q. The Cairo and your theater was the only theaters running in 1930?

A. Yes, sir.

By Mr. WRIGHT:

Q. After the Masters' theater was taken over by Griffith, what, if any, major product did you play at the El Morro?

A. After Masters' theater was taken over by Griffith what major product did I play, is that the question?

Q. Yes, sir.

A. I was immediately reduced to Metro-Goldwyn-Mayer and Paramount as the two principal companies.

Mr. RICE. I can't hear you.

1390 A. I was immediately reduced to Metro-Goldwyn-Mayer and Paramount.

By Mr. WRIGHT:

Q. After they took over were you offered any season's first run deals of Fox or Warner?

A. There was on one occasion, about 1932. Shall I explain that?

Q. Yes, go ahead.

A. The Fox manager called me from Denver and wanted to know——

Mr. RICE (interrupting.) We object to the conversation, your Honor.

The COURT. Sustained. Don't tell the conversation that occurred between you and any of the distributors. You may tell what happened in the theater business at that time and what you know.

By Mr. WRIGHT:

Q. Let's go back and have the question repeated. He may not have quite understood it. Will you read it, please?

(Last question read by the reporter.)

Q. This is after Griffith took over the Cairo or Chief Theater?

The COURT. Just tell what you did, not your conversation with these distributors.

A. I made an appointment with the Fox manager in Albuquerque. He wished to know if I would be interested in the Fox product again. I told him I would be.

1391

By Mr. WRIGHT:

Q. When was that, can you fix the time approximately?

A. That was approximately 1932. He then explained that he had to go back to Denver.

Mr. RICE. He is doing by indirection what the Court said he could not do directly.

The COURT. Objection sustained. Just state what happened, not the conversation between you and the Fox representatives, but what happened.

A. He was not ready to accept an application for the contract.

By Mr. WRIGHT:

Q. Then, did Fox or Warner take any contract applications from you for season's deal after Griffith took over the Masters Theater?

A. No, sir.

Q. Now, coming down to 1934–35——

Mr. RICE (interrupting.) Have you finished with that period?

Mr. WRIGHT. Yes.

Mr. RICE. I think we should, and we move to strike the testimony regarding the product before April 28, 1934, your Honor.

The COURT. Overruled and exception allowed. The Court will disregard any testimony that he regards immaterial.

1392

Mr. WRIGHT. I beg pardon, I didn't hear that, your Honor. Will you read it, please?

(Court's remarks read by the reporter.)

By Mr. WRIGHT:

Q. Can you tell us what major product you were using there during the 1934–35 season?

A. Paramount and Metro-Goldwyn-Mayer, and I believe that it was in the 1934–35 season on which I had RKO.

(Plaintiff's Exhibit 290 for identification was marked by the reporter.)

Q. I show you this contract, marked Plaintiff's Exhibit No. 290 for identification, and ask you if you recognize that

as the contract you had with RKO for the 1934–35 season?

A. Yes, sir.

Mr. WRIGHT. We will offer this Plaintiff's Exhibit 290 in evidence.

Mr. RICE. No objection.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. Then, were you offered a first run deal with RKO for the following season, 1935–36?

A. I was not.

Q. Did you make any efforts to secure that product?

A. I wrote the sales manager in New York that I expected the product the following year, that was coming on to the purchasing season for 1935–36.

1393 Q. Did you get an answer?

A. No, sir.

Q. By the way, in dealing with the film companies, what exchanges were you served out of by most of them?

A. Los Angeles.

Q. And the salesmen that called on you were salesmen from the Los Angeles exchanges for the most part?

A. Yes, sir.

Q. And from Denver?

A. Later, United Artists did from Denver, and Fox did from Denver.

Q. Then for the 1935–36 season, can you tell us what major product you had then?

A. Paramount, Metro-Goldwyn-Mayer, and Universal.

(Plaintiff's Exhibit No. 291 for identification was marked by the reporter.)

Q. I will show you this Universal contract, dated, approval date October 16, 1935, and ask you if you recognize that as the contract you had with them for the 1935–36 season?

A. Yes, sir.

The COURT. What is the number of the exhibit, Plaintiff's Exhibit 291?

Mr. WRIGHT. Plaintiff's Exhibit No. 291 for identification, your Honor. We will offer in evidence Plaintiff's Exhibit No. 291.

1394 Mr. RICE. No objection.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. Were you offered a first run deal for the 1936–37 season by Universal?

A. No, sir.

Q. And did you try to buy those pictures?

A. Yes, sir, I called at the Los Angeles office and was advised that the deal was out of their hands, and was all in New York.

Q. Now, what major product did you have for the '36–37 season?

A. Metro-Goldwyn-Mayer and Paramount.

Q. In addition to Universal?

A. No, that was all.

Q. That was all?

A. Yes, sir.

Q. Was the same true for the '37–38 season?

A. Was the same true?

Q. Yes, you had the same?

A. Yes, the same service.

Q. And the '38–39 season?

A. Paramount and Metro.

Q. Now, calling your attention to the year 1936, was there another theater put up in the town then?

A. At about that time the Griffith people converted
1395 a store room into a theater.

Q. And called it what?

A. The Navajo.

Q. After the Navajo was opened, did they continue to operate the Chief?

A. Yes.

Q. Do you know about what policies the Navajo and the Chief were operated on?

A. Could you define your question a little more; do you mean the price policy or what?

Q. Well, the general program policies the kind of pictures they played.

A. I would say that primarily the Chief Theater played the first run pictures, and the Navajo would play mostly the slough pictures and the second runs.

Q. By slough pictures, you mean what?

A. In each company there is inferior pictures made that sometimes do not fit a first run situation.

Q. You mean inferior from the standpoint of box office value, is that right?

A. Yes, sir.

Q. Now, those theaters, the Navajo and the Chief, continued to operate there through the succeeding seasons, did they?

A. Yes, sir, both theaters operated, but I believe there was a time that the Navajo operated only on part-time basis.

1396 Q. Do you remember when that was?

A. Not exactly.

Q. Do you know what the size, approximately of those theaters was?

A. I could only estimate it. Possibly 600 seats each.

Q. Do you say the Chief was remodeled by Griffith?

A. I believe they did do a remodeling job on the theater sometime, oh, about 1936 or '37.

Q. After the Chief was remodeled, how did it compare with the El Morro Theater?

A. That is kind of a delicate question. It doesn't compare.

Q. Well, which theater of the three there do you say would be classed as the A theater in the town?

A. I would say the El Morro.

Q. And the B theater?

A. Due to the run of pictures in the Chief Theater it could hardly be classed as a B theater. As far as the two theaters are concerned, the El Morro is far superior to the Chief Theater, but as long as they run first run pictures in the other theater—I presume it is presentable— there hasn't been any other theater for a number of years.

Q. The Chief continued to play the better pictures that Griffith played there and the others were played in the Navajo. Is that right?

1397 A. Yes, sir.

Q. During the seasons from '34–35 through '38–39 were you offered a first run season deal from either Fox, Warner or Columbia?

A. No, sir.

Q. Did you know Mr. R. E. Griffith?

A. Yes, sir.

Q. And had you talked to him at any time with reference to a possible sale of your theater or a pooling arrangement there in Gallup?

A. Yes, sir.

Q. When was the first time you had such a conversation?

A. There were a number of little thrusts back and forth or sparring, and on one occasion Mr. Griffith came up to my theater to see me on the understanding that his manager had advised him that I wished to make some sort of a deal with them.

Q. When was that?

A. I would judge that was about 1931.

Q. Was there any deal made?

A. No, sir.

Q. Then was his manager's understanding correct?

A. No, sir.

Q. Then did you later have any conversations with him about a deal?

1398 A. There were two other specific times.

Q. What were they?

A. One was in Denver, about 1932.

Q. Do you know what the substance of the discussion was then?

A. Mr. Griffith wanted to talk with me over the idea of pooling the town.

Q. Did he talk to you about that?

A. He wished to talk about that and make an appointment for the evening.

Q. Did you make an appointment with him?

A. No, sir.

Q. Why not?

A. I didn't wish to pool it.

Q. Then when was the last time that he talked to you about a sale or pooling your theater?

A. We discussed that one evening in my theater about the fall of 1939, an approximate time.

Q. That was at Gallup?

A. Yes, sir.

Q. Do you know what the substance of that conversation was?

A. At that time I told Mr. Griffith that I would either buy or sell.

Q. What did he say to that proposition?

1399 A. He asked my price. I gave him the price and he said that was more than he wished to pay. I then told him if he would name his price and if it was within $10,000 of what I considered right I would take it, and he said he did not wish to sell.

Q. And that was the last approach?

A. Directly with Mr. Griffith.

Q. When you say directly, who else made any approaches to you in connection with the sale?

A. There have been times that some of the house managers for Mr. Griffith have taken it upon themselves to talk to me about it.

Q. "House manager." You mean the managers of the theaters there at Gallup?

A. Yes, sir.

Q. What period did those conversations cover generally?

A. Oh, they had been rather vague and indefinite. There have been times during the years when one of them would ask me if I wanted to pool, or why didn't we pool or sell out and various things——

Mr. RICE. We move to strike that testimony regarding the conversations with the house managers.

The COURT. Sustained.

Mr. RICE. They are not identified.

The COURT. Sustained. Exception allowed.

1400 Mr. WRIGHT. That is all.

Cross-examination by Mr. RICE:

Q. Let me refresh your memory a bit. Wasn't Mr. Master's theater known as the Strand?

A. I believe you are correct.

Q. Do you recall or do you know when the Griffith organization took over the Strand Theater and remodeled it in 1930?

A. I don't recall that.

Q. Don't you recall that it was remodeled and reopened under the name of the Cairo?

A. I was under the impression, it is a little vague on the exact times of the remodeling or renaming, but I was under the impression it was renamed about 1936, but of course I am not positive.

Q. It was remodeled in 1936, wasn't it?

A. Well, I think about that time.

Q. The name Griffith originally gave it was Cairo and it was changed to Chief?

A. I believe that is correct.

Q. You don't know when?

A. Not exactly, I don't.

Q. Getting back to 1928, how many changes a week were you running in your theater?

1401 A. At times three and at times four.

Q. How many was Mr. Masters running in his theater?

A. I can't be positive but I believe three and four.

Q. And one house was operating, is that right, in 1930, I mean.

A. I didn't get the question.

Q. I was wrong. I mislead you. I didn't mean to. In 1928 you were operating three to four changes a week and Mr. Masters was running approximately the same number in his house?

A. Yes, sir.

Q. Was that in 1930?

A. I believe in our instance we were running three changes a week as a regular policy in 1930.

Q. In June, 1930.

A. Yes, sir.

Q. And what was Mr. Masters running?

A. That I couldn't say but the general policy was three changes a week.

Q. I understood you to say that you had a deal with Metro, Paramount, Warner, Fox and RKO for the season of 1929-30. Is that correct?

A. Mr. Wright, if I am correct, asked the question from 1928 to 1931, or 1932, and during that time I had all of those companies, at one time or another.

1402 Q. You didn't have them all at one time?

A. Not all in 1929.

Q. What did you have for the 1929-30 season?

The Court. We will recess at this time until 2:00 o'clock.

(Hereupon Court adjourned until 2:00 o'clock p. m. this day.)

1403

AFTERNOON SESSION

May 21, 1945, 2:00 o'clock p. m.

PROCEEDINGS

Mr. Caskey. I produce license agreement between Metro-Goldwyn-Mayer Distributing Corporation and Nona Kyser, operating the Strand or Ada Theaters in Ada, Oklahoma, dated November 17, 1936.

(Said instrument marked by the reporter as Plaintiff's Exhibit 292 for identification.)

I produce license agreement between Metro-Goldwyn-Mayer Distributing Corporation and E. H. Kyser, operating the Strand or New Strand Theater in Ada, Oklahoma, dated June 11, 1936.

(Said instrument marked by the reporter as Plaintiff's Exhibit 293 for identification.)

I produce license agreement between Loew's, Incorporated and Kyser & Kyser operating the Strand or Ada theaters, in Ada, Oblahoma, dated November 17, 1936.

(Said instrument marked by the reporter as Plaintiff's Exhibit 294 for identification.)

I produce license agreement between Loew's, Inc., and Nona Kyser, operating the Ada or Strand theaters in Ada, Oklahoma, dated February 24, 1937.

(Said instrument marked by the reporter as
1404 Plaintiff's Exhibit No. 295 for identification.)

William Nagle, a witness called by and on behalf of the plaintiff, was recalled and was examined and testified as follows:

The Court. Proceed with your cross-examination.

Cross-examination by Mr. Rice:

Q. Your Honor, I think there is a question on which we didn't get an answer. Did I understand you to say that in 1930 when Griffith entered Gallup and took over the

Strand Theater, you didn't have all the majors that you recited under the contract?

A. I didn't get that quite clear, Mr. Rice.

The COURT. Read the question.

By Mr. RICE:

Q. To refresh your memory, you stated that you had had from time to time during those years Metro, Paramount, Warner, Fox and RKO?

A. Yes, sir.

Q. But not all at one time, is that what you said?

A. I had them during the three-year period over which Mr. Wright asked me the question. Now, in 1930—1929 and 1930, for that picture season, as I recall, I had Fox, Metro-Goldwyn-Mayer, Paramount, I am not positive of Warners, and RKO.

1405 Q. All of them?

A. Yes, sir.

Q. Did you play all their pictures?

A. Yes, sir.

Mr. RICE. That's all.

The COURT. Anything further?

1406 By Mr. COCHRAN:

Q. For the season of 1933-34, did you have Fox product licensed?

A. No, sir.

Q. For that same season did you have the Warner product licensed?

A. No, sir.

Q. Did you have RKO?

A. 19——

Q. '33-34?

A. No, sir.

Q. Did you have Universal?

A. For '33-34?

Q. '33-34.

A. No, sir.

Q. And the season of '34-35 you had none of those pictures which we have just mentioned—I mean the pictures of none of those companies we have just mentioned except RKO. Is that right?

A. For '34-35?

Q. Yes, sir.

A. I had RKO during that season.

Q. I say, and the others of those distributors I have mentioned that you did not have in 1933-34 you likewise did not have in '34-35 with the exception of RKO?

A. Yes, sir.

1407 Q. That is correct, is it?

A. That, I believe, is correct.

Q. In '35-36 you did not have RKO?

A. That is right.

Q. You did not have Warner, Fox or United Artists. Is that right?

A. There was one season in which I had United Artists but I am not positive of the season.

Q. Well, you did not have Warner or Fox in '35-36?

A. No, sir.

Q. You had none of the other product which you had in '33-34 except Universal. Is that right?

A. I had Universal in '34-35.

Q. Isn't it a fact of the Universal you had only '35-36?

A. '35-36, that is right.

Q. And in the year '35-36 you had the same product that you had in '33-34, with the exeeption of Universal?

A. Yes, sir.

Q. And you only had Universal for one year?

A. That is right.

Q. That is all.

By the COURT:

Q. Was the Cairo Theater in operation when you opened it in 1938?

A. Under a different name and individual management.

1408 Q. But the theater was there in operation?

A. Yes, sir.

(Witness excused.)

C. C. HAMM, was called as a witness on behalf of the plaintiff, and being duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your name and address, please.

A. C. C. Hamm, Vernon, Texas.

Q. What is your occupation?

A I am in the theater business.

Q. Motion picture theater business?

A. Yes, sir.

Q. Do you operate a theater at Vernon?

A. Yes, sir.

Q. Did you formerly operate a theater at Altus, Oklahoma?

A. Yes, sir.

Q. When was that?

A. 1936-37.

Q. What theater was that?
A. The Ritz Theater.
Q. When did you open that?
A. It was in July of 1936, I believe.
1409 Q. Was that a theater you bought or built?
A. A theater I built.
Q. At Altus?
A. Yes, sir.
Q. How big a town was Altus then, do you know?
A. It was around 9000.
Q. Were there any other theaters operating there at the time?
A. There was one theater—they had two they were operating, the Empire and the Rex.
1410 Q. The Empire and the Rex?
A. Yes, sir.
Q. Who operated those theaters?
A. Griffith Amusement.
Q. Were they both being operated full time then?
A. Yes, sir, I believe so.
Q. How large were those theaters?
A. Well, I don't know the exact seating capacity. I believe the Empire was around six or seven or eight hundred and the Rex was probably four hundred.
Q. And how big was the Ritz?
A. The Ritz was about 425.
Q. Now, for the 1936-37 season what, if any, major film product did you have at the Ritz Theater?
A. I only had Universal.
Q. That was of what year, what year's product?
A. It was '35-36, I believe.
Q. Did you play that on what run?
A. That was first run.
Q. Did you use it on second run too?
A. Well, I had 536–37 second run, I believe it was.
Q. Did you try to buy any other major product for the Ritz?
A. Yes, sir.
Q. From what companies?
1411 A. Well, all the major companies.
Q. Can you name the ones you tried to get the pictures from?
A. Metro, Paramount, Warner, Fox, RKO.
Q. Columbia?
A. And Columbia.
Q. How about United Artists?
A. Well, I did use some United Artists second runs.

Q. Did you get any United Artists first run?
A. Some of the cutbacks first run.
Q. Now, can you tell us during what, during that '36-37 season what kind of program policy the Empire or the Rex were operated on with reference to what kind of product they used and what runs they played it on?
A. Well, they used their class A pictures in the Empire, and the Rex used, they were more or less class B pictures.
Q. From the major companies that you didn't have?
A. Yes, sir.
Q. Did they play any regular major second run there?
A. I think they played very few. They probably played some of the class A pictures, second run, in the Rex.
Q. Some of the A major pictures, you think were repeated at the Rex?
A. Yes, sir.

Q. Apart from them, were there any, was there
1412 any regular second run of any major product played at either of those theaters?
A. Not that I remember.
Q. Did you try to buy a second run of the major product from these companies other than Universal?
A. Yes, sir.
Q. That you mentioned?
A. Yes, sir.
Q. What did you do in that connection?
A. Well, I just come to Oklahoma City and made the rounds of the major companies.
Q. Did any of them besides Universal offer you a second run? I believe you said you had some United Artists. Did any other than Universal and United Artists offer you a second run for that town?
A. No, sir.
Q. How long did you operate the Ritz there?
A. Approximately a year.
Q. Then what did you do with it?
A. I sold to Griffith.
Q. With whom did you make arrangements that led up to the sale?
A. Well, it was a fellow called up from Lawton, Oklahoma, and said that he represented a couple of fellows that had never been in the theater business, and they wanted to buy the Altus Theater, so I made a price, and they
1413 made arrangements to meet me in Altus on a certain day, and when I came over it was Mr. Spears and his assistant, Mr. Berry.
Q. Mr. Spears was whom?
A. He is the Griffith partner, I imagine, at Altus.

Q. The Griffith partner at Altus?
A. Yes, sir.
Q. Who was the other fellow?
A. His assistant, Mr. Berry, I believe the name was.
Q. At that meeting was there any discussion with reference to you making an agreement not to operate theaters against Griffith?
A. Well, Mr. Spears asked me to sign that I wouldn't open any theaters in any of their towns, and I agreed not to open a theater in Altus for a period of ten years.
1414 Q. You declined to agree not to operate—when you say "other towns" what other towns are you talking about?
A. Well, I took it for granted they meant any of the other Griffith towns.
Mr. COCHRAN. We move to strike that.
The COURT. Sustained.

By Mr. WRIGHT:

Q. As nearly as you can recall, what did he actually say?
A. Well, after we had made the deal he said "I want you to sign that you will not operate any theaters in any of our towns." "No", I said, "I will sign an agreement not to operate any theater in Altus." The period of time was ten years.
Q. Were you able to find a copy of that agreement?
A. I have a copy at home, I am pretty sure.
Q. You didn't bring one with you?
A. No, sir.

By the COURT:

Q. Was anything said about not opening any further Griffith town until your contract was completed?
A. "Griffith" wasn't mentioned. He just said "Any of our other towns."
Q. You didn't agree to that?
A. No, sir.

By Mr. COCHRAN:

Q. The only person who signed that contract other
1415 than yourself and your associates was Mr. Spears. Is that true?
A. I don't remember.
Q. Will you say it is not a fact that contract was with Mr. Spears and Mr. Spears only?
A. I couldn't say. I don't remember.
Q. You didn't bring the contract with you?
A. No, sir. No, sir, I didn't, but Mr. Spears has a copy of it.

Q. Will you say the Consolidated Theaters or the Griffith Amusement Company were a party to that contract at all?

A. Well, will you repeat that?

(Question read.)

A. When I came in and there were supposed to have been two fellows that had not been in the theater business and there sat Mr. Spears and Mr. Berry and I said, "There was a couple of funny looking fellows never to have been in the theater business before." Mr. Spears said, "I thought maybe you would not want to sell if you knew you were going to sell to Griffith." From then on I considered it was Griffith I was dealing with.

Q. My question was, was the Consolidated Theaters or Griffith Amusement Company a party to that contract you signed?

A. I would have to see the written contract I had
1416 before I could answer it. I don't remember.

Q. You know the deal you carried on at Altus was with Spears and Berry?

A. Yes, I know that.

Q. Had you been in the theater business before you had opened the theater at Altus?

A. Yes, sir.

Q. Where?

A. I was in business at Vernon at that time.

Q. You were in business at Vernon?

A. Yes.

Q. Had you been in the theater business at any other place?

A. Yes, sir.

Q. Where?

A. I was in business at Wichita Falls with my brother at Grandfield, Oklahoma.

Q. How long were you in business at Wichita Falls?

A. Not very long. I went from Wichita to Vernon.

Q. How long did you stay in Wichita Falls?

A. Eight months.

Q. What period was that?

A. Back in 1932.

Q. And did you dispose of your theater there?

A. No, sir.

1417 Q. At Wichita Falls?

A. No, sir.

Q. What happened to it?

A. I left my brother there.

Q. How long did he continue to operate it?

A. Up until approximately five years ago.

Q. Was that Volney Hamm?
A. Yes, sir.
Q. Had he been interested with you up to the time you left Wichita Falls?
A. Yes, sir.
Q. Then you went from there to Vernon?
A. Yes, sir.
Q. Was your brother associated with you at Vernon?
A. At that time, yes, sir.
Q. How long did he continue to be associated?
A. Until about 1938.
Q. And then you continued to operate that theater and he got out. Is that right?
A. Yes, sir.
Q. Where is he operating now?
A. He isn't operating theaters at this time.
Q. Did you operate at any other point except Wichita Falls and Vernon?
A. Grandfield, Oklahoma.
1418 Q. When did you go into Grandfield?
A. That was prior to 1932.
Q. Was anyone associated with you there?
A. My brother.
Q. How long did you operate there?
A. Approximately 18 months.
Q. What became of your theater at that time?
A. We moved it to Wichita Falls.
Q. Was that your first experience in the motion picture business, at Grandfield?
A. No, sir.
Q. Where was your experience just before Grandfield?
A. Ringling, Oklahoma.
Q. When did you go into Ringling.
A. I opened up when sound came in, we opened a theater.
Q. Was that in 1928 or '29?
A. '28, I believe.
Q. How long did you operate the theater in Ringling?
A. Until I went to Grandfield.
Q. What period was that?
A. That was about '31.
Q. About how many months?
A. About '31.
Q. How many months did you operate?
A. From 1928 to '31.
1419 Q. You think you operated about two years?
A. Three years.
Q. What happened to your theater at Ringling?

A. I moved it to Grandfield.
Q. Why did you move it from Ringling to Grandfield?
A. Grandfield was a little better town.
Q. When you moved from Ringling did you leave some unplayed contracts with the distributors?
A. Yes, sir, I believe so.
Q. Had you had any experience in the motion picture business before you went to Ringling?
A. No, sir.
1420 Q. When you went to Grandfield under what name did you open a theater?
A. I have forgotten now.
Q. Well, was it your name, or your brother's name, or the name of the corporation?
A. Well, it was just our theater.
Q. How is that?
A. It was just our theater; it was just a partnership affair.
Q. Did you operate it as a corporation or in your individual name or in your brother's name, or how?
A. It was operated in my brother's name.
Q. It was operated in your brother's name?
A. Yes, sir.
Q. The one at Ringling had been operated in your name, had it?
A. The one at Ringling had been operated in both of our names.
Q. When you left Grandfield, did you leave some unplayed contracts?
A. Another fellow took the theater over and played the contracts.
Q. But you didn't play all of them?
A. The theater building, we moved the equipment out.
Q. Isn't it a fact that those contracts were not played and that the distributors had unpaid claims against
1421 you for those theaters?
A. I suppose so, yes, sir.
Q. Did you ever go into Sherman, Texas, with a theater?
A. My brother did.
Q. Your brother did? Were you interested with him?
A. No, sir.
Q. Did you assist him in operating the theater?
A. Very little.
Q. What year was that?
A. That was, I believe that was the same time I was over at Altus, '36 and '37.
Q. How long did he operate that theater at Sherman?

A. I couldn't say.

Mr. WRIGHT. If the Court please, I think we are getting pretty far afield, going into his brother's operations.

Mr. COCHRAN. Just a minute, and I will ask him one other question.

The COURT. I don't know whether his brother had anything to do with it or not.

By Mr. COCHRAN:

Q. Was your brother interested with you at Altus?

A. Yes, sir.

Mr. COCHRAN. That was a joint operation at Altus, and we submit the question in regard to Sherman
1422 is admissible, your Honor.

The COURT. Yes, I think it is.

By Mr. COCHRAN:

Q. How long did he operate at Sherman?

A. I couldn't say.

Q. Is he still operating it?

A. No, sir.

Q. Did you go into Muskogee?

A. He did.

Q. When did he go into Muskogee?

A. About the same time he was in Sherman.

Q. How long did he operate in Muskogee?

A. I couldn't say.

Q. You have no idea?

A. No.

Q. Is he still operating there?

A. No.

Q. Did you go into Durant?

A. No, sir.

Q. Did he go into Durant?

A. He did not.

Q. How about McAlester?

A. He was in McAlester.

Q. You had no interest there?

A. No interest.

Q. How long did he operate in McAlester?

1423 A. I couldn't say.

Q. He isn't operating there now, is he?

A. No.

Q. You know that in Sherman, Muskogee, and McAlester he hasn't operated since 1937, don't you?

A. Approximately that time.

Q. Griffith Consolidated or Griffith Amusement Company

were not operating at Ringling or at Wichita Falls or at Grandfield or at Sherman or at Muskogee or at McAlester, were they?

A. No, sir.

Q. You were still interested with your brother in Wichita Falls at the time that you went into Altus, did you say?

A. Yes, sir.

Q. You went into Altus in July 1936?

A. Yes, sir.

Q. And you disposed of your interest at Wichita when?

A. Along about '37.

Q. About '37?

A. Yes, sir.

Q. After leaving Altus did you have any other—have you had any other theater interests other than your interest at Vernon?

A. Yes, sir.

1424 Q. Where?

A. Borger, Texas.

Q. Where?

A. Borger.

Q. And where else; any other place?

A. That's all.

Q. Did you say that your brother is or is not interested with you at Vernon?

A. He is not.

Q. He is not?

A. No, sir.

Q. Who else was interested with you in the Ritz Theater at Altus besides your brother, Volney Hamm?

A. No one.

Q. You stated you built the theater?

A. Yes, sir.

Q. Now, that theater was simply a store building that you converted into a theater, was it not?

A. Yes, sir.

Q. A 25-foot building, wasn't it?

A. Yes, sir.

Q. When you opened it in July, 1936, the Universal pictures that you licensed first run were pictures of the '35-36 season that had not been licensed by anyone else in the town?

A. I think so, yes, sir.

1425 Q. That's correct. In other words, those were pictures that had been produced during the season which was just about to close?

A. Yes, sir.

Q. Did you license any Universal pictures second run of the '35-36 season?

A. They were first run.

Q. Did you license any second run?

A. I don't believe so.

Q. You don't believe so?

A. No, sir.

Q. I just can't understand whether you are saying yes or no.

A. I don't believe I did.

Q. Thank you; I just wanted to be sure we understand each other.

A. Yes, sir.

Q. Did you license any Universal pictures second run for the '36-37 season?

A. Yes, sir, I believe I did.

Q. Do you have those contracts?

A. I do not.

Q. Do you know how many of those pictures you licensed second run of the '36-37 product?

A. No, sir, I don't.

1426 Q. You can be mistaken about that, can't you?

A. I sure could, yes, sir.

Q. When was it that you sold out your theater at Altus?

A. It was, I believe it was in July of '37.

Q. That was before the '37-38 season had opened?

A. Yes, sir.

Q. That was before the '37-38 had opened?

By the COURT:

Q. What was the name of your theater in Altus?

A. The Ritz.

By Mr. COCHRAN:

Q. At the time you came into Altus, you made an investigation of the situation so far as availability of pictures was concerned, didn't you?

A. Well, yes, sir, I did.

Q. And you found at that time that Consolidated Theaters, who were operating two theaters at that time, were operating both of those theaters on first run product, is that right?

A. Yes, sir.

Q. And that after those theaters there had been licensed first run product, major companies, sufficient to meet the playing policy of those theaters——

Mr. WRIGHT (interrupting.) If the Court please, I don't know how he would be competent to say what the

needs of the Griffith theaters were or what Griffith licensed.

1427 The COURT. The question was whether he made an investigation before he went there to determine these facts. I don't know how else he would know.

A. I wouldn't know.

By Mr. COCHRAN:

Q. You wouldn't know about that?

A. No, sir.

Q. Did you ascertain whether, at that time, Consolidated Theaters was using first run product of Metro or Loew's?

A. They were using it.

Q. They were using it currently?

A. Yes, sir.

Q. Did you find that they were using the product of Paramount currently, first run?

A. Yes, sir.

Q. And of Warners?

A. Yes, sir.

Q. And of Universal?

A. I don't believe they were using Universal.

Q. And RKO?

A. Yes.

1428 Q. What other product did you find they were using currently?

A. Well, Fox. You forgot Fox.

Q. You found they were using Fox?

A. Yes.

Q. So that the product that was open for a season's contract at that time was Universal?

A. Yes, sir.

Q. Of the so-called major distributors?

A. Yes, sir.

Q. Then there were Independent products you were able to get?

A. Yes, sir.

Q. Did you know whether the Consolidated Theaters previous to the '35-36 season had been an account of Universal?

A. I believe so; I am not sure.

Q. In '36-37 Universal again sold some of its product, first run product, to the Consolidated Theaters?

A. I believe so, yes, sir.

Q. Do you recall that during that season Universal offered you some 24 pictures first run for the '36-37 season?

A. I don't recall.

Q. Will you say they didn't do that?

A. I don't remember.

1429 Q. At the time that you sold your theater in 1937, had you licensed any product for the '37-38 season?

A. I had, yes, sir.

Q. How much product had you licensed at that time?

A. I couldn't say.

Q. Can you tell us what company you had contracts with a that time for the '37-38 season?

A. Well, I had the Independents.

Q. Well, do you recall which companies you had contracts with?

A. Well, it would be Republic and at that time there was the Square Deal.

Q. You had contracts with them for the '37-38 season. You sold out in July?

A. I am not sure.

Q. You are not sure about that?

A. No, sir.

Q. You are not sure what contracts, if any, you had at that time?

A. No, sir.

Q. What companies did you leave with unplayed product when you sold out at Altus?

A. I left some Republic product and Square Deal product and Universal product, and I believe there was some

1430 United Artists product. I wouldn't say for sure about that.

Q. And you sold out and left that product unplayed?

A. No, sir. It was unplayed.

Q. That is what I say.

A. Yes, sir.

Q. Didn't Columbia sell you some product along in May, 1937, which was entirely unplayed at the time you disposed of your theater?

A. I don't remember.

Q. You can't say about that?

A. No, sir.

Q. I believe I forgot to ask you how much you invested in your theater at Altus when you opened it.

Mr. WRIGHT. If the Court pleases, we didn't go into any question of investment with this witness.

The COURT. I don't see how it would be material.

Mr. COCHRAN. That is all.

Re-direct examination by Mr. WRIGHT:

Q. Mr. Hamm, I think you testified on cross examination that after you had investigated the situation there that you found the only major product that was open in the town was Universal. Now, did you mean to suggest by that that

that was the only product that was open on any run, or that was the only first run product open?

1431 A. The only first run.

Q. As far as second run product was concerned, that was all open, wasn't it?

A. Well, Griffith had it bought second run.

Q. And these companies that were referred to here, Metro, Paramount, Warner, RKO and Fox, you were unable to license second run from any of those companies?

A. Yes, sir.

Q. And were you at that time, during the '36-37 season dealing with those companies and using their films at Vernon and Wichita Falls?

A. At Vernon I was not using Fox.

Q. At Wichita Falls were you?

A. I don't believe so, no, sir.

Q. Were you using the other companies' product at those places?

A. We were not using Fox and Paramount at that time.

Q. What ones were you using?

A. We were using Universal and the Independents, of course, and Warner Brothers and RKO, Columbia.

Q. Metro?

A. No, sir, not Metro.

Q. And those companies you have just named, none of them have offered you a second run at Altus?

1432 A. No, sir.

Q. None of that product was used by Griffith second run at Altus for Consolidated?

A. A few of the pictures were I believe.

Q. With the exception of an occasional picture. Is that right?

A. Yes, sir.

Q. Do you know what was done with the Ritz Theater after you sold it?

A. It was closed to Fridays and Saturdays each week.

Q. Week-end operation?

A. Yes, sir.

Q. That is all.

Re-cross-examination by Mr. COCHRAN:

Q. Don't you know that the Ritz was operated full time for a while and then changed to a Friday and Saturday operation?

A. I couldn't say. I know I was in Altus a short time after I sold and it was only operating Fridays and Saturdays.

Q. How soon after you sold?

A. I don't remember. Probably six weeks or something like that.

Q. Could it have been as much as three months?

A. I couldn't say.

1433 Q. How many theaters in 1936 and '37 were operating in Vernon?

A. Three.

Q. How many of those did you operate?

A. One.

Q. Did you have the first run of any product in Vernon?

A. In '36, I didn't have any major first run, no.

Q. You say you did have some second run of major product?

A. Yes, sir.

Q. What size town was Vernon?

A. About 10,000.

Q. It was over 10,000 was it not?

A. In '36?

Q. Yes.

A. I believe the census gave it 9,000 and something.

Q. Do you know how long second run had been sold in Vernon?

A. You mean how long I had been using second run?

Q. Do you know how long the major distributors had been selling regular second run in the town of Vernon in 1937?

A. I had second run——

Q. I am not asking you about that. Read the question.

(Previous question read.)

A. Do you mean prior to '36 and '37?

Q. Yes, sir.

1434 A. They were selling in 1933.

Q. Were you operating there then?

A. Yes, sir.

Q. When did you go into Vernon?

A. 1933.

Q. How long prior to 1933 had it been licensed?

A. It probably had not been.

Q. Do you know?

A. I don't know. They were only operating one theater at that time.

(Witness excused.)

Mr. Wright. We do not have any more witnesses here today. I think we can go ahead with some documentary evidence. What I would like to offer now is some of the inter-office correspondence that has been previously identified here. This correspondence came from the Paramount

files and deals with the situations at Lubbock, with respect to the Tech and Tower Theaters about which your Honor heard testimony from Mr. Bearden and Mr. Smith. The documents are marked P–86. There are a number of pages that carry that designation, P–86, pages A to L in-
1435 clusive, and a document that I should like to offer at this time, pages C through L, inclusive.

Mr. COCHRAN. To which we object for the reason this is correspondence between one representative of Paramount and another representative of Paramount, and therefore are hearsay as to these defendants.

1436 The COURT. The objection will be sustained and an exception allowed.

Mr. WRIGHT. If the Court please, in connection with this offer I also wanted to make it clear that we were presenting a stipulation which would show who these various Paramount executives whose names appear in the correspondence are. So that we know where we stand on this inter-office memoranda, I would, of course, like to know whether the ruling is based upon lack of identification of the persons named there. If that were true, that can be cured by the stipulation.

The COURT. No; it isn't, it is hearsay testimony.

Mr. WRIGHT. The ground on which they are excluded is that these memoranda were prepared outside of the presence of the defendants, is that correct?

Mr. COCHRAN. That isn't the objection at all. I notice that statement continually appearing here.

The COURT. Because the defendants had nothing to do with it.

Mr. COCHRAN. The defendants had nothing to do with it.

Mr. WRIGHT. If the Court please, I think it is quite apparent from the correspondence and the testimony that the defendants had a great deal to do with the inability of the Tech Theater to get that run ahead of the Tower
1437 Theater. Now, this evidence is——

The COURT (interrupting.) It would not be competent evidence against the defendants in this case, because they certainly had nothing to do with writing those letters.

Mr. WRIGHT. Well, if the Court please, the letters purport to set down in the ordinary course of carrying on the business of that exchange there what was done by Paramount with reference to the deals with the Tower and with the Tech, which we have gone into here.

The COURT. Well, you have it in the record.

Mr. WRIGHT. Where that course of business is an issue in the case, as it is here, we submit that evidence of this character which we have submitted here is of higher perhaps probative value than anyone you might put on the stand at a later date, as to what actually occurred I suppose contemporaneous memoranda might well be regarded as the best evidence available.

The COURT. No, I think it is hearsay testimony. An exception will be allowed.

Mr. WRIGHT. Now, I think we have offered all of the operating agreements. We will have some other interoffice memoranda of this sort, but I think it does not need to be offered now. I would suggest that we could probably best spend the rest of the time available here in having identified the material that Mr. Caskey has produced in response to subpoenaes. It can be done outside
1438 your Honor's presence, if you prefer.

The COURT. Very well.

Mr. COCHRAN. Will it take the rest of the afternoon to do that?

Mr. WRIGHT. I don't know how long it will take. We could have a recess.

Mr. COCHRAN. What I am getting at is this, I take it that it won't be necessary for me to be present while you are identifying them?

Mr. WRIGHT. I shouldn't suppose so.

Mr. COCHRAN. I just wanted to know if I should come back up here. I can be doing something else.

Mr. WRIGHT. As far as I am concerned, it would be agreeable to recess for the rest of the day. We had these out-of-town witnesses, we didn't suppose——

Mr. COCHRAN (interrupting.) Mr. Griffing says he will remain here and call me if necessary.

The COURT. Very well. We will recess then until tomorrow morning at 10:00 o'clock.

(Whereupon court recessed until Tuesday, May 22, 1945, at 10:00 o'clock a. m.

(Whereupon the following proceedings were had and recorded out of the presence of the Court, by agreement:)

1439 Mr. CASKEY. In response to paragraph 4 of the subpoena duces tecum served upon RKO Radio Pictures, Inc., returnable May 21, 1945, I produce agreement between RKO Distributing Corporation and E. H. Kyser operating the Strand Theater at Ada, Oklahoma, dated September 13, 1934.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 296 for identification.)

I produce license agreement between RKO Distributing Corporation and E. H. Kyser, operating the Strand Theater at Ada, Oklahoma, dated September 13, 1934.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 297 for identification.)

I produce license agreement between RKO Distributing Corporation and E. H. Kyser, operating the Strand Theater, Ada, Oklahoma, dated September 13, 1934, relating to sixteen features, second run.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 298 for identification.)

Nothing is produced at this time in response to paragraph 5 of the aforesaid subpoena relating to Ardmore, Oklahoma.

In response to paragraph 6 of the aforesaid subpoena I produce license agreement between RKO Distributing Corporation and H. Ford Taylor, operating the Ritz Theater, Brady, Texas, dated April 15, 1935.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 299 for identification.)

1440 Nothing is produced in response to paragraph 7 of the aforesaid subpoena.

In response to paragraph 8 of the aforesaid subpoena I produce license agreement between RKO Distributing Corporation and Southwestern Theaters, Inc., operating the Midwest or Ismo Theaters, Chickasha, Oklahoma, dated May 29, 1936, relating to the 1934-36 season feature productions. (The above instrument identified as Plaintiff's Exhibit No. 300 for identification.)

I produce license agreement dated November 7, 1934, between RKO Distributing Corporation and the Chickasha Midwest Theater Company operating the Midwest Theater at Chickasha, Oklahoma, relating to 15 features of the 1934-35 productions, second run. (The above instrument identified as Plaintiff's Exhibit 301 for identification.)

I produce license agreement dated October 26, 1934, between RKO Distributing Corporation and Chickasha Midwest Theater Company operating the Midwest Theater at Chickasha, Oklahoma, relating to 50 features of the 1934-35 productions, first run. (The above instrument identified as Plaintiff's Exhibit No. 302 for identification.)

Pursuant to paragraph 9 of the aforesaid subpoena duces tecum I produce an agreement dated December 5, 1939, between RKO Radio Pictures, Inc. and Mrs. Myrtle Guthrie, operating the Ritz Theater, Clinton, Oklahoma,

relating to 52 features of the 1939-40 productions.
1441 (The above instrument identified as Plaintiff's Exhibit No. 303 for identification.)

In response to paragraph 10 of the aforesaid subpoena I produce agreement dated November 26, 1938, between RKO Radio Pictures, Inc., and J. A. Guest, operating the Ritz Theater, Duncan, Oklahoma, relating to 54 features of the 1938-39 production. (The above instrument identified as Plaintiff's Exhibit No. 304 for identification.)

In response to paragraph 11 of the aforesaid subpoena duces tecum I produce an agreement dated December 8, 1939, between RKO Radio Pictures, Inc., and Mrs. Mary Hunt, operating the Rex Theater at Elk City, Oklahoma, relating to 56 pictures of the 1939-40 productions, first run. (The above instrument is identified as Plaintiff's Exhibit No. 305 for identification.)

In response to paragraph 12 of the subpoena duces tecum I produce agreement dated January 7, 1937, between RKO Radio Pictures, Inc., and John Gray operating the Rivoli Theater, Enid, Oklahoma, relating to specified 1934-35 and 1935-36 productions first or second run. (The above instrument is identified as Plaintiff's Exhibit No. 306 for identification.)

Nothing is produced in response to paragraph 13 of the subpoena duces tecum.

In response to 14 of the aforesaid subpoena duces tecum I produce license agreement between RKO Distributing Corporation and Pettit Theater Company operating the Pettit Theater at Hominy, Oklahoma, dated May 29, 1935, relating to 48 pictures for the '35-36 productions. (The above instrument identified as Plaintiff's Exhibit No. 307 for identification.)

I produce agreement dated April 17, 1936, between RKO Distributing Corporation and Pettit Theaters Company operating the Pettit Theaters, Hominy, Oklahoma, relating to 48 pictures of the 1936-37 productions. (The above instrument identified as Plaintiff's Exhibit No. 308 for identification.)

I produce license agreement dated January 8, 1937, between RKO Distributing Corporation and Pettit Theater Company relating to 48 features of the 1937-38 productions, first run. (The above instrument is identified as Plaintiff's Exhibit No. 309 for identification.)

I produce license agreement dated July 8, 1937, between Pettit Theater Company operating the Pettit Theater at Hominy, Oklahoma, relating to two Joe E. Brown produc-

tions, 1937-38 feature productions. (The above instrument identified as Plaintiff's Exhibit 310 for identification.)

I produce license agreement dated September 18, 1937, between Pettit Theater Company operating the Pettit Theater of Hominy, Oklahoma, and RKO Radio Pictures, Inc., relating to six George O'Brien action dramas for the 1937-38 feature productions. (The above instrument is identified as Plaintiff's Exhibit No. 311 for identification.)

1443 I produce license agreement dated March 8, 1938, between RKO Radio Pictures, Inc., and Pettit Theaters Co., operating the Pettit Theater, Hominy, Oklahoma, relating to six action features of the 1938-39 feature productions.

(The foregoing instrument marked by the reporter as Plaintiff's Exhibit 312 for identification.)

I produce license agreement dated March 8, 1938, between Pettit Theater Co., operating the Pettit Theater, Hominy, Oklahoma, and RKO Radio Pictures, Inc., relating to 48 features of the 1938-39 productions.

(The foregoing instrument marked by the reporter as Plaintiff's Exhibit No. 313 for identification.)

I produce license agreement dated January 18, 1939, between RKO Radio Pictures, Inc., and Pettit Theater Co. operating the Pettit Theater, Hominy, Oklahoma, relating to 55 pictures of the 1939-40 feature productions.

(The above instrument marked by the reporter as Plaintiff's Exhibit No. 314 for identification.)

Nothing is produced in response to paragraph 15 of the aforesaid subpoena, calling for contracts for the 1934-35 features at the Tech Theater at Lubbock, Texas.

In response to paragraph 16 of the aforesaid subpoena duces tecum, I produce agreement between RKO Radio Pictures, Inc., and Juanita B. Berry, operating the Oklahoma Theater at Norman, Oklahoma, relating to 54

1444 features of the 1938-39 season.

(The foregoing instrument marked by the reporter as Plaintiff's Exhibit No. 315 for identification.)

I produce license agreement dated September 20, 1939, between RKO Radio Pictures, Inc., and Juanita Berry, operating the Oklahoma Theater at Norman, Oklahoma, relating to 52 features of the 1939-40 productions, first run.

(The foregoing instrument was marked by the reporter as Plaintiff's Exhibit No. 316 for identification.)

I produce license agreement dated September 20, 1939, between RKO Radio Pictures, Inc., and Juanita B. Berry, operating the Oklahoma Theater at Norman, Oklahoma,

relating to 29 features of the 1939-40 productions, second run.

(The foregoing instrument marked by the reporter for identification as Plaintiff's Exhibit No. 317.)

Nothing is produced in response to paragraph 17 of the aforesaid subpoena, and counsel for the plaintiff has withdrawn that paragraph.

In response to paragraph 18 of the subpoena duces tecum, I produce license agreement dated September 11, 1934, between RKO Distributing Corporation and E. C. Trieb, operating the Capitan Theater, Roswell, New Mexico, relating to 50 features of the 1934-35 productions, first run.

1445 (The foregoing instrument was marked by the reporter as Plaintiff's Exhibit No. 318 for identification.)

I produce license agreement dated October 29, 1934, between RKO Distributing Corporation and E. C. Trieb, operating the Capitan Theater at Roswell, New Mexico, relating to 30 features of the 1933-34 productions, first run.

(The foregoing instrument was marked by the reporter as Plaintiff's Exhibit No. 319 for identification.)

In response to paragraph 19 of the subpoena duces tecum, I produce license agreement dated October 3, 1934, between RKO Distributing Corporation and R. H. Russ, operating the Camera Theater, Stillwater, Oklahoma, relating to 51 features, first run.

(The foregoing instrument was marked by the reporter as Plaintiff's Exhibit No. 320 for identification.)

1446 I produce license agreement dated October 3, 1934, between RKO Distributing Corporation and R. H. Russ operating the Camera Theater in Stillwater, Oklahoma, relating to 15 features for the '34-35 productions, second run. (The above instrument is identified as Plaintiff's Exhibit No. 321 for identification.)

In response to the subponea duces tecum served upon Paramount Film Distributing Corporation, returned May 21, 1945, paragraph 4 thereof, I produce license agreement dated May 31, 1934, between Paramount Pictures Distributing Corporation and Southwestern Theaters Corporation operating the Midwest Theater, Chickasha, Oklahoma, relating to 16 pictures of group S-5, 1933-34 productions, second run. (The above instrument is identified as Plaintiff's Exhibit No. 322 for identification.)

I produce license agreement dated May 31, 1934, between Paramount Pictures Distributing Company and Southwestern Theaters Corporation operating the Midwest Thea-

ter at Chickasha, Oklahoma, for pictures, third run; group S-5. (The above instrument is identified as Plaintiff's Exhibit No. 323 for identification.)

I produce license agreement dated May 31, 1934, between Paramount Distributing Company and Southwestern Theaters Corporation operating the Midwest Theater, Chickasha, Oklahoma, relating to two pictures, third run
1447 of group S-5.

(The above instrument is identified as Plaintiff's Exhibit No. 324 for identification.)

With regard to paragraph 5 it is our understanding that this is a duplication of a subpoena previously issued to which response has been made.

In response to paragraph 6 of the aforesaid subpoena, I produce license agreement dated October 9, 1933, between Paramount Pictures Distributing Corporation, Inc., and Funk & Nagle, relating to all group S-5.

(The above instrument is identified as Plaintiff's Exhibit No. 325 for identification.)

With regard to paragraph 7 of the subpoena, it is our understanding that this is a duplication of documents called for by a previous subpoena to which response has been made.

Nothing is produced in response to paragraph 8 of the subpoena.

Nothing is produced in response to paragraph 9 of the subpoena.

Nothing is produced in response to paragraph 10.

In response to paragraph 11 I produce license agreement dated August 1, 1936, between Paramount Pictures Distributing Company, Inc., and H. A. Letherman operating the Oklahoma Theater at Norman, Oklahoma, relat-
1448 ing to eight pictures, third run.

(The above instrument is identified as Plaintiff's Exhibit No. 326 for identification.)

I produce agreement dated July 11, 1935, between Paramount Pictures Distributing Company, Inc., and Mrs. Ray C. Berry, operating the Oklahoma Theater at Norman, Oklahoma, relating to three pictures of group S-5.

(The above instrument identified as Plaintiff's Exhibit No. 327 for identification.)

I produce license agreement dated June 20, 1935 between Paramount Pictures Distributing Company, Inc., and Mrs. Ray C. Berry, operating the Oklahoma Theater, Norman, Oklahoma, relating to one feature of the group S-5; repeat run.

(The above instrument is identified as Plaintiff's Exhibit No. 328 for identification.)

Nothing is produced in response to paragraph 12.

1449 In response to paragraph 13 of the aforesaid subpoena duces tecum, I produce license agreement dated February 7, 1935, between Paramount Pictures Distributing Company, Inc., and Roy McAmis, operating the Princess Theater, Sayre, Oklahoma, relating to all of the group S-7 feature productions (1935-1936), first run.

(The aforesaid instrument was marked by the reporter as Plaintiff's Exhibit No. 329 for identification.)

I produce agreement dated December 26, 1935, between Paramount Pictures Distributing Company, Inc., and Roy McAmis operating the Princess Theater, Sayre, Oklahoma, relating to all of the group S-7 pictures and marked "amendatory contract".

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 330 for identification.)

Nothing is produced in response to paragraph 14 of said subpoena duces tecum.

In response to paragraph 15 of the aforesaid subpoena duces tecum, I produce license agreement dated July 25, 1933, between Paramount Pictures Distributing Company, Inc., and R. H. Russ, operating the Camera Theater, Stillwater, Oklahoma, relating to one picture "The Marx Brothers Production".

It is believed that there was a season contract, but it has not been located.

1450 (The aforesaid instrument was marked by the reporter as Plaintiff's Exhibit No. 331 for identification.)

In response to a subpoena duces tecum served on Twentieth Century-Fox Film Corporation, and returnable May 21, 1945, paragraph four thereof, I produce license agreement dated February 26, 1935, between Fox Film Corporation and Max Burger, operating the Rita Theater, Enid, Oklahoma, for 20 features, of the K-2 (1934-1935) productions.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 332 for identification.)

Nothing is produced in response to paragraph five of the subpoena duces tecum. (Gallup.)

In response to paragraph six of the aforesaid subpoena duces tecum I produce license agreement dated August 4, 1933, between Fox Film Corporation and Roy McAmis operating the Princess Theater, Sayre, Oklahoma, relating to all of the K-1 (1933-1934) productions, first run.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 333 for identification.)

Nothing is produced in response to paragraph seven. (Shawnee.)

In response to a subpoena duces tecum served on Warner Brothers Pictures, Inc., returnable May 21, 1945, paragraph four thereof, I produce license agreement dated April 14, 1933, between Vitagraph Inc. and C. W.
1451 Guthrie, operating the Ritz Theater, Clinton, Oklahoma, for the picture "Gold Diggers of 1933", first run.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 334 for identification.)

I produce license agreement dated August 7, 1933, between Vitagraph Inc., and C. W. Guthrie, operating the Ritz Theater, Clinton, Oklahoma, for the picture "Gold Diggers of 1933", second run.

(Said instrument was marked by the reporter as Plaintiff's Exhibit No. 335 for identification.)

Nothing is produced in response to paragraph five of said subpoena duces tecum.

(Proceedings to be resumed Tuesday, May 22, 1945, at 10:00 o'clock a. m before the Court, pursuant to the recess heretofore noted herein.)

1452 PROCEEDINGS

May 22, 1945, 10:00 o'clock a. m.

J. D. GUEST, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your full name and address, please.
A. J. D. Guest, Duncan, Oklahoma.
Q. What is your occupation?
A. Theater owner.
Q. What theater?
A. The Ritz and Tower.
Q. Those are in Duncan?
A. In Duncan, that is right.
Q. How long have you been engaged in the theater business there?
A. Since October, 1930.
Q. You are associated in that business with your father?
A. That is right.
Q. What is his first name?
A. J. A. Guest.

Q. In October, 1930, you opened the Ritz Theater,
1453 was it?

A. That is right.

Q. What other theaters were there in Duncan at that time?

A. The Palace and Folly.

Q. And who operated them?

A. The Griffith Amusement Company.

Q. Did you remodel the Ritz later?

A. A short while after opening we did. That is, about two years later.

Q. Then as remodeled, how large a theater was it?

A. About 365 seats after it was remodeled.

Q. You say that was about 1932?

A. That is right, the latter part of '32.

Q. The other theaters there were still the Palace and the Folly?

A. The Palace and the Folly.

1454 Q. How large a town was Duncan then?

A. A population of between eight and nine thousand.

Q. During the '32-33 motion picture season what, if any, major film product did you have there at the Ritz?

Mr. Cochran. What season is that?

Mr. Wright. '32-33.

A. I had Paramount.

Q. Of what run?

A. First run.

Q. Any other?

A. No other first run, no.

Q. How about during the '33-34 season?

A. I used Paramount that year too.

Q. First run?

A. First run.

Q. Any second run?

A. And second run.

By the Court:

Q. That was in '31?

A. '32-33 and '33-34.

Mr. Wright. Last season I asked about was '33-34.

Q. I will show you this photostat of a contract here, that has been previously identified as P-41-A, and ask you if you recognize that as a copy of the first run contract you had with Paramount for the '33-34 season?

A. That's right.

1455 Mr. Wright. We will offer in evidence Plaintiff's Exhibit P-41-A for identification.

Mr. Cochran. It is understood, of course, that the other page of the standard contract will be considered a part of it?

Mr. WRIGHT. Yes.

Mr. COCHRAN. No objection.

The COURT. Has that heretofore been offered in evidence?

Mr. WRIGHT. Yes, your Honor, this is offered in evidence.

The COURT. Has it been heretofore offered.

Mr. WRIGHT. Oh, no, your Honor.

Mr. COCHRAN. Do you have the second run contract?

By Mr. WRIGHT:

Q. Mr. Guest, were you able to locate any of your contracts prior to 1940?

A. No, I wasn't.

1456 Q. You don't have any second run contract you had with Paramount. Is that right?

A. No, I don't have a copy of it.

Mr. WRIGHT. I don't think it was produced by Paramount.

Mr. COCHRAN. There was none for that year.

By Mr. WRIGHT:

Q. Do you recall at this time whether you had a season contract for the second run Paramount product that you played for the '33-34 season, or whether it was spot booked?

A. I don't recall at the time but I know I played some product, second run. I thought I had a contract.

Q. You don't know whether you had a regular contract or whether you just picked that up?

A. No, I am not positive I had a contract.

Q. Now, for the '34-35 season, what major film product did you have there at the Ritz?

A. I don't believe I had any '34-35; no major product.

Q. Did you have RKO?

A. I had RKO. I was thinking of the '35-36. It is possibly '34-35.

Q. You didn't have Paramount that year?

A. No, I didn't.

Q. And was the Paramount product offered to

1457 you for the '34-35 season, first or second run?

A. No, it wasn't.

Q. Did you try to get it?

A. I made an attempt to buy it. I asked for it.

Q. Where?

A. In the branch manager's office at Oklahoma City.

Q. Did he take any application from you?

A. No, he didn't submit a deal at all.

By the COURT:

Q. What other did you have in '34-35?

A. I had RKO in '34-35 and that is all, of first run product.

By Mr. COCHRAN:

Q. You are talking only of the so-called major distributors?

A. He asked me what other product I had except RKO.

The COURT. You had RKO. That is the first run, on a regular contract?

A. That is right.

Q. Did you have any other contract with the major distributors?

A. No.

1458 By Mr. WRIGHT:

Q. I will show you this contract that has previously been marked as Plaintiff's Exhibit No. 203 for identification and ask you if you recognize that as a copy of the '34-35 contract with RKO?

A. That's right.

Mr. WRIGHT. We will offer Plaintiff's Exhibit No. 203 in evidence.

Mr. COCHRAN. No objection.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. Now, then, did you also play some RKO second run of that season?

A. Yes, sir, I did.

Q. Do you know whether you had a season's contract for that, or whether you spot booked that?

A. No, that was spot booked.

Q. Were you offered the RKO product on first or second run for the 1935-36 season?

A. No, I wasn't.

Q. What did you do to try and make a deal for that season?

A. Well, when I found out I couldn't buy it first run, I asked for second run deal on it, and I couldn't get that.

Q. Did they take an application from you on either run?

A. They wouldn't take an application at all.

Q. What, if any, major product did you have there at the Ritz for the '35-36 season?

1459 A. I had Universal.

Q. Anything else?

A. Not first run, no.

Q. I will show you this photostat of a contract that has been previously marked as U–16 for identification and ask

you if you recognize that as the first run deal you had with Universal for the '35–36 season?

A. That's right.

Q. I will show you this Plaintiff's Exhibit U–15 for identification, and ask you if you recognize that as a contract you made with Universal for some second run pictures at the same time?

A. That's right.

Mr. WRIGHT. We will offer in evidence Plaintiff's Exhibits U–15 and U–16.

Mr. COCHRAN. No objection.

The COURT. They will be admitted.

Q. Then, were you offered a first or second run contract with Universal for the '36–37 season?

A. No, I wasn't.

Q. Did you try to negotiate for that product?

A. Yes, sir.

Q. With whom?

A. With the branch manager.

Q. At Oklahoma City?

A. That's right.

1460 Q. And were you able to negotiate one?

A. No.

Q. Then in the '36–37 season, did you have any regular deal for major film product?

A. No, I didn't.

Q. Not on any run?

A. Not on any run.

Q. And was the same true for the '37–38 season?

A. That's right.

Q. And during the '38–39 season, do you remember what product you had then?

A. No major product, I am sure of that.

Q. Did you have RKO?

A. '37–39?

Q. '38–39?

A. I don't think so.

By the COURT:

Q. You had no major product in either?

A. I don't think I had any that year.

By Mr. WRIGHT:

Q. I will show you this contract that has been previously marked as Plaintiff's Exhibit No. 304 for identification, and ask you if you recognize that as a first run deal you had with RKO that season?

A. That's right.

The COURT. That is '38-39?

Mr. WRIGHT. '38-39, yes, your Honor. We will
1461 offer in evidence Plaintiff's Exhibit No. 304.

The COURT. What is the number of that?

Mr. WRIGHT. 304.

Mr. COCHRAN. No objection.

The COURT. It will be admitted.

By Mr. WRIGHT:

Q. Other than that RKO, did you have any major product for the Ritz for the '38-39 season?

A. No, I didn't.

Mr. COCHRAN. You are asking him any product, or a season's contract?

By Mr. WRIGHT:

Q. That is, on a season's deal?

A. No.

Q. Now, during the period '33-34 through '38-39, the only theaters in the town were your Ritz and Griffith's Palace and Folly?

A. That's right.

Q. Can you tell us what the policy of the Palace and Folly was during that period with reference to the kind of programs they played?

A. They both operated on a first run policy.

Q. Major product?

A. Major product.

Q. Did they play any second runs?

A. Not as a policy. They might have played a few pictures.

1462 Q. Occasional pictures?

A. Occasional pictures.

Q. But no regular second runs at either house?

A. That's right.

Q. During that same person did you make any efforts to get second run major pictures for your Ritz Theater?

A. Yes, I did.

Q. From what companies?

A. Well, I tried from practically all the major companies, except United Artists.

Q. Those would be what; can you name them?

A. It would be Paramount, Warner, Metro, Fox and RKO.

Q. Any others?

A. No, I don't believe so.

Q. Now, I believe you say you did get some second runs of Paramount repeating after your own, when you had it first run, is that right?

A. Yes, sir.

Mr. COCHRAN. We object to that as repetition. His statement was that he spot booked some second run.

The COURT. He has already answered the question.

By Mr. WRIGHT:

Q. And the same was true with reference to RKO?

A. That's right.

Q. As I understand it, you were not able to make
1463 any contracts for second run with any of those companies you mentioned other than the pictures that you played second run after your own first run, is that right?

Mr. COCHRAN. Objection, as leading, and repetition.

The COURT. Overruled. You may answer.

A. That is right.

By Mr. WRIGHT:

Q. Now, in attempting to license those second runs, just what did you do, as nearly as you recall?

A. Well, I went to the exchange and talked to the exchange manager about buying second run, and I never was able to even get them to submit a deal.

Q. They never took an application for it?

A. No, that's right.

Q. Were you able to negotiate at all with reference to any terms?

A. No, I never did.

Q. Then in later seasons, did you finally get second run on major product?

A. '41, I did.

Q. In '41?

A. That's right.

Q. That was the first year in which you were able to get second run of the major product that Griffith played first run?

A. In April '41, was the first time.

1464 Q. What companies did you get them?

A. Warner Brothers, Metro-Goldwyn-Mayer, and Paramount.

Mr. COCHRAN. What was that answer, Warner and who?

A. And Metro.

By the COURT:

Q. That was what year?

A. 1941.

Q. 1941-42 or '40-41?
A. '40-41.
Mr. COCHRAN. He said April 1941.

By Mr. WRIGHT:

Q. Those were the '40-41 season's pictures?
A. Yes, sir.
Q. And the companies you named were what, Warner, Metro and what?
A. And Paramount.
Q. And Paramount?
A. Yes.
Q. Do you know about how large Duncan was then?
A. Oh, it was slightly over 9,000.
Mr. WRIGHT. You may cross-examine.

Cross-examination by Mr. COCHRAN:

Q. You opened your theater in Duncan at a time when Griffith Amusement Company was already operating two theaters, is that right?
1465 A. That's right.
Q. You knew at that time that it was their policy to operate both of those theaters on a first run basis, did you?
A. That's right.
Q. And you opened your theater on a policy of first run, did you not?
A. I wouldn't say that. I opened my theater on a policy of whatever I could get. I wanted to open it on a second run.
Q. At that time, in 1930, the season of 1930-31, which was the first season you commenced to operate, you knew the Griffith Amusement Company were using Paramount pictures, first run, in their theaters, did you not?
A. That's right.
Q. They were operating the Palace as their first run house, were they not?
A. That's right.
Q. I mean as their A house?
A. As their A house.
Q. Their A, first run house, and the Folly as their B house; that is, where they played the pictures that were not as outstanding pictures as those which were played in the Palace, is that correct?

A. I believe that's right.

1466 Q. Did you say at that time you knew they were playing Paramount?

A. Yes, I said that.

Q. And the same is true for the '31–32 season, is that right?

A. Yes, I believe it was.

Q. Then, in the seasons 1932–33 and 1933–34, you were able to license Paramount pictures first run, were you not?

A. That's right.

Q. Don't you know that they did not and would not license you a regular contract on second run pictures at that time, even though you had their first run contract?

A. No, I don't know that to be a fact.

Q. Well, they didn't do it, did they?

A. I used a lot of Paramount.

Q. I didn't ask you that; I asked you if you made a contract with them for their pictures, or if the ones you played were merely an occasional spot booking?

A. No, I played more than occasional pictures spot booked.

Q. They were all spot booked that you played, weren't they, second run?

A. If I didn't have a contract, they were.

Q. Do you have your contracts?

A. No, sir.

1467 Q. Do you have anything from which you can tell whether you had a contract?

A. Yes, sir, my booking record of what I played.

Q. Do you have anything on your paper to show?

A. No.

Q. You do have a memoranda there, do you?

A. That's right, but I don't have anything to show that.

Q. You don't have a memoranda showing whether you had a Paramount contract, second run?

A. No, sir.

Q. Now, in the season 1930–31, you knew that Griffith was playing the RKO pictures, first run, did you not?

A. Yes, I think he was.

Q. And also in the 1931–32 season?

A. No, I don't believe that is right. On the first question you asked me——

Q. (Interrupting.) I beg pardon.

A. I don't think that is right. You asked me on '30–31 if Griffith was playing.

Q. '30–31?

A. I believe I played the pictures in '30–31.

1468 Q. Did you have any contract with RKO for the '30–31 pictures?

A. I don't have a copy of it, but I used the product, I think I did have at the time.

Q. Will you say definitely you did have the contract with RKO for '30–31?

A. No, I will not say definitely I did. I say definitely I used the product.

Q. You used some product?

A. I used substantially all of it.

Q. Do you have any playing record to show?

A. I do.

Q. Where is it?

A. It is here.

Q. Let's have it.

A. Mr. Wright has it there.

Q. The record you have there is merely a tabulation, isn't it?

A. That's right.

Q. That isn't your original record, is it?

A. The original booking record, no.

Q. Where is your original booking record?

A. It is in Duncan.

Q. When was this record prepared?

1469 A. I beg pardon?

Q. When was the record prepared, which you have in your hand?

A. Oh, this month.

Q. This month?

A. Yes, sir.

Q. By whom?

A. By my office.

Q. From what?

A. From the actual booking records.

Q. But you didn't bring your booking records with you?

A. No, sir, I didn't.

Q. Did some stenographer prepare this?

A. That's right.

Q. This doesn't purport to show anything for the '30–31 season, does it?

A. I thought it went back that far. No, this begins in '34, that's right.

Q. Then you have no record—what record do you have from which you are saying that you played a majority of the RKO product in '30–31 season, or substantially all of it; what record do you have with you?

A. Well, I just recall the product that I played. I know that I did.

1470 Q. In the memoranda which you have in your hand, do you have any reference to the '30–31 product?

A. Except the fact that we used that product then.

Q. When did you prepare that?

A. Before I came up here.

Q. Where?

A. When?

Q. Where?

A. Yesterday at Duncan.

Q. From what did you prepare that?

A. From what records we had of what we played, from the date books.

Q. But you didn't bring the records with you?

A. I didn't bring my date books, no.

Q. In the '32–33 season, you knew that Griffith was playing RKO product, did you?

A. Yes, sir.

Q. And the same is true in '33–34 season?

A. That's right.

Q. I believe you didn't answer me about the '31–32. You knew Griffith was playing it in '31–32, did you?

A. Yes.

Q. In '34–35, you did make a first run contract for some RKO pictures, which has been offered in evidence?

A. That's right.

1471 Q. That's right, is it?

A. That's right.

Q. Now, isn't it a fact that on the same date that you licensed those pictures first run from RKO, to wit: on October 8, 1934, you licensed 16 pictures second run from RKO?

A. I don't recall that.

Q. And isn't it a fact that you didn't play a single one of those pictures?

A. I don't recall that incident at all.

Q. Don't you know that you refused to play each and every picture that you had licensed second run with RKO for that year, and they were canceled?

A. No, the answer is the same, I don't recall that deal at all.

Q. You don't recall that?

A. No, I sure don't.

Q. If you didn't play those pictures—you stated you licensed some RKO pictures first run for that season, didn't you?

A. I said I played some.

Q. If you licensed 16 pictures under a contract the same date as your first run contract, and played none of
1472 them, can you tell us why you didn't play them?

A. No, I can't tell you why. Probably——

Q. (Interrupting.) And isn't it a fact that you preferred to play independent product which you were able to license first run, your choice of the independent product, the so-called independent product, that you preferred to play that rather than to play that second run product in your theater, and for that reason you cancelled those second run pictures?

A. No, I don't think that is a fact.

Q. You were playing product other than these major—so-called major distributors that you have mentioned, were you not?

A. That's right.

Q. Can you tell us what pictures, whose pictures you were playing at that time?

A. Well, I played some Republic.

Q. All right.

A. And Allied.

Q. All right.

A. And back early, along in '30, was Tiffany.

Q. We are talking now about the year 1934–35. Don't you have in your hands there a record of that?

A. No. I can recall from memory what I played, though.

1473 Q. All right, Republic and Allied, and you played some Grand National, didn't you?

A. That's right.

Q. And you played some Monogram, didn't you?

A. Yes.

Q. And you played some Art Cinema?

A. That was Square Deal.

Q. All right, Square Deal, you played some of those?

A. Yes, sir.

Q. Was there any PRC at that time?

A. I don't believe so; I don't recall it.

Q. You played some Victory, didn't you?

A. I possibly did. I don't know who released them.

Q. And you selected the best of the product from those companies, didn't you?

A. No, I believe I just played about everything they had, because I didn't select.

Q. Isn't it a fact that those companies were releasing, for instance, at that time wasn't Republic releasing about 75 pictures a year?

A. I don't recall the number.

Q. Does that sound about right?

A. That sounds a little high. With westerns and all, it sounds about right.

1474 Q. Including westerns?

A. Yes, sir.

Q. In your town, westerns were just about as valuable as anything else for you on Saturday or for week end play, were they not?

A. Yes, sir.

Q. In fact, with the choice of the product, you preferred to play on your week ends, a good western picture?

A. On Saturday, yes.

Q. That would be your week end change?

A. Yes, sir.

Q. Allied at that time was releasing something near 100 pictures, were they not?

A. Well, they probably had that many pictures. I don't believe they were releasing that many pictures, but they probably had that many there from past seasons.

Q. Available for your licensing?

A. That's right.

Q. Then National was also offering something like the same number, was it not?

A. Well, possibly so.

Q. And Monogram was offering something like the same number, is that right?

A. I believe so.

Q. How about Square Deal, do you know how many?

1475 A. I wouldn't know how many new pictures a year they had.

Mr. WRIGHT. Your Honor please, I just want to point out that none of this is within the scope of the issues of the complaint or the direct examination of the witness. We haven't asked anything with respect to this independent product at all.

The COURT. Overruled. I think it is proper cross examination. You have opened up the question as to what he used.

By Mr. COCHRAN:

Q. You had ample product from these various distributors to operate your theater on a change of three or four, or a program of three or four changes a week, did you not?

A. I never made as many as four. I usually made three.

Q. Didn't you make three, and an additional western on Saturday?

A. If I did, it was for a very short time, because the majority of the time I always operated on three changes a week.

Q. That was your normal policy, three changes a week?

A. Yes, sir.

Q. And you had ample product to make those changes?

A. I had enough pictures of that kind, yes.

Q. Now, in 1935–36, you didn't license RKO first run?

1476 A. No.

Q. Is that right?

A. That's right.

Q. Did you attempt to spot book any of the second run pictures?

A. I attempted to buy them.

Q. I didn't ask you that; I asked you if you attempted to spot book any, not as a season's deal for second run, but to buy those pictures, some of those pictures, on a spot booking basis?

A. I attempted to play them under any arrangement, spot booking or anything else.

Q. Will you say you didn't play any RKO pictures?

A. No, I won't say.

Q. For that season?

A. I won't say I didn't play any. I am sure I didn't have anything like the season's product.

1477 Q. But you did spot book RKO pictures during that season?

A. I am not sure that I didn't, no.

Q. Do you recall on October 22, 1936, receiving a letter from Keaton, Wells & Johnston in regard to a claim for an unpaid amount of $140 for delinquent product?

A. With RKO you mean?

Q. Yes.

A. Yes, I believe I do.

Q. Do you know what season's product that was that was unplayed at that time and unpaid for?

A. No, I don't recall.

Q. Will you say that wasn't product of the 1935–36 season?

A. I couldn't say because I said I didn't recall what it was. I wouldn't say.

Q. Now, you didn't state in regard to United Artists, except you mentioned the fact in one of those years it was one of the companies that you didn't attempt to obtain. Isn't it a fact that you didn't license or attempt to license the United Artists product in any of the years 1933–34, 1934–35, or 1935–36?

A. During that period I possibly did attempt to once or twice. I imagine I did.

Q. Will you say you attempted to license them?

1478 A. I imagine I did, yes.

Q. That product wasn't being played in the Griffith theaters, was it?

A. No, there was a period through there that it was not; I don't recall just what years.

Q. Don't you know that you didn't make any attempt to license that product during that period?

A. No, I have talked to them about the product.

Q. Don't you know that during those years I have mentioned United Artists tried to sell you their product and you wouldn't buy it?

A. Yes, I have had United Artists offered to me on terms that I couldn't pay.

Q. In other words, you would not meet the terms they asked you to pay?

A. That's right.

Q. Now, there was produced here a contract for the '38–39 season with RKO which you signed. Did you play out that contract?

A. Yes, I am sure we did.

Q. Well, do you know?

A. I am sure that we did.

Q. You don't have that on your memoranda, do you?

A. No, I don't.

Q. Do you know why you didn't have it on your memoranda?

1479 A. No, I don't know.

Q. You evidently didn't play it or you would have had it on your memoranda, wouldn't you?

A. No, it is possible that I wouldn't.

Q. Do you now have any recollection as to what performance, if any, there was under this contract with RKO for the 1938–39 season?

A. No; we had a contract; I imagine it was played.

Q. I am asking you if you know?

A. No, I don't.

Q. Beg pardon.

A. I don't know positively.

Q. You don't know?

A. No.

Q. Isn't it a fact that for the '39–40 season that RKO attempted to license you your product and you were not able to agree on terms?

A. No, I don't think so.

Q. Will you say that it not a fact?

A. For the '39-40?

Q. '39-40?

A. No, I don't recall that.

Q. Well, will you say that it isn't a fact that you were offered the '39-40 RKO pictures, first run, and that you negotiated and couldn't make a deal, and didn't make
1480 a deal?

A. I don't recall that at all.

Q. How about the 1940-41 season, were you offered RKO Pictures for that season?

A. No, I don't think so.

Q. If it is a fact that those pictures were offered to you in the season 1939-40 and '40-41, by RKO, and you didn't license them, it was because you felt that the prices they attempted to exact from you, that it would be more profitable for you to use the independent product at the prices you could license them at than to use the RKO pictures at the prices they wanted you to pay, is that true?

A. I don't know whether it was or not, because I don't recall what the prices were, or if they were even offering it or not?

Q. So you just don't remember your negotiations with RKO for the '38-39, '39-40 or '40-41 seasons, do you?

A. Yes, I think I do. I don't think that the pictures were offered to me there, I really don't.

Q. You continued to say you think.

A. Well, I can't be positive.

Q. What do you recall in regard to your negotiations in regard to those seasons?

A. I don't recall any specific thing.

1481 Q. All right. Now, in the season '34, 1933-34 and 1934-35, you know that Griffith theaters were using Universal product, didn't you?

A. I believe that's right.

Q. In the 1935-36 season, you licensed some Universal pictures, first run, is that correct?

A. That's right.

Q. Do you remember how many of those pictures you played?

A. I imagine we played them all.

Q. I am not asking you that, I want to know if you know?

A. No, I don't know how many I played. I would think we played them all.

Q. Did you say you also licensed the Universal pictures second run for that season?

A. I bought some pictures, second run, for that season, during that season.

Q. I notice in the exhibit marked U-15, that there are only ten pictures licensed second run, is that correct?

A. Yes.

Q. Your first run contract covers all of their pictures for that season, does it not?

A. That's right.

Q. Do you remember how many they released that season?

1482 A. No, I don't.

Q. This contract says that there were, that you licensed four pictures in the A group, fourteen in the B group, and twenty in the C group.

A. That's right, 38.

Q. Then it says, "D pictures, the remaining photoplays are licensed under the D group"?

A. That's right.

Q. So you do have listed there 38 pictures in the A, B, and C groups?

A. Yes, sir.

Q. Then there were some, in addition to that, in the D group?

A. Yes, sir.

Q. Can you tell us why it was that you only licensed ten of those Universal pictures that season, second run?

A. Yes, that's all I thought I would make any money on off of the contract.

Q. That was all that you wanted to license of those offered?

A. That's right, that I would use myself, first run.

Q. In other words, you selected those which you considered you could well with and rejected the rest of them?

A. That's right.

Q. Do you know how many of those pictures you played?

1483 A. I believe them all, I am sure.

Q. Well, now, again, I asked you if you know, and you have answered you believe them all, you were sure. I asked you if you know.

A. No, I don't know how many I played, no, I don't know exactly how many was released, under the contract; how would I know?

By the Court:

Q. Did you play all that were released?

A. Yes, sir.

By Mr. Cochran:

Q. You are testifying to that from memory, are you?

A. To the best of my opinion, I played all that were released, I am sure of that.

Q. Don't you know that on those second run pictures that you played only two?

A. I don't recall that I did; no, I don't remember that; I figure I played them all.

Q. You don't recall either way?

A. No.

Q. The answer is no?

A. No.

Q. During each one of the seasons that you were engaged in the picture business there in Duncan, you were able to license pictures from each of the major distributors on spot booking pictures which were not used by Grif-
1484 fith, were you not?

A. That would be first run not used, in other words, rejected pictures, is that the question?

Q. Pictures which were not used.

A. I have played a few like that, I don't recall how many.

Q. You were not refused any of those pictures which you attempted to license from any distributor, were you?

A. I didn't understand the question.

Mr. COCHRAN. Read the question.

(Question was read by the reporter.)

A. Yes, I was.

By Mr. COCHRAN:

Q. Who refused to license you any so-called outback pictures?

A. That wasn't the question. You said I wasn't refused any that I attempted to license.

Q. I said pictures which were not used by Griffith which you attempted to license.

A. No, I wasn't refused any of those pictures that were offered me.

Q. All right. So far as the independent product was concerned, you continued to have the product from the same independent distributors available through and including the season 1938-39, didn't you?

A. Just about, yes, sir.

Q. And there was some additional independent
1485 distributors during that season, were there not, or producers?

A. I don't recall any that we haven't already mentioned.

Q. PRC came along there, didn't it?

A. Yes, sir.

Q. Do you remember when they first came along?

A. No, I don't remember what year exactly.

Q. They were releasing and selling pictures in that area, Pathe productions, during the season 1937-38 and '38-39, were they not?

A. That is possibly right.

Q. And continue to do so today?
A. Yes, sir.
Q. You are playing those pictures today, aren't you?
A. I have played a few, yes.
Q. They are available for you?
A. Yes, sir.
Q. Now, Pathe is one of the old producers of pictures, isn't it?
A. I think so, yes.
Q. Beg pardon?
A. Yes, that's right.
Q. Along in 1939, you commenced to run double features in the Ritz, did you not?
A. I believe that's about the year, yes, sir.
Q. On how many days did you run double bill?
1486 A. Two.
Q. How?
A. Two days.
Q. So that you required, instead of three pictures a week, you then required five pictures a week, is that right?
A. Four pictures.
Q. Well, you required one picture on your single bill?
A. I didn't have a single bill when I started running double. When I started running double bills. I made two changes a week.
Q. When you started running double bills, you changed from three to two changes, and used four instead of three?
A. Yes, sir.
Q. Does that policy continue down to the present time?
A. That's right.
Q. In 1939-40, you were using RKO, Monogram, Universal, and Victory, Grand National, Republic, Art Cinema, Paramount, and United Artists' pictures, were you not?
A. I don't recall whether I used all of those or not. I wouldn't know.
Q. Each of those companies were licensing you pictures during that season, were they not?
A. I couldn't answer that definitely, without checking.
Q. In the season 1940-41, weren't you using Columbia, Monogram, PRC, Universal, United Artists, Repub-
1487 lic, RKO, Warner, Fox, First National, Lone Star and Victory pictures?
A. You mentioned Warner. If that is after I bought Warner second run, I did, that's about right.
Q. I am asking you, didn't you use some Columbia pictures that year?
A. In 1941?
Q. '40-41?

A. Yes, I did.
Q. Monogram?
A. Yes.
Q. PRC?
A. Yes.
Q. Universal?
A. I don't recall on Universal.
Q. Don't you remember playing, on December 14, 1939, the picture "Risky Business" a Universal release?
A. No, I don't remember it. I possibly did.
Q. In the season 1941-42, you played Universal, Republic and Warner, didn't you?
A. Yes.
Q. Also Paramount, Metro, and Columbia?
A. That's right.
Q. And Monogram, RKO and Fox?
A. I am not sure about Fox, no.
Q. And PRC?
1488 A. Yes, we played some PRC.
Q. Do you remember playing in the '40-41 season the Universal pictures "Sandy Is a Lady", and also, "Ski Patrol" and "Slander House", and "Dunn Code"?
A. Yes, I believe I recall playing those.
Q. And also about the same time the picture "Enemy Agent" and "I Can't Give You Anything But Love, Baby", do you remember those pictures?
A. Not specifically, no, sir.
Q. You said you didn't remember Fox in the '41-42 season. Do you remember playing a picture, "Four Sons"?
A. No, I don't.
Q. On May 11, 1941?
A. I don't recall playing it.
Q. "Young as You Feel".
A. I don't recall the picture. I don't say I didn't play it.
Q. Do you remember the picture "Sante Fe Stampede"?
A. Yes, I remember the picture.
Q. Do you remember playing it?
A. No, I don't remember playing it.
Q. In 1943, you filed a complaint with the arbitration board, didn't you?
A. That's right.
Q. In that you were complaining against Paramount——
1489 Mr. WRIGHT. If the Court please, I don't see what possible relevance this complaint that was filed under the arbitration board could have to this suit. It certainly is nothing that was covered on direct examination.

The COURT. Of course, under the consent decree, he would have the right, after November 1920.

Mr. COCHRAN. I want to show by this witness that he filed a complaint against Paramount, which was heard by the arbitration board, and his claim was denied, and he appealed it, and the denial by the arbitration board was sustained.

Mr. WRIGHT. Assuming it was, what possible relevance has that got to do with the issues.

The COURT. Well, it might be competent as to whether or not his claim against Paramount in prior years was good.

Mr. WRIGHT. How, if the Court please, could what happened to his complaint in '43 possibly throw any light at all on the validity of his complaint from '34 through '39, which is the period covered here?

The COURT. That is the point; I don't know whether it does or not.

Mr. WRIGHT. Counsel has not offered to show how it does. All he says he is offering to show is that he filed a complaint and lost it. If we get into a collateral
1490 issue of that kind, is your Honor going to undertake to review the decision of the arbitration board there?

The COURT. Not at all, but assuming he is contending that he was entitled to certain productions in '43 or '44, or '37 or '38, if the same conditions prevailed in prior years that prevailed at the time that this complaint was heard it might throw some light on it.

Mr. WRIGHT. Counsel has not offered to make any such showing, and I don't think he possibly could.

The COURT. I think we are covering just a little too much territory all along on these matters.

Mr. COCHRAN. The purpose of this is that he is attempting to show along and leave the impression, or attempt to have the Court draw an inference, that there was something wrong about Paramount planning to sell him second run pictures during a certain period, and our position is that that was a matter for Paramount to determine, and we had nothing to do with it.

The COURT. I don't think there is any evidence——

Mr. COCHRAN. That's right.

The COURT. So far in this particular case to connect your client with it in any way.

Mr. COCHRAN. That's right, but this goes to show that after the consent decree that he did elect to proceed against Paramount in an attempt to obtain second
1491 run, and that the matter was thrashed out and he was still denied his second run. We will withdraw the question.

Q. Now, at the time you opened the Ritz Theater, it had 220 seats, did it not?

A. 192.

Q. 192?

A. That's right.

By the COURT:

Q. You opened the Ritz in 1930?

A. October 1930.

Q. And you have stated that you also operated the Tower?

A. Yes, sir.

Q. When did you begin operating the Tower?

A. In 1942, the latter part of '42.

The COURT. At this time, gentlemen, we will take a short recess.

Mr. COCHRAN. Just a minute, your Honor please; I want to get that answer straight before we take the recess.

Q. You say the Tower was in 1942 or '32?

The COURT. '42.

The WITNESS. '42.

Mr. COCHRAN. All right.

(At the conclusion of the recess, the proceedings herein were resumed as follows.)

1492 Re-direct examination by Mr. WRIGHT:

Q. Mr. Guest, reference was made here to the double features in your theater. Did the Griffith houses ever use the double features or other policies designed to attract people to the theater there?

A. They never used double features as a policy. However, they have had "two for one" admissions and "give-aways."

Q. With reference to these pictures you say Griffith rejected that were offered to you, those were the first run pictures?

A. Yes, they would always be first run.

Q. The major pictures they didn't use second run were not offered to you. Is that right?

A. That is right.

Q. Now, with reference to the general quality of United Artists and Universal and Columbia features which were released during the period from 1934-35 through '38-39, how did those compare as box office attractions with the five companies that you designated as majors?

A. They were not as good.

Q. And what was the general quality of these independent companies that were referred to as compared with Uni-

versal, Columbia and United Artists during the same period?

A. They were not as good. United Artists were
1493 better. Universal would be better.

Q. As I understood your testimony on direct examination, you did get Paramount, second run, in '41, as well as Fox and Warner, is that right?

A. As well as Metro and Warner.

Q. Or Metro and Warner?

A. That is right.

Q. And this arbitration proceeding that counsel referred to was one which involved a subsequent loss on that second run you got in '41. Isn't that right?

A. That is right.

Mr. WRIGHT. If the Court pleases, I might say in that connection I don't have any objection to your Honor taking judicial notice of this appeal board's decision that involved any of the people in this case or any other case for that matter, and if counsel wishes to submit——

The COURT. He has withdrawn it.

Mr. WRIGHT. There is no reason why your Honor should not examine that. All we object to is simply examining it on the same facts involved in this case. That is all.

Re-cross-examination by Mr. COCHRAN:

Q. How many pictures did you license, second run, from Paramount in '41?

A. I don't remember the exact number.

1494 Q. At that time they were licensing their pictures in groups of five, weren't they?

A. That is right.

Q. How many groups did you license?

A. I don't remember that.

Q. Will you say you licensed any of their groups for the '41 season, second run?

Mr. WRIGHT. What season are you talking about?

Mr. COCHRAN. '41.

Mr. WRIGHT. You are asking him—you should ask him first if he knows of such a thing as a '41 season.

By Mr. COCHRAN:

Q. My question was whether you licensed any in '41, the calendar year, '41?

A. That is when my deal was made with them, yes, in '41.

Q. How did you license?

A. I don't recall that number.

Q. Do you have your contract?

A. I believe I do on that, yes.

Q. With you?
A. Yes, I have the contract on that.
Q. Let's see it.
(Witness examines paper.)
A. My contract on that is with the Arbitration Board and they still have it. It has never been returned.
1495 Q. Then you do not have the contract here?
A. I do not have it, that is right.
Q. When did you say that Griffith had a policy of two for one admissions at Duncan?
A. I don't recall the exact year. However, I know they did have. I imagine the period between '33 and '35; somewhere along there.
Q. For what period of time did that continue?
A. I don't recall just how long.
Q. Was that a regular policy?
A. I believe it was a regular policy in the A houses; week ends.
Q. You don't know how long that continued?
A. No, I don't.
Q. During that time did you have a policy of some kind of "give-aways" also?
A. Oh, yes.
Q. "Country store" and so forth?
A. Yes, I have used them.
(Witness excused.)

1496 JAMES G. BENNETT, was thereupon called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

Direct examination by Mr. KIMB:

Q. State your name.
A. James G. Bennett.
Q. Where do you live?
A. Drumright.
Q. Were you formerly in the theater business in Drumright?
A. Yes, sir.
Q. When did you first go into that business in that community?
A. January 1, 1926.
Q. What theaters?
A. I had the Strand Theater and the Midwest Theater.
Q. Were those the only theaters then operating in Drumright?
A. Yes, sir.
Q. Did another one come in later or another theater open?

A. Yes, sir, in 1934 another theater opened.
Q. How long was that in operation?
A. Oh, four or five months.
Q. What happened to it?
1497 A. I bought it. This fellow that had it sold it to me.
Q. Then did you run the three?
A. No. I closed the third house.
Q. In 1936 did anything happen to the Strand?
A. The Strand burned June 4, 1936.
Q. You had a lease on it at that time?
A. Yes, I had a lease for four years to run.

By the Court:

Q. What year did it burn?
A. 1936.

By Mr. Kime:

Q. Who owned that building?
A. It belonged to an incompetent Indian named Wilson Clinton.
Q. Who was the guardian of this incompetent Indian?
A. A fellow named Williams of Bristow.
1498 Q. His lawyer was whom?
A. I didn't know his lawyer. I dealt with him though.
Q. Mr. Williams?
A. Williams, yes.
Q. Direct. Shortly after the theater burned, were you approached by any representatives of any of the Griffith corporations?
A. Yes, I was.
Q. When?
A. About six weeks after the theater burned.
Q. Who approached you?
A. Well, a fellow named Slocum, as I recall.
Q. Commonly known as "Red"?
A. Yes.
Q. Who was he?
A. He worked for Griffiths I don't know who he was or what he did.
Q. Who was with him, if anyone?
A. There was a fellow named Claude Motley with him.
Q. Who was Claude Motley?
A. He was the Griffith manager in Cushing.
Q. Where is Cushing in relation to Drumright?
A. Ten miles west.
Q. Had you known him for some time?

A. Yes, I had known him for several years.

1499 Q. Had you known Slocum for some time?

A. Slocum used to be a film salesman. I had met him in that way.

Q. What was the date of their visit to you?

A Well, they said they wanted to buy the theaters.

Q. Is that all they said?

A. Well, they asked me if I wanted to sell the theaters.

Q. What did you tell them?

A. I told them "no".

Q. Did they say anything further?

A Well, they wanted to know why I wouldn't sell. I told them we were going along all right and making a little money and satisfied with things as they were, and didn't want to sell.

Q. Did they offer any comment to that?

A. Yes. Slocum said, "You might be making a little money today and getting along all right, but you won't be six months from now if we come in here".

Q. Did he say whether they would come in or not?

A. He said, yes, they were coming in; they were going to build a de luxe theater in the town; that the town warranted a de luxe house, he said.

Q. How large was that town then?

A. About 4500 people.

Q. That was in 1936?

1500 A. Yes. sir.

Q. Was there anything else of any importance in that conversation on that occasion?

A. No. As I recall, he went away then. I don't believe we had much more to say.

Q. Did he return shortly?

A. Yes, he came back a day or two later.

Q. Who was with him on that, if anyone?

A. Oh, I don't remember who was with him on that trip but he came back and made his proposition to buy again.

Q. Did he make a visit to you in company with C. B. Aker, commonly known as "Brownie"?

A. Well, I believe that was later.

Q. That was later?

A. Yes.

Q. Did Slocum come back alone on one occasion?

A. I believe he came back alone.

Q. About when was that?

A. It seems to me there were always three or four fellows with him but they usually hung around outside.

Q. What do you mean by "outside"?

A. Outside of the theater.

Q. Not where they could hear the conversation?

A. No, and this second time when he came I gave him a thirty day option on the theater.

1501 Q. And who was with you in this theater business?

A. Well, I was merely managing theaters for my sister-in-law. I didn't own them.

Q. What is your sister-in-law's name?

A. Mrs. Tessin.

Q. She owned the theaters and you managed them for her?

A. That is right. I ran the theaters for her.

Q. Do you have a copy of this option?

A. No, sir, I have no copy.

Q. What did Mrs. Tessin say when you told her you had given this option?

Mr. Cochran: We object to that as hearsay and incompetent.

The Court. Sustained.

By Mr. Kime:

Q. Shortly after the option was given were you approached by any other representatives of the Griffith defendant corporation?

A. This option was a thirty day option, and as I recall, I didn't have any further contact with them for a couple of weeks. However, I got a letter from them in which they said they intended to take up the option.

Q. When was that?

A. That was probably about the 15th of August, I suppose.

By the Court:

Q. What year?

1502 A. 1936.

By Mr. Kime:

Q. Did Slocum come back in company with any other representative immediately prior to the time you received the registered letter?

A. About the same time he came back and he had Mr. Griffing with him.

Q. Henry Griffing sitting here?

A. Yes, sir.

Q. What happened at that time? What was the object of their visit?

A. Well, the object was to see if we were going through with this option. That is what they wanted to know.

Q. What did they learn?

A. I told them no; we were not.

Q. Did you assign any reason?

A. I said Mrs. Tessin objected and would not sell.

Q. What was the comment, if any, of either Mr. Griffing or Slocum?

A. I think my conversation that time was entirely with Mr. Griffing.

Q. What did Mr. Griffing say?

A. Griffing said "Well, whether you sell to us or not, we are coming into Drumright and when we come in you will know what will happen to you."

Q. Did you receive any phone call from anyone
1503 representing themselves as the Griffith people, whose voice you recognized?

A. No, no, sir. I received a phone call from a man by the name of Montgomery from Ponca City about the deal.

Q. What did Montgomery have to do with the deal?

Mr. COCHRAN. We object to that as no foundation has been laid.

The COURT. Unless it is shown he was connected with the defendant——

Mr. KIMP. That is what I am trying to discover whether he did have.

By the COURT:

Q. Did you know who he was?

A. (By the Witness) Yes, I knew him. I had met him once or twice.

Q. What was his connection?

A. He was a theater man in Ponca City and he came into Drumright about the time all this was going on——

Mr. COCHRAN. We object to that. He shows no connection with Griffith whatever.

By the COURT:

Q. Do you know of your own knowledge whether or not he was connected with the Griffith interests?

A. No, sir, I don't.

Q. What do you know about his connection with the Griffith interests?

A. Nothing.

1504 The COURT. Objection sustained.

By Mr. KIMP:

Q. Then you received a registered letter on what date, do you recall, the 15th of August you say, about then?

A. This option was dated about the first of August for 30 days, as I recall, and about the 15th I received this registered letter which informed me they were going to take up the option.

Q. Who signed that letter?

A. It was signed "Consolidated Theaters by"—I don't remember who signed it.

Q. Do you have a copy of the letter?

A. No, sir.

Q. But you recall that it was registered?

A. Yes, sir.

Q. And the option was due to be taken up on September 1, 1936?

A. That is right.

Q. Was it taken up on that date?

A. Yes. I talked my sister-in-law into going through with it and they took it up and we turned the theaters over to them.

Q. Then the deal was finally concluded on or about the first of September?

A. Yes, sir, that is right.

1505 Q. At the time, or about the time the theater burned in July, 1936, was it customary for the representatives of the various distributors to call on you to secure contracts for the coming season?

A. The theater burned down June 4, 1936, and that was about the time, about July 1, when the salesmen usually came in to sell their new product.

Q. Did they come in 1936 to sell you the '36-37 product?

A. The RKO salesman came and the Paramount salesman came and I believe the Universal. I believe those three companies' men came in.

Q. Do you recall who the RKO representative was?

A. It was Paul Fielding.

Q. Did he try to sell you?

Mr. COCHRAN. We object to that as incompetent and immaterial.

By the COURT:

Q. Did he sell you?

A. Yes, sir, he sold me the product.

By Mr. KIRK:

Q. Did you buy any other product?

A. I bought Paramount, and I believe Universal.

Q. What product had you had in the '35-36 season?

A. I had all product but Metro.

Q. All but Metro?

1506 A. Yes, sir.

Q. RKO, Fox, and Metro representatives came to see you?

A. RKO, Paramount and Universal came to see me.

Q. RKO, Paramount and Universal?

A. Yes, sir. Metro, Fox and Warner didn't come.
Q. And you had that product the season before?
A. I had not had Metro the season before. I said I had everything but Metro.

By the COURT:

Q. Were you buying this for the other theater?
A. Well, I was operating two theaters, and I was buying for both theaters, yes, sir.
Mr. KIMB. That is all.

Cross-examination by Mr. COCHRAN:

Q. What two theaters were you operating in July of 1936?
A. I was operating the Midwest and another little house, the one I had bought from this independent exhibitor that came in. I was operating those two after the Strand burned.
Q. That small theater you are talking about was the Rex, was it not?
A. Yes, sir.
Q. It has been closed since when?
1507 A. It had been closed since April, 1935.
Q. When did you reopen?
A. I reopened it in July.
Q. Of 1936?
A. Yes, sir.
Q. So you had not had any product licensed for that theater for the succeeding year?
A. No. I had no product licensed for that year.
Q. So for the year '35-36 and up until July, '36, you were licensing pictures only for one theater?
A. I was licensing pictures for the Strand and Midwest until June 4, 1936, when the Strand burned.
Q. You were playing the A pictures in the Strand and B pictures in the Midwest?
A. Yes, sir.
Q. You said it was customary for salesmen to come around and solicit your business for a season's product in July of each year. Don't you know, as a matter of fact, that they did not, as a rule, come around until later than that; that they did not come around until after their national conventions had been held?
A. Well, they usually came to see me along about July 1st.
Q. Who usually came to see you at that time?
A. The salesmen for the different companies.
1508 Q. All of them?
A. Oh, I won't say all of them.

Q. Their visits to you extended over a considerable period, didn't they?

A. Oh, possibly 30 days. They usually all came in within 30 days.

Q. Did you contact Fox?

A. The Fox man came in to get some dates from me.

Q. In other words, you were delinquent with Fox at that time?

A. Oh, a few pictures. That is customary in the business.

Q. And he was trying to get you to date pictures which you had licensed for the preceding season?

A. Well, they were pictures which were still current. They were '35-36 pictures.

Q. They were pictures which in July of 1936 had not been played?

A. That is right.

Q. Can you tell us how many Fox pictures you had unplayed at that time on your '35-36 contract?

A. No, sir, I have forgotten that.

Q. Isn't it a fact you had more than half of the Fox pictures unplayed at that time?

A. I don't think it is a fact.

1509 Q. I thought you said awhile ago that the Fox man did not come in to see you.

A. He came in to see me about getting some dates on these delinquent pictures.

Q. When was that?

A. That was along in July.

Q. Isn't it a fact that he was not in to see you until after your option to sell your theaters had been executed?

A. No, that is not a fact.

Q. The Warner salesman, did he come in in July?

A. No, he never came near at all.

Q. At that time is it not a fact you had more than half of the Warner pictures which you had licensed for the preceding season unplayed?

A. No, it is not a fact.

Q. You had a number of delinquent pictures?

A. Yes, all exhibitors have a number of delinquent pictures.

Q. I asked you if you had a number of delinquent pictures?

A. Yes.

Q. I mean pictures which you have not dated and which they had sent you notice of availability on a long time before.

1510 A. Of course, they sent me notices of availability as soon as the picture is ready, but that does not mean you play it the next day.

Q. Hadn't they called your attention, every one of these distributors, hadn't they called your attention to this delinquency time and time again before you entered into this option contract?

A. They always do. They keep writing you letters.

Q. Did they on this occasion?

A. Yes, they always write you letters when you are delinquent.

Q. In May of 1936, Metro had a suit pending against you and your sister for the product which you had not played in the amount of $984.50, didn't they?

A. No, sir.

Q. Was not that suit pending in the district court of Creek County, Oklahoma?

A. Metro?

Q. Yes, sir.

A. I never heard of it.

Q. Hadn't you employed an attorney to represent you in that case and an answer had been filed?

A. This is the first time I ever heard of it.

Q. And that answer was filed on June 8, 1936?

1511 A. This is the first time I ever heard of it.

Q. You know that you had had difficulties with Metro and they had not licensed you their pictures for some time?

A. Metro didn't license their pictures to me for 1936.

Q. Don't you know that the reason—they didn't license you their pictures for the '35-36 season; isn't it a fact that the reason they didn't license you their pictures was because they had this unpaid claim?

A. No, sir, it isn't a fact; it was because I wouldn't buy their pictures at the price they offered them to me.

Q. And the pictures which you licensed for the preceding year, you would not play because you considered them too high?

A. As I remember, I played their contract out.

Q. What was the date of the first visit that Mr. Slocum made to see you?

A. I can't give you the exact date; it was approximately the middle of July, I don't know just when.

Q. The attorney who represented you in the Metro case, Mr. W. F. Speakman, do you know Mr. Speakman?

A. Yes, I know Mr. Speakman.

Q. Didn't you employ him, you and your sister, to represent you in that case?

Mr. KIMB. If the Court please, I submit that the best record, if there is a record of that, would be a cer-
1512 tified copy of the record of the court.

The COURT. Yes, but nobody knows it any better than this witness. If he knows of his own knowledge, he may answer.

A. Your Honor, I have no recollection of that suit at all.

By Mr. COCHRAN:

Q. What was the date that you say that E. R. Slocum first saw you?

A. I think about July 15, along there sometime; I can't tell you the exact date.

Q. Was that the first conversation that you had had with E. R. Slocum since he had been working for Griffiths?

A. Yes, I hadn't seen Mr. Slocum for years, five or six years, maybe.

Q. On that occasion Claud Motley was with him?

A. I believe Mr. Motley was there, yes, sir.

Q. That was your testimony on your direct examination, is that correct?

A. Yes, that's correct, I will say.

Q. Where did that conversation take place?

A. Well, we had a little office in the theater, at the Midwest, and they were in that little office.

Q. Were you in that little office?

A. Yes, I think we were.

Q. You and Slocum and Claud Motley?

1513 A. I think that's right.

Q. What was the size of that room?

A. It was about six by ten, possibly, a small office.

Q. Mr. Motley was present during that conversation?

A. I believe he was.

Q. What was said by each of the parties present at that conversation?

A. I don't believe that Motley said anything.

By the COURT:

Q. What did Slocum say?

A. Mr. Slocum said that he was representing Griffiths and they wanted to buy the theaters.

By Mr. COCHRAN:

Q. What else; give us all the conversation, every word of the conversation.

A. I can't remember all that conversation. That was nine years ago.

Q. Well, give us all you can recall of the conversation, and the substance of the balance.

A. The substance of it was that they wanted to buy the theaters and I said no, I didn't want to sell.

Q. Was there anything else?

A. Well, he made some talk about they were going to build a deluxe house.

Q. What was said about that?

A. Well, I think he said he thought the town merited a better theater than it had, and they were going to
1514 build a deluxe house there.

Q. What else?

A. I don't know that he said anything more; he probably said a lot more.

Q. That's all you can recall?

A. Oh, I can recall very well what he said when I told him I wouldn't sell.

Q. All right, tell us.

A. All right. He said, "Why won't you sell?" I said, "Because we have a little business here that is making us a living and making a little money, and we don't care to sell; we are satisfied as we are." He said, "You may have a business that is making you a little money now, but it might not be doing so well six months from now when we get in here."

Q. What else was said?

A. That is about all.

Q. You can't think of anything else that was said?

A. No, sir.

Q. How long was it before you had any further conversation with anyone purporting to represent any defendant in this case, either Griffith Amusement Company, Consolidated, or L. C. Griffith, or H. J. Griffith, any of the Griffith parties?

A. They send boys out to do their dirty work, you know; they don't go themselves.

1515 The Court. Just answer the question.

Mr. Cochran. We move to strike that answer.

The Court. The answer will be stricken.

A. Slocum came back.

Q. Now, that question didn't call for any conversation with L. C. Griffith or H. J. Griffith, but only called for any conversation you had next succeeding the conversation you have given us, with any person purporting to represent any of the parties I mentioned.

A. Slocum came back.

Q. What was that date?

A. I don't know the date, possibly a week later, it might have been the 20th of July.

Q. A week later?

A. Yes, sir.

Q. Who was with him on that occasion?

A. He talked to me alone; I don't think there was anybody present.

Q. Where did that conversation take place?

A. In this same little office.

Q. What was the conversation then?

A. Well, he repeated his——

Q. (Interrupting.) Just state what he said.

A. I don't know exactly.

Q. Well, as nearly as you can recall.

1516 A. He repeated his offer of buying the theaters; he said he came back to buy the theaters.

Q. What did you say?

A. I said no.

Q. What did he respond?

A. Well, he gave me a sales talk; I guess we talked maybe 30 minutes about price, and so forth, and finally I gave him an option.

Q. What threats or intimidation or anything of the kind were exercised by him at that time?

A. Well, I don't remember of any threats or intimidation that time.

Q. You signed an option at that time?

A. Yes, I signed an option.

Q. Who drew it up?

A. He did.

Q. And that was the option given him, an option to purchase your theaters, or rather your sister's theaters, within thirty days time?

A. That's right.

By the COURT:

Q. Did that cover just the one theater or all the theaters?

A. That covered all of the theaters. We still had some salvage at the burned theater; it covered that too.

By Mr. COCHRAN:

Q. What was the date of that option?

1517 A. That option was dated August 1st, and it ran until September 1st.

Q. When was it that you had your next conversation with anyone purporting to represent the Griffith interests?

A. Well, it must have been just about the time that option expired, probably the last week in August.

Q. When was it that you said that Mr. Slocum came over there with Mr. Akers?

A. Well, I didn't say he came with Akers. Akers was there, but I don't know whether he was with Slocum or not.

Q. All right, when was it that he was there with Akers?

A. I don't know whether he was ever there with Akers.

Q. I thought you just said he was there with Akers?

A. No, I didn't say he was there with Akers.

Q. Did you ever see Mr. Akers over there with Mr. Slocum?

A. I don't know whether he was with Slocum or not. I saw Mr. Akers there; he came and took an inventory of the property.

Q. Well, that was after the option had been executed wasn't it?

A. I suppose it was.

Q. Had you had any conversation with any other representative, or with any representative of Griffith
1518 between the first conversation you have detailed, which you said was about July 15, and the second one, which was on the date the option was executed by you?

A. No, I don't believe there was with anybody in those couple of weeks.

Q. Well, had you had any conversation over the telephone or otherwise?

A. No, I had no telephone conversations at all.

Q. Was Mr. Akers present at the time you had your dealings with Mr. Slocum on the day the option was executed?

A. Not that I know of.

Q. On any other occasion, did you have any conversation or dealing with Mr. Slocum after the option was executed?

A. I wish you would repeat that. I didn't get it.

(Last question read by the reporter.)

A. No, I don't believe that I ever talked to Mr. Slocum again.

Q. How long was it after that option was executed before Mr. Akers came over and took an inventory of your property?

A. Well, I don't think he took an inventory of the property until the deal was closed.

Q. Do you mean until after the option had been
1519 exercised?

A. And the money changed hands.

Q. Did you see Mr. Akers any in Drumright prior to the time when he was over there to take the inventory?

A. No, I never saw him before in my life until he came to take that inventory.

Q. And you had no conversation with him prior or——

A. (Interrupting.) Rather, he came to——

Q. (Interrupting and continuing.) To take the inventory?

A. I believe he was there the day we closed the deal and he took the inventory that day. He was there a full day, that is all I remember.

Q. My question was whether you had had any conversation with him prior to that.

The Court. He said he never saw him before.

A. I never saw him until he came to take that inventory.

1520 Q. Now, then, what was the next conversation that you had with any person purporting to represent the Griffith interests after the option had been executed?

A. Do you mean after the deal was closed?

Q. After you signed the option.

A. Well, Mr. Griffing was over there.

Q. That's the very next time that you had any conversation with a representative of the Griffiths?

A. After the option was given, yes.

Q. Do you remember that date?

A. No.

Q. Before that—before Mr. Griffing came over there you had received a letter, a registered letter, advising you that they elected to buy the property under the option, had you?

A. Right.

Q. How long was it after you received that letter before Mr. Griffing came over?

A. Oh, I have no recollection.

Q. You can't give us any idea?

A. No. It was later that month, later in the month.

Q. Mr. Slocum wasn't with Mr. Griffing at that time, was he?

A. I don't know. He may have been; I didn't see him that I remember.

Q. You didn't see Mr. Slocum on that occasion?

1521 A. Not that I remember.

Q. Did you see Mr. Akers?

A. No, I didn't see Mr. Akers until the day Mr. Akers came and took the inventory.

Q. Well, didn't he take the inventory on that same day that Mr. Griffing was over there, and wasn't the deal closed the next day at the Bank of Cushing?

A. The deal was closed, I believe, on the first of September.

Q. Well, I am asking you if the deal wasn't closed and the money paid at the First Bank of Cushing the day after Mr. Griffing first saw you about this matter?

A. Well, it might be, I don't remember.

Q. And hadn't the inventory been taken before the money was paid?

A. No, no inventory was taken until some money had been paid. I wouldn't let them in the theater until some money had changed hands.

Q. Don't you know that the inventory was taken the night before the money was paid?

A. The inventory was taken in the daytime, I remember that distinctly.

Q. Where did you have this conversation with Mr. Griffing that you have detailed, where was that conversation?

A. That was on the sidewalk in front of the Rex Theater.

1522 Q. Who was with Mr. Griffing at that time?

A. I don't remember that there was anybody with him.

Q. Well, was there?

A. I don't know. There might have been somebody around somewhere; I saw nobody but Mr. Griffing.

Q. Isn't it a fact that Mr. Akers was with him and introduced you to Mr. Griffing?

A. I don't remember it.

Q. Will you say that Mr. Akers was not present or didn't introduce you to Mr. Griffing on that occasion?

A. No, I wouldn't say he wasn't; I just don't remember it.

Q. Now, give us the conversation which took place at that time.

A. Well, I can just give you the gist of it. Mr. Griffing asked if we were going through with the deal, and I said no.

Q. Go ahead, just tell us all of it.

A. Then he said, "You understand we are coming in here whether you sell to us or not, and then you know what will happen to you".

Q. What were you saying during that time?

A. I don't know that I said anything, except I told him we were not going through with the deal.

Q. And what else was said by Mr. Griffing?

A. I can't remember anything else.

1523 Q. Did you stand there on the sidewalk all that time?

A. That wouldn't take very long. He wasn't talking to me but two or three minutes, as near as I remember.

Q. Then what happened?

A. I guess he went away, I don't remember.

Q. Well, did he?

A. I suppose he did.

Q. There was no further conversation on that occasion?

A. None that I remember.

Q. When was the next time you saw him?

A. I believe the next day; I think the next day was the first of September.

Q. Well, did you see him the next day after this conversation on the sidewalk?

A. Well, I think I did.

Q. Where did you see him?

A. I believe down at the Little Theater, this little Rex Theater.

Q. In the office?

A. Yes, I think they came into the office.

Q. Who was present with him then?

A. I think Akers and Motley were both with him then.

Q. And what conversation took place there?

A. Well, I really don't remember much of the conversation. I had talked my sister-in-law in going
1524 through with the options the night before; as nearly as I can remember, they had a check for half of the purchase price, and I told them I had to have it all.

Q. Had you had any conversation between that conversation which you have detailed as having taken place on the sidewalk the day before, and this conversation that you are now detailing with Mr. Griffing or with any other representative of Griffith?

A. Not that I remember.

Q. You saw Mr. Griffing no more after that conversation that you have detailed having taken place on the sidewalk until the next day when you had the conversation you are now detailing, is that right?

A. The next forenoon, I believe.

Q. Is that right?

A. Well, to the best of my memory, it is. I don't know whether it is right or not, but that is the way I remember it.

Q. What date was that, that last conversation that you have detailed?

A. Do you mean when we closed the deal?

Q. Yes.
A. September 1st, I believe.

By the COURT:

Q. Did you sell everything for a lump sum?
A. Yes, sir, everything.
1525 Q. What was the necessity for an inventory then, before the deal was closed?
A. Well, that was their idea.
Q. It wasn't necessary to close the deal?
A. Your Honor, I believe, as I remember it, we didn't turn the theaters over for about three days, in order to make a smooth turn-over we held them until Saturday night, after the Saturday night show, September 4th, and they wanted an immediate inventory, I suppose to protect themselves against anything being taken out during those three days.

By Mr. COCHRAN:

Q. You had represented that you had certain personal property in the theater, hadn't you, in those theaters, at the time the deal was made?
A. Oh, there was no personal property except a popcorn machine.
Q. Well, wasn't there a projection machine, there were projection machines, weren't there?
A. There were three pair of projection machines.
Q. And seats?
A. Oh, yes.
Q. And drapes?
A. Yes.
Q. And screens?
A. We sold the complete equipment of the two theaters that we were operating.
1526 Q. All right, you didn't own the real estate, did you?
A. No, sir.
Q. So you were assigning the lease contracts and selling the personal property in those theaters?
A. Yes, sir.
Q. And you had represented in making that deal that you had certain sound equipment and certain seats and so forth, had you not?
A. No, they just wanted to buy the business; they didn't go into any details about what we had.
Q. Then why was it that any inventory was taken at all?
A. You will have to ask Mr. Akers about that. He took the inventory. He asked me if he could take an inventory

and I told him yes, and I went with him and unlocked the theaters and unlocked the booth and so forth and helped him take the inventory.

Q. Will you say that wasn't taken before the money was paid over?

A. No, they paid over half of the money before the inventory was taken.

Q. They paid half of the money beforehand?

A. Yes, sir.

Q. But not the complete purchase price?

A. No, they had to get the other that afternoon in
1527 Cushing.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KIMB:

Q. In the buying season there of '36–37 did the Fox representatives stop and see you?

A. Yes, sir.

Q. Did you try to buy the '36–37 product?

A. Yes, sir.

Q. Did you buy it?

A. No, sir.

Q. Did he assign any reason why he wouldn't sell it to you?

A. He said he——

Mr. COCHRAN (interrupting.) We object to what he said.

The COURT. Sustained.

By Mr. KIMB:

Q. What reason did he give?

Mr. COCHRAN. We object to that for the same reason.

The COURT. Sustained.

1528 By Mr. KIMB:

Q. Do you know, as a matter of fact, why he would not sell you?

A. Yes, sir.

Q. Why wouldn't he sell you?

A. Because that was already sold.

Q. That is all.

Mr. COCHRAN. We object to that, and move to strike it because he doesn't know that of his own knowledge.

The COURT. Sustained and it will be stricken as hearsay testimony.

Mr. WRIGHT. May we just have the conversation under the same arrangement as heretofore so we can make a record on it.

The COURT. Very well.

By Mr. KIMB:

Q. What did the Fox representative tell you then on that occasion?

A. He told me the product had already been promised to other parties.

Mr. KIMB. That is all.

Mr. COCHRAN. That is all. We would like for this witness to be here this afternoon. We might have a few questions to ask. As I understand it, that was simply an offer and the Court sustained our objection to the offer.

THE COURT. Yes. It will be stricken as hearsay.

(Witness excused.)

(Court recessed until 2 o'clock p. m. this day.)

1529 AFTERNOON SESSION

May 22, 1945, 2:00 o'clock p. m.

PROCEEDINGS

(The following proceedings were had out of the presence of the Court, by agreement:)

Mr. CASKEY. In response to paragraph 3 of the subpoena duces tecum served upon Loew's, Incorporated, returnable May 21, 1945, I produced a list showing relase dates of pictures released between September 1, 1933 and August 31, 1943.

(Said instrument marked by the reporter as Plaintiff's Exhibit No. 336 for identification.)

In response to paragraph 3 of subpoena duces tecum served upon RKO, returnable May 21, 1945, I produce list showing release dates of pictures released between September 1, 1933, and August 31, 1943.

(Said instrument marked by the reporter as Plaintiff's Exhibit No. 337 for identification.)

In response to paragraph 3 of subpoena duces tecum served upon Fox, returnable May 21, 1945, I produce list showing release dates of pictures released between September 1, 1933 and August 31, 1943.

(Said instrument marked by the reporter as Plaintiff's Exhibit 338 for identification.)

1530 Pursuant to or in response to paragraph 3 of subpoena duces tecum served upon Paramount, returnable May 21, 1945, I produce list showing release dates of pictures released between September 1, 1933, and August 31, 1943.

(Said instrument marked by the reporter as Plaintiff's Exhibit No. 339 for identification.)

In response to paragraph 3 of subpoena duces tecum served upon Warner Brothers, returnable May 21, 1945, I

produce list showing release dates of pictures released between September 1, 1933, and August 31, 1943.

(Said instrument marked by the reporter as Plaintiff's Exhibit No. 340 for identification.)

(The proceedings were thereupon resumed in the presence of the Court, as follows:)

The COURT. You may proceed.

JAMES B. BENNETT, recalled and examined as follows:

Further Cross-examination by Mr. COCHRAN:

Q. The conversation which you had with Mr. Griffing on the sidewalk the first day that you say you saw him over at Drumright, took place at what time of day?

1531 A. It was along in the evening, I think about eight-thirty or nine o'clock.

Q. Eight-thirty or nine o'clock in the evening?

A. Yes, sir.

Q. Sometime prior to August 4, 1936, do you recall a salesman of Metro's coming to your place and you told him to get out and stay out?

A. I had a little row with a Metro salesman, but it was in 1935.

Q. Yes, sir, covering the season 1935–36?

A. Yes, sir.

Q. How was that salesman?

A. It was Jimmie Byrd.

Q. On that occasion didn't you tell him to get out of your place and stay out?

A. Oh—(hesitating).

Q. Did you?

A. I don't think I said that to him.

Q. And don't you know that that incident was followed by the suit which was brought on unplayed product and unpaid for product for the 1934–35 season?

A. Well, I don't know when that suit was brought.

Q. All right, you know that you had—at the time of this incident with Mr. Byrd, you know there were eleven unplayed pictures of Metro of the '34–35 season, first

1532 run, don't you?

A. I don't know it, but I wouldn't deny that it might be the case.

Q. On the Fox product did you have that product licensed for the '34–35 season?

A. Yes, sir.

Q. And for that season it was licensed on a flat rental basis, wasn't it?

A. No, just part of the pictures were flat rental; they always had some percentage pictures.

Q. Isn't it a fact that the 1935–36 season's product of Fox was the first season when you had had a considerable number of pictures licensed on a percentage basis?

A. I think Fox licensed the Will Rogers and the Shirley Temple pictures; the Will Rogers pictures they licensed in '33 and '34 and '35 and '36, and the Temple pictures in '33, I believe, from then on.

1533 Q. Do you recall that for the '35–36 season that you licensed 16 pictures on a percentage basis, thtat is, a certain percentage of the gross?

A. Well, if you have the contract there, I don't know anything about anything like that, I don't remember anything about it, that was nine or ten years ago.

Q. Don't you recall that during that season that you played one of the A pictures, no, one of their B pictures, "Farmer Takes", on August 28, 1936, a three day run, and reported gross receipts for the three days of $70.60, or something of that kind?

A. I don't; I remember a picture called——

Q. (Interrupting.) The proposition is——

A. (Interrupting.) "Farmer in the Dell" Ithink was the name of the picture, something like that.

Q. "Farmer Takes a Wife."

A. "Farmer Takes a Wife."

Q. Starring Janet Gaynor, but regardless of whether you remember that particular picture, don't you know that there was a controversy arose between you and Fox because of the returns which you were making of the gross receipts, and they put a checker in there to check your gross receipts and that the first returns which were made after the checker went in for a B picture was $152.55?

A. A B picture they checked?

1534 Q. Yes, sir.

A. What was the B picture?

Q. The picture "Burlesque."

A. Yes, they checked "Burlesque."

Q. Isn't it a fact that there was in August of 1936, immediately preceding that a very sharp dispute between you and Fox because of that checking and because of the discrepancies shown between the checkings and the returns which you had been making prior to that time?

A. A dispute about that farmer picture?

Q. I am not just talking about the farmer picture, I am talking about an objection on your part to the checking of the box office, and second, a controversy between you and Fox because their checking on the same type of pictures showed so much larger gross receipts than you had been showing on the flat rent.

Mr. KIMEL. We object to that, if your Honor please, as hearsay.

The COURT. Overruled; if you know whether or not it occurred.

A. Yes, sir, I remember very distinctly. I never objected to a checker, but I did object to this, when the checker would make his report out at the end of the run and I would give him a check for the overage and sign his report, that they would send me an additional bill for
1535 the same picture later on, when they had a checker taking tickets on the door.

By Mr. COCHRAN:

Q. So there was a dispute between you and Fox at that time, was there?

A. Yes, sir.

Q. And controversy?

A. Yes, sir, on account of their checking.

Q. All right. That was prior to the time that Griffith made this option deal with you, wasn't it?

A. Oh, yes, yes, I have had checkers, I have had pictures checked on me for years.

Q. I am talking about in this season of 1935–36 with Fox?

A. Yes, sir, Fox checked pictures right up to the time my theater burned.

Q. And a controversy existed between you and Fox in that 1935–36 season?

A. Yes, sir, we had a controversy every time they sent me a bill for overage.

Q. All right. Now, at the time that you executed this option, there were 23 pictures of the 1935–36 season of Fox which were unplayed, were there not?

A. Well, I wouldn't dispute that. I don't know. I have forgotten.

Q. You know there were a considerable number?
1536 A. There were some pictures unplayed.

Q. I say there was a considerable number?

A. I wouldn't say there was a considerable number.

Q. When did you say you started to operating the Midwest and Strand Theaters for your sister?

A. For her, on April 10, 1933.

Q. Along in 1931—you owned and operated the Strand Theater, did you not—I am talking about you individually.

A. No, we had a corporation at that time, the Strand Amusement Company.

Q. You were interested in it, were you?

A. Oh, yes; I was president of it.

Q. Operating the Strand Theater?

A. And the Idle Hour Theater, which was afterwards named the Midwest.

Q. Now, isn't it a fact that the Midwest Theater was opened by Isley and Moran, or Southwest Theaters, Inc.?

Q. They got ahold of the Idle Hour.

Q. And they were operating that?

A. And changed the name to Midwest.

Q. They were operating that in 1931–32, weren't they?

A. They operated it from Thanksgiving day, 1932, to April 10, 1933.

Q. And didn't they acquire the Strand Theater from you?

A. Yes, sir.

1537 Q. So there was a period when you were not operating any theater, either you or your sister, in Drumright, was there?

A. There was a period of about a year.

Q. And then in the fall of 1933 you and Mrs. Tessin bought these theaters from Isley and Moran or the Southwestern Theaters, Inc.?

A. We bought them April 10, 1933.

Q. You and your sister?

A. Yes, sir.

Q. And you continued to operate them then until you sold out?

A. September 4, 1936.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KIME:

Q. Mr. Bennett, what made you sell finally when you disposed of this theater?

A. Well, I sold because—(hesitating). I had to sell.

Q. What caused you to have to sell?

A. Well, I really had to sell because I knew that in a short time, within a year, I wouldn't have any product.

Mr. KIME. That's all.

Mr. COCHRAN. That's all.

(Witness excused.)

1538 JAMES A. GUEST, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. Will you state your full name and address please?

A. James A. Guest.

Q. You are the father of Mr. J. D. Guest——

A. Yes, sir.

Q. Who testified here?

A. Yes, sir.

Q. And you are interested with him in the Ritz Theater at Duncan?

A. Right.

Q. Calling your attention to the year 1934 did you have any conversation with any of the Griffith brothers at that time?

A. Well, I believe it was in '34, I won't say positive, but it was '33 or '34, somewhere along in there, I did with one of them.

Q. Do you remember which one it was?

A. No, I don't.

Q. Can you describe him?

A. No, sir. All I know, he was, I imagine about my height, or something like that; he was a tall, slender man, but I wouldn't know him.

1539 Q. Where did this conversation occur?

A. Well, there wasn't very much conversation to it.

Q. I say where was it?

A. Oh, at the Ritz Theater at Duncan.

Q. Can you tell us what was said?

A. Well, he came up——

Mr. COCHRAN (interrupting.) We object, if the Court please, until the identity of this party is established better than it is now. It doesn't show that it was either of these defendants, or that he was employed by either one of these defendants.

By the COURT:

Q. Who was the man you talked to?

A. Griffith, one of the Griffiths.

Q. Well, which one?

A. I wouldn't know, I wouldn't know the man. He just told me he was one of the Griffith boys. I wouldn't know the man. That is the only time I really remember seeing him.

Q. Is he in the court room now, the man you talked to?

A. If he is, I couldn't tell you, because if I ever saw him over that one time, I don't remember it? I didn't know him.

Q. Do you know L. C. Griffith?

A. No, I wouldn't, I wouldn't know him.

The COURT. Stand up, Mr. Griffith. Is that the man?

A. Yes, sir, I believe it is. I wouldn't say it is—

1540 I know this—I wouldn't say positive that was—that he was him, because I just don't, I wouldn't know, but I know he told me he was one of the Griffiths, and that is all I know.

Continuing by the COURT:

Q. Well, do you know Mr. H. J. Griffith? Will you stand up, Mr. Griffith? Is that the man?

A. No, sir, I wouldn't know.

Q. You don't know what one of the Griffiths it was?

A. I don't know which one of them, no, sir. I know he told me he was one of the Griffiths.

The COURT. I will reserve a ruling and permit you to ask him the question.

Mr. WRIGHT. I beg pardon?

The COURT. I will reserve a ruling and permit you to ask the questions, subject to a motion to strike.

By Mr. WRIGHT:

Q. Can you tell us as nearly as you can recall what the substance of the conversation was?

A. About all I remember, he came up and introduced himself and told me who he was, and wanted to know if I wanted to sell my theater, or take a few hundred dollars, three or four hundred dollars, and hunt a new location; and I told him no, I guess he had me down wrong because I didn't put it in to sell, and I didn't want to sell. That's about all the conversation really we had; I just told
1541 him it wasn't for sale, I didn't want to sell it.

Q. Is there any better date you can fix for the conversation than just 1934?

A. Well, I do know this, I know it was right after we played Paramount, we had had Paramount first run.

Q. Was this after you lost your Paramount first run?

A. Yes, sir——

Mr. COCHRAN (interrupting.) Just a minute. We object to the statement, "lost the Paramount" and move to strike the question, on the ground that it is an improper statement and question to say "when you lost Paramount."

The COURT. Do you mean when you ceased using their pictures?

A. Well, we had them, I believe it was in '33-34, I believe.

By Mr. WRIGHT:

Q. This was after you stopped playing Paramount pictures?

A. Paramount pictures.

Q. First run?

A. That's right.

Mr. WRIGHT. That's all.

Cross-examination by Mr. COCHRAN:

Q. Griffith Amusement Company had been operating

in Duncan prior to the time you located a thea-
1542 ter there, hadn't they?

A. That's right.

Q. And you located there in 1930, was it?

A. Right.

Q. From 1930 down to the time of this conversation you are speaking about, you had never met either one of the Griffiths, had you?

A. I had not.

Q. Have you ever met any of them up to this time?

A. I don't believe I have.

Mr. COCHRAN. We now move to strike the testimony of this witness in regard to his conversation with this person who said he was one of the Griffiths.

The COURT. Overruled and exception allowed. It is immaterial one way or the other.

Mr. COCHRAN. No further questions.

Mr. WRIGHT. That's all.

(Witness excused.)

RAY H. RUSS, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. KALLIS:

Q. Will you state your name?

A. Ray H. Russ.

Q. Where do you live, Mr. Russ?

1543 A. Stillwater, Oklahoma.

Q. Oklahoma?

A. That's right.

Q. What's your business?

A. Beg pardon?

Q. What is your business or occupation?

A. I run the Camera Theater at Stillwater, Oklahoma.

Q. When did you begin operating the Camera Theater in Stillwater?

A. In October 1928.

Q. Now, Mr. Russ, will you please state——

The COURT (interrupting.) What is the name of this theater?

Mr. KALLIS, The Camera, C-a-m-e-r-a.

By Mr. KALLIS:

Q. Will you please state the population in Stillwater as of 1928?

A. In 1928, I don't know just what it was, I imagine around about five or six thousand.

Q. Is there a college located at Stillwater?

A. Yes, sir, Oklahoma A & M.

Q. Does the population you have just mentioned include the students enrolled at the school?

A. No, that would be extra.

Q. About how many students were enrolled in 1928?

A. Oh, I judge maybe 2500.

1544 Q. What is the population now?

A. 10,000.

Q. And prior to the war what was the average normal enrollment at the college in Stillwater?

A. I should judge about 4500.

By Mr. COCHRAN:

Q. What was your answer as to the present population?

A. The present population in Stillwater?

Q. Yes, sir.

A. I don't know what it would be; the last census was 10,000.

By Mr. KALLIS:

Q. Mr. Russ, when you opened the Camera Theater in Stillwater in 1928, how many theaters besides yours were operating in the town?

A. There were two.

Q. What were their names?

A. There was the Aggie and the Mecca.

By the COURT:

Q. The what?

A. The Aggie and the Mecca.

By Mr. KALLIS:

Q. Who owned and operated those theaters?

A. Griffith Amusement Company, Oklahoma City.

(Plaintiff's Exhibit No. 341 for identification was then marked by the reporter.)

Q. Mr. Russ, calling your attention to the year, 1931, did you have any business association with the

1545 Griffith Amusement Company.

A. Yes, sir.

Q. And did you enter into an agreement with the Grifith Amusement Company?

A. Yes, sir.

Q. I show you what has been marked as Plaintiff's Exhibit No. 341 for identification, and ask you if you recognize that?

A. That is the contract between Griffith Amusement Company and myself.

Q. And was it executed on or about the date it bears, September 12, 1931?

A. Yes, sir.

Mr. COCHRAN. No objection.

Mr. KALLIS: We offer in evidence Plaintiff's Exhibit No. 341.

The COURT. It will be admitted.

Mr. COCHRAN. What is the date of that?

Mr. KALLIS: This is a contract between Griffith Amusement Company signed by L. C. Griffith, vice-president, and C. E. Leachman and R. P. Leachman, as parties of the first part, and R. H. Russ as party of the second part, and dated September 12, 1931, and provides for the pooling of the Camera Theater of Mr. Russ and the Mecca Theater of the Griffith Amusement Company.

1546 Q. Now, Mr. Russ, will you please state what the circumstances were which led to the execution of this agreement?

A. Well, I hadn't been able to buy any film on film row and I was getting scarce on product, and there seemed to be a lot of competition——

Mr. DUDLEY (interrupting.) We object to him giving the circumstances preceding the execution of the contract. The contract speaks for itself, and it is a voluntary statement of the witness, and a mere conclusion. Let him state the facts.

The COURT. Read the answer.

(Last answer read by the reporter.)

The COURT. Overruled and an exception allowed.

By Mr. KALLIS:

Q. You may continue.

A. What else? That was the reason I suggested a partnership with them, was the fact that they could help me buy film, in running my house.

Q. You say you suggested a partnership; with whom did you have the conversation on the subject?

A. Well, I talked with the R. M. Clark, or Ish Clark, I think his initials are R. M. Clark, first.

Q. Do you know whether he had any connection with the Griffith Amusement Company at that time?

1547 A. He was one of the executives of the Griffith Amusement Company at that time, I don't know, office manager or vice-president, or something; he was an executive.

Q. Can you place the conversation with respect to the date, as nearly as you recall?

A. It was along sometime in the late summer of '31.

Q. Was it before this contract which has been marked?

A. Yes, sir.

Q. As Plaintiff's Exhibit 341?

A. I remember definitely I was talking to Mr. Clark in the little coffee shop down below Griffith Amusement Company, where they had their offices, and I got pretty well acquainted with Mr. Clark; I kind of liked him, he was a pretty good fellow.

1548 Q. What did you say to him and what did he say to you?

A. Well, I said, "Is there any reason why we can't get together on the shows up there in Stillwater?" I said, "I am having a lot of trouble getting film and you people seem to have all the film you want. It seems to me we could get together and work something out and there would be less competition and less trouble." He said "Russ, that is the first sensible thing I have heard anyone say. I don't see any reason why we can't get together at any time." He said, "Do you want to talk it over with the boss?" I said, "I will be glad to." And we talked it over with L. C. Griffith and we came to this agreement.

Q. This is the agreement which has been received in evidence as Plaintiff's Exhibit No. 341?

A. Yes, sir.

Q. Was anything said in that conversation between you and Mr. Clark with reference to the ability of the Griffith Amusement Company to obtain pictures for your theater?

Mr. COCHRAN. Objected to as repetition.

The COURT. It is leading and suggestive. You can state what the conversation was. State whatever the conversation was.

A. I believe I have stated it as near as I can remember it. That has been a long while ago. I mentioned the

1549 fact they had worlds of product and I didn't seem to be able to have any and there ought to be some way we could get together.

By Mr. KALLIS:

Q. Did he say anything to you with reference to Griffith being able to get you pictures?

Mr. COCHRAN. Objected to as being leading.

The COURT. Sustained. You can state what he said.

A. I think it is perfectly clear, what I have just stated.

By the COURT:

Q. What did he say?

A. What did Mr. Clark say?

The COURT. In response to your question?

A. I don't remember exactly. I know we talked about it and the whole thing simmered down that we would go and talk to Mr. Griffith.

By Mr. KALLIS:

Q. Did you have a talk with Mr. Griffith?
A. Yes, sir.
Q. Which one?
A. Mr. L. C. Griffith.
Q. When was that?
A. That was a week later when I was down on film row.
Q. Where did that conversation take place?
A. At Mr. Griffith's office, upstairs.
Q. Will you state the substance of that conversation?

1550 A. We discussed it and L. C. said, "I don't see why we can't get together on some kind of a deal." I said I wanted to notify Mr. Leachman at Stillwater. I don't remember whether we made the contract out then or whether we just talked it over and came back later, but I think we came back later and made the contract out down here in Mr. Wilson's office.

Q. After this contract was executed did you continue in any capacity in connection with either the Mecca or Camera Theater.
A. I continued to operate the Camera.
Q. What happened to the Mecca?
A. They opened the Mecca and started showing pictures over there the following week.
Q. How long has this partnership continued?
A. As I remember it, about 20 months.
Q. When did it begin?
A. You want the exact date?
Q. If you have it in your records, yes.
A. It started October, 1931, and lasted until May, 1933; 20 months.
Q. During that period of 20 months was the Mecca operated?
A. The Mecca was closed.
Q. During all that time?

1551 A. During all that time, yes, sir.

Q. What arrangement was made with reference to the rent of the Mecca?
A. The rent was to be absorbed.
Mr. COCHRAN. We object, if that is in the contract.
A. It is right there in the contract, yes, sir.

By Mr. KALLIS:

Q. Did you pay any rent on the Mecca during the time the partnership continued?
A. I paid all the rent.
Q. What proportion of that rent did you personally pay?

A. That would make mine half.

Q. Now, with reference to buying and booking for the Camera Theater during the life of this partnership, who took care of that?

A. The buying and booking was conducted by the Griffith Amusement Company and they were to receive 4 per cent of the gross receipts as their fee for buying and booking the pictures.

Q. What was your salary as manager of the Camera?

A. $30 a week.

Q. Calling your attention to the year 1931, and approximately Thanksgiving time, did you have a conversation with Mr. R. M. Clark?

1552 A. Yes, sir.

Q. Where was that?

A. In Mr. Leachman's office at the Aggie Theater.

Q. Will you state the substance of that conversation?

A. Mr. Clark was in town and we were talking over the situation, talking about pictures and business, and he had been down to the Camera and I followed him up to the Aggie; we were in the office, and I was so dissatisfied with the way things were working out, and I had been talking it over with Mr. Clark and Mr. Clark said, "Russ, you ought to consider yourself lucky you are affiliated with us." I said, "Why?" He said, "We are going to make it tough on all independent exhibitors and close them out." I said, "How are you going to do that?" He said, "We will just control the product and they won't have anything to show." I said, "Well, that is fine if you think it will work that way."

Q. During the life of this partnership between you and the Griffith Amusement Company was the Aggie Theater being operated by the Griffiths?

A. Yes, sir.

Q. What product was being shown there during that period?

A. They were playing all the major product, A pictures mostly. It was their A house. They were playing the very best.

1553 Q. What pictures did you play in the Camera?

A. We had some very poor pictures, B and C product.

Q. Do you know whether the '32–33 releases of Paramount were played at all in the Aggie Theater?

A. '32–33?

Q. Yes.

A. No, sir, they were not played at the Aggie Theater.

Q. What about the '33–34 releases of Paramount, were they played at the Aggie Theater?

A. I don't think so, no, sir.

Q. Did you have a conversation with Mr. L. C. Griffith about that product?

A. Yes, I had several conversations with Mr. Griffith. That is while we were in partnership.

Q. When was that?

A. Well, that was, I imagine, we had been in partnership almost a year, and I asked Mr. Griffith if I couldn't go down and buy Paramount pictures.

Q. What did he say?

A. He said, "No." He said, "I forbid you to buy Paramount." He said, "We are having a big battle with Paramount and we are going to show them we can operate in this territory without their pictures and we are going to make them come to us." He says, "I forbid you to buy their pictures."

1554 Q. Did he say anything else?

A. Yes, there was other conversation.

Q. With reference to the Paramount product?

A. Later I asked him again if I couldn't buy those pictures. I said, "L. C., I am losing money at the Camera and there is no reason why I should lose money; all I need is some good product." I said, "If I could get these Paramount pictures, I can get them at a good price." I said, "Roy Hefner is a good friend of mine and I could get a good deal, and I can show them at the Camera and pay you off what I owe you." He said, "I forbid you to buy those pictures. If you buy them it means the breaking up of this partnership."

Q. Did you buy Paramount?

A. Yes, sir.

Q. For what season?

A. They were the S-4 and S-5 group. I will have to look at the date. That was the '33–34 and the '32–33 pictures, the S–4 and S–5 group.

Q. You say that during the last part of this partnership you were playing poor product in the Camera and Griffith was playing the better product in the Aggie Theater. Will you please specify what major companies and what run, if

any, Griffith was playing at the Aggie Theater during that period?

1555 A. Well, I don't know, they had the pick of all the major product. Nobody else was running any pictures in Stillwater, and at that time I know they had an argument with Warner and First National about prices or something. They were not wanting very many Warner pictures but the rest of them—Warner and Paramount together—but they run everything else.

Q. I show you what has been marked as Plaintiff's Exhibit 342 for identification, and ask you whether you recognize this as the contract you received from Paramount for the '32–33 feature product.

A. Yes, sir, that is their contract for the S-4 group, '32–33, 63 features.

Q. And I will show you what has been marked as Plaintiff's Exhibit P-51 for identification, and ask you whether you recognize that as a contract you had with Paramount for the '33–34 season?

A. It looks like a copy. I think I have the original contract right there. That is the S-5 group, '33–34. This is it right here.

Q. Compare them and see if they are the same?

A. Yes, sir, these are the same as far as I can see.

Q. I show you what has been marked Plaintiff's Exhibit 343 for identification and ask you whether that is the contract you received from Paramount for the '33–34

1556 releases?

A. Yes, sir.

Mr. COCHRAN. No objection.

By Mr. KALLIS:

Q. Did you play the Paramount '32–33 releases first run and '33–34 releases, first run, as provided by these contracts in evidence?

A. Yes, sir.

Q. Did you receive a contract for the Paramount releases for the '34–35 season?

A. That was the next year?

Q. Yes.

A. No, sir.

Q. Were you given an opportunity?

A. Well, at the time we made that deal Mr. Pickett was manager of Paramount. Roy Heffner had just left as manager and Pickett had replaced him. Pickett was a stranger to me. I went to him and said, "Mr. Pickett"——

Mr. COCHRAN. Object to the conversation.

By the WITNESS:

A. It led up to the deal.

The COURT. Don't state what he said.

A. I asked Mr. Pickett to buy the pictures——

Mr. COCHRAN. We object to what he said to Mr. Pickett.

The COURT. He is not stating the conversation. Did you buy the pictures?

1557 A. Yes, sir. I bought those two years and they promised me another year when I was in their office.

Mr. COCHRAN. We move to strike out his statement he was promised another year's pictures.

The COURT. The motion will be sustained.

By Mr. KALLIS:

Q. Were you given an opportunity of buying the Paramount '34–35 releases, first run, for Stillwater?

A. No, sir.

Mr. COCHRAN. We object to that and move to strike the answer for the reason it calls for a conclusion.

The COURT. Overruled. Exception allowed.

By Mr. KALLIS:

Q. I show you what has been marked as Plaintiff's Exhibit 344 for identification. Will you please read that?

A. Out loud?

Q. No, to yourself.

A. Yes, sir.

(Witness reads document.)

By Mr. KALLIS:

Q. Mr. Russ, did you write to Paramount on or about August 12, 1934, with reference to the '34–35 Paramount product, first run?

A. Yes, sir, I wrote several letters.

Q. I show you this exhibit, Plaintiff's Exhibit 344, for identification, and ask you if you received that letter on or about the date it bears?

1558 A. I certainly did. That is one of the answers to one of the letters.

Mr. DUDLEY. We object to the exhibit for the reason it is hearsay and not binding upon the defendants.

The COURT. Objection sustained. Exception allowed.

By Mr. KALLIS:

Q. Do you know whether you played United Artists, first run, at your theater for the '33–34 season?

A. For '33–34, United Artists sell their pictures on separate contracts. I don't know just all the pictures they had that year. I think I played most of them first run.

Q. Did you play the United Artists first run, of the releases of the '34–35 season?

A. I played some of them, first run. The pictures were foreign made pictures and the pictures they couldn't sell to Griffith I played first run.

Mr. COCHRAN. We move to strike his statement he played the pictures they couldn't sell to Griffith because that is a matter he could have no knowledge of.

The COURT. Sustained. That would be hearsay.

By the COURT:

Q. How did you get the information they couldn't sell to Griffith?

1559 A. The salesman told me. He says, "We haven't been able to sell this to Griffith and I can offer them to you."

The COURT. Objection will be sustained as hearsay.

By Mr. KALLIS:

Q. I show you what has been marked as Plaintiff's Exhibit No. 343 for identification and ask you if you recognize this exhibit as the contract you received from Columbia for the '32–33 product, first run?

A. Yes, sir.

Mr. COCHRAN. No objection.

Mr. KALLIS. May it be received?

The COURT. What is the date?

Mr. KALLIS. The application is dated September 26, 1932, and approved September 30, 1932, as a first run contract of Columbia for the '32–33 season, signed by Mr. Russ for the Camera Theater. If I may be permitted, I would like to refer to Plaintiff's Exhibit No. 342, which is in evidence, and for the sake of the record just indicate that it is a first run contract of Paramount for '33–34 and the dates of approval and application are not clear. With respect to the Exhibit No. 343, this is a first run contract for the '33–34 releases of Paramount. I refer again to Exhibit 342. That exhibit is dated April 24, 1933, and Plaintiff's Exhibit No. 343 is dated July 25, 1933. I understand that Plain-

1560 tiff's Exhibit 341, 342, 343 and 345 are in evidence. Is that right, Mr. Cochran?

Mr. COCHRAN. What is No. 342?

Mr. KALLIS. Paramount, first run for the '32–33 season. No. 343 is a contract for the '33–34 season.

Mr. COCHRAN. What is No. 341?

Mr. KALLIS. No. 341 is the pooling agreement.

Mr. COCHRAN. What is No. 344?

Mr. KALLIS. No. 344 is a letter dated August 14, 1944, from E. A. Pickett to R. H. Russ, and No. 345.

Mr. COCHRAN. Nos. 341 to 344 inclusive have been admitted, as I understand it.

Mr. KALLIS. That is right.

The COURT. They have all been admitted, including 345.

Mr. COCHRAN. 344 was excluded.

Mr. KALLIS. That is right.

By Mr. KALLIS:

Q. Mr. Russ, I show you what has been marked as Plaintiff's Exhibit No. 320 for identification and ask you whether you recognize this contract as the one you received from RKO for the '34–35 releases, first run?

A. Yes, sir. That is the RKO pictures; all of them; '34–35.

The COURT. What is the date of the contract?

Mr. KALLIS. The application is dated October 3,
1561 1934, and approved October 24, 1934.

The COURT. No. 326?

Mr. KALLIS. No, No. 320. This has been previously identified. I offer Plaintiff's Exhibit No. 320 in evidence.

Mr. COCHRAN. No objection.

Mr. KALLIS. Plaintiff's Exhibit No. 320, in evidence, is a first run contract for the 1934–35 releases of RKO given to Mr. Russ for his Camera Theater.

By Mr. KALLIS:

Q. Mr. Russ, did you play the RKO product, first run, for the '35–36 season?

A. '35–36 season, no, sir. Wait just a minute—I don't remember exactly—no, sir, I didn't have RKO for '35–36.

Q. Were you given an opportunity of buying that product?

A. No, sir.

Q. Did you make any effort to buy the '35–36 product?

A. I certainly did. That was the year following the '33–34.

Q. What did you do?

A. I asked them to sell it to me repeatedly.

Q. Spoke with whom?

A. Mr. Williams of RKO.

Q. What was his position with RKO?

1562 A. Branch manager.

Q. You spoke with him in Oklahoma City?

A. That is right.

Q. With reference to Columbia product for the '33–34 season, second run, did you make any effort to buy that?

A. For '33–34?

Q. Yes.

A. I don't remember making any great effort to buy Columbia, no, that year.

Q. What about United Artists for the '34–35 season, first run?

A. United Artists, '34–35?

Q. Yes.

A. I just took what they offered me. I asked for all they had and took what was left.

Q. What arrangement or what effort did you make to get the Paramount product for 1934–35 season?

A. I asked for that repeatedly.

Q. Where?

A. Oklahoma City.

Q. And you were not offered the product?

A. No, sir. I have a letter there stating why it wasn't sold.

Q. Mr. Russ, did you ever have a conversation with Mr. L. C. Griffith about March, 1933, concerning a picture called "Blond Captive"?

1563 A. I really don't remember the particular dates, but I do remember the conversation about Blond Captive, a Columbia picture.

Q. With whom was that conversation?

A. Mr. Griffith.

Q. L. C.?

A. L. C.

Q. As nearly as you can recall when did that take place?

A. That was about midway of our partnership agreement after we had been going probably seven or eight months.

Q. Where did that conversation occur?

A. In Mr. Griffith's office.

Q. What was said?

A. I asked him if I couldn't go down and buy "Blond Captive", which was a special picture being made by Columbia, released on a separate contract and he said "You can go down and buy Columbia Pictures" and as to "Blond Captive" he said, "You deal with Len Stocker. Don't deal with Sam Benjamin. Len Stocker is one of my boys and he will give you a good deal."

Q. With reference to United Artists for the '34–35 season, did you play any of those pictures first run?

A. What product?

Q. United Artists, '34–35?

A. No, sir. I didn't play any pictures of United

1564 Artists for '34–35. I played some first runs, British made pictures and refuse. Griffith wouldn't buy refuse.

Q. Did you play the top allocated pictures?

A. No, sir.

Q. What about '35-36 pictures?

A. Well, I had some United Artists first run and some second run. Those second run were picked from the better pictures of the preceding year.

Q. What about the first run?

A. As I remember it, they were the British made pictures and pictures that Griffith had refused to buy.

Mr. COCHRAN. We object to the continual statement about what Griffith refused to buy. The witness has repeatedly said that after you have ruled on it.

The COURT. Don't state what was said to you unless it was by Griffith or some of these defendants.

By Mr. KALLIS:

Q. With reference to RKO for the '35-36 season, what effort, if any, did you make to buy first run?

A. RKO '35-36?

Q. Yes.

A. Well, I asked them if they wouldn't sell me; that I needed the pictures very bad——

Mr. COCHRAN. We object to the conversation.

The COURT. Sustained. Exception allowed.

1565 By Mr. KALLIS:

Q. You did talk with RKO representatives in Oklahoma City?

A. Yes, sir.

Q. Showing you what has been marked as Plaintiff's Exhibit No. 340 for identification, do you recognize this as a contract you received from Universal for the 1935-36 releases, first run?

A. Yes, sir.

Mr. KALLIS. We offer Plaintiff's Exhibit 346 for identification in evidence.

Mr. COCHRAN. No objection.

Mr. KALLIS. This is a contract between Universal and R. H. Russ for the 1935-36 product, first run. The application was dated October 14, 1935, and the approval date is October 18, 1935.

By Mr. KALLIS:

Q. After playing the pictures called for in this contract, first run, for the '35-36 releases of Universal, did you receive a contract from Universal for the '36-37 releases, first run?

A. As I remember it, the next year the best we could do was to take what they call a split contract. Griffith had the pick of the pictures and I took what was left.

Mr. DUDLEY. We move to strike the answer out as not responsive to the question and a voluntary statement.

The COURT. The last part of the answer, of course, he could only have gotten that from someone telling him.

1566 The motion to strike will be sustained, as to Griffith getting the pick.

By Mr. KALLIS:

Q. Showing you Plaintiff's Exhibit No. 347 for identification, is this the contract which you received covering the '36-37 releases?

A. Yes, sir.

1567 Mr. KALLIS. We offer in evidence Plaintiff's Exhibit No. 347.

Mr. COCHRAN. No objection.

The COURT. No. 347?

Mr. KALLIS. No. 347.

The COURT. That's the Universal contract?

Mr. KALLIS. Universal contract.

The COURT. For '36-37?

Mr. KALLIS. For '36-37. It is a first run contract, and expressly provides that distributor is privileged to eliminate any 12 features, the exhibitor to play the remaining 24 as outlined above. The application is dated November 20, 1936, and approved November 30, 1936, for these at the Camera Theater, Universal product.

Q. Now, Mr. Russ, do you know what the 12 pictures which this contract provides should be eliminated by Universal cover?

A. Did I know which ones they were to take up?

Q. Do you know which ones were actually eliminated?

A. We would have to go back and check our bookings to make sure.

Q. Do you know the quality of those pictures?

A. I got the B and C pictures.

Q. What were the 12 which were eliminated from your contract?

A. The better pictures.

1568 Q. Did you characterize them as A pictures of Universal?

A. Yes, sir, A pictures.

Q. Were those played at the Griffith house?

A. They played at the other two houses, I don't know which house.

Q. In Stillwater?

A. In Stillwater, yes, sir.

(Plaintiff's Exhibit No. 348 for identification was marked by the reporter.)

The COURT. We will take a short recess.

(At the conclusion of the recess the proceedings were resumed as follows:)

By Mr. Kallis:

Q. Mr. Russ, calling your attention to the year 1939, do you know that there was a new theater built in Stillwater?

A. Yes, sir, about that time, the Campus was built.

Q. By whom?

A. The Griffith Amusement Company.

Q. Where, with respect to the business district is that Campus Theater located?

A. The Campus Theater is located opposite A. & M. College campus, about eight or nine blocks from the center of the town.

Q. How long did the Campus Theater start operating after it was completed?

1569 A. As soon as they had it completed, they opened it.

Q. And what character of product has been played at that theater?

A. They opened it as a second run house, run second run pictures.

Q. What major companies?

A. All the major companies with the exception of Metro.

Q. And with reference to the time before this Campus Theater was built, did you make any efforts to buy second run product for your theater?

A. Occasionally I bought second run pictures to fill out my programs when I couldn't buy first.

Q. Were you ever offered a regular season's deal by any major companies?

A. Nobody except Metro.

Q. How long have you been using Metro product second run approximately?

A. Do you mean all of Metro's run, their entire product each year?

Q. Yes.

A. Since 1937-38; that's the first group I bought of Metro.

Q. Since the Campus Theater was opened, have you made any efforts to buy second run product for your Camera Theater?

A. Yes, sir.

1570 Q. What have you done?

A. I buy Metro every year, they sell me Metro. I have no luck with anybody else.

Q. Have you made any efforts with the other seven major companies to buy second run for your Camera Theater?

A. Yes, sir.

Q. What efforts have you made?

A. I haven't been able to get any.

Q. What have you done, have you come to the film exchanges in Oklahoma City?

A. I go to the film exchanges and ask them what is open.

Q. Have you been offered a second run contract with any of the major companies?

A. No, sir.

Q. With the exception of Metro?

Mr. COCHRAN. Objected to as a repetition.

A. No, sir.

By Mr. KALLIS:

Q. During the period from 1933, when this partnership agreement terminated, to 1939, when the Campus Theater was opened, what were the admission prices of the three theaters in Stillwater?

A. Well, I believe, the Aggie was running for about ten and fifteen.

Mr. COCHRAN. We object, unless he knows and can
1571 give the admission prices.

A. I don't have the exact records. It can be found.

Mr. COCHRAN. His estimate of it would not be of any value to us.

The COURT. Well, since you don't know, don't state it; if you do know, you may state it.

A. I never checked it up.

By Mr. KALLIS:

Q. And since the Campus Theater was opened, what admission prices have been charged at that theater?

A. They run 10 and 20.

Q. What did you say?

A. 10 and 20.

Q. 20 cents refers to adults for evening performances?

A. That's right.

Q. What admission prices have you been charging during the same period?

A. I have been getting 10 and 25, plus tax.

Q. Mr. Russ, have you ever refused to buy any season's deal that was offered to you at any price demanded by any major company?

Mr. COCHRAN. Objection as leading and suggestive.

The COURT. Overruled, you may answer.

A. Answer?

By the COURT:

Q. Yes.

1572 A. No, I never refused to buy any major product that was ever offered to me.

By Mr. KALLIS:

Q. I am referring to either first or second run.

A. I never refused to buy any major product, no, sir.

Q. Prior to the time that the Griffiths opened the Campus Theater, was Griffiths playing any regular major second run product in either the Aggie or the Mecca Theater?

A. No, sir.

Mr. KALLIS. That's all.

Mr. COCHRAN. Mr. Kallis, will you let me have a letter delivered to you by Mr. McKenzie from the United Artists' file, a letter dated October 18, 1934, another dated November 1, 1934, another dated December 19, 1935, and also a letter delivered to you by Mr. Nickerson from the RKO files, dated December 14, 1939, another dated December 16, 1939, and another one dated February 5, 1940.

Mr. KALLIS. Now, Mr. Cochran, I will have to look through these papers and see just exactly what I have up here.

Cross-examination by Mr. COCHRAN:

Q. You said that during the years 1934-35, 1933-34, 1936-37, that the United Artists' pictures were inferior pictures?

1573 A. No, sir.

Q. Didn't you make the statement that they were mostly foreign made pictures?

A. No, sir.

Q. And that isn't a fact, is it?

A. They made some foreign made, they distributed some foreign made pictures; they made some very good ones.

Q. And isn't it a fact that during that entire period United Artists were recognized as some of the finest pictures made?

A. Yes, sir.

Q. However, those pictures were usually licensed at a higher price?

A. Yes, sir.

Q. Their license fees were excessive in your opinion, weren't they?

A. Yes, sir; they had plenty of film rental on some of them.

Q. They had plenty of film rental?

A. Yes, sir.

Q. Now, you say you never refused any major product that was offered to you during the period which counsel for the plaintiff asked you about; that was your statement, wasn't it?

A. Yes, sir.

1574 Q. I will ask you if it isn't a fact that around October 18, 1934, that United Artists took your application for a number of contracts?

A. '34?

Q. Yes, sir.

A. Yes—I didn't buy United Artists that year.

Q. I didn't ask you that. Didn't they take your application?

A. I don't remember whether they did or not.

Q. And isn't it a fact that those applications were rejected because of the rentals, because the rentals given were not acceptable to the producers of those pictures?

A. I don't know. That is something I don't know about.

Q. Isn't it a fact that when you were notified that they were not accepted, that you then wrote Mr. Truog on October 19, 1934, stating, "I am glad the contracts were not accepted. I had offered more for these pictures than I could pay. Your company is so far out of line with prices for my house here, that I think it is best to forget the whole deal?"

A. I remember writing them. Yes, sir, they were out of line.

Q. Then on December 19, 1935, weren't you negotiating with Mr. Truog for United Artists' product at that time?

A. I think so.

1575 Q. And negotiations extended quite awhile, didn't they?

A. Yes, sir.

Q. Didn't you write him on December 19, 1935, "after taking the whole matter into consideration I have decided to give United Artists a good letting alone. I feel pretty sore about this kind of treatment, especially after I have exerted special effort in the past two or three years to use all of your product at top prices, and in addition bringing nearly all of it back second run?"

A. That is exactly what I said.

Q. Now, when did you get into the motion picture business?

A. In October 1928.

Q. What had you been doing prior to that time?

A. Factory manager of the Harrison-Smith Battery factory at Oklahoma City.

Q. You had had no experience in the motion picture business, had you?

A. No, sir.

Q. And at that time you made a deal with Mr. Brewer, who was the manager of First National Pictures in Oklahoma City, to go in with you in a silent partnership in this Camera Theater, didn't you?

A. He agreed to lease the Camera from Mrs. Tull—Mr. Tull.

Q. I say, didn't you enter into a silent partnership
1576 with him at that time?

A. Yes, sir.

Q. Who had been operating the Camera Theater before that time?

A. Mr. F. M. Tull, the owner.

Q You furnished some money, did you?

A. I furnished the money, yes, sir.

Q. The understanding with Mr. Brewer was that he was to buy and book pictures for you, was it?

A. Yes, sir.

Q. At that time he was branch manager of one of the distributing companies, wasn't he?

A. That's right.

Q. And you knew that at that time branch managers were not permitted to engage in that kind of business, didn't you?

A. It was news to me; I didn't know it.

Q. At any rate, his partnership with you was a silent partnership?

A. I am not—I think everybody knew it.

Q. The lease was taken in your name, wasn't it?

A. Yes, sir.

Q. And the theater was operated by you?

A. Yes, sir.

Q. He was not known so far as the operations were
1577 concerned, was he?

A. He went on film row and booked the pictures.

Q. I mean except in the licensing of pictures from the film row?

A. I think he signed some of the contracts.

Q. How long did that arrangement continue?

A. Why, it was about a year and a half or two years.

Q. Well, when did it start?

A. In 1928.

Q. In 1928, what time?

A. October.

Q. Did he license pictures for you in the '28-29 season?

A. I don't remember.

Q. Did he license them for you in 1929-30?

A. No.

Q. Who did the licensing then?

A. I think that's when I did some of it.

Q. When did your arrangement with Mr. Brewer cease?

A. Shortly after he joined the Griffith Amusement Company and they put in the Reno Theater.

Q. When was that?

A. When the Reno was built, I don't know; it was along there in '29 or '30, somewhere around there.

Q. It was sometime prior to the time that he started operating the Reno Theater that he discontinued working for the First National, didn't he?

1578

A. Yes, sir.

Q. How long before?

A. I think it was—well, he went right out of the job with First National and went to building and operating and managing the theater. He was partly responsible for constructing it; he conceived the idea or something.

Q. At any rate, he was not connected with First National Pictures. The fact is, First National Pictures merged with Fox, didn't they, about that time?

A. Wasn't it Warner Bros.?

Q. Warner Bros.?

A. Yes, sir.

Q. He was no longer connected with First National, was he?

A. No, sir.

Q. The reason you made the deal, that arrangement with Mr. Brewer, one of the reasons, was that you knew nothing about licensing pictures, is that true?

A. That's right.

Q. You had never licensed a picture, had you?

A. I had never bought a picture, no.

Q. You also thought that by reason of having a man who was branch manager of one of the companies to do your licensing, that you would have some advantage in licensing pictures, is that right?

1579

A. Yes, sir.

Q. Now, Mr. Roy Heffner, who was manager of Paramount at that time, was one of the persons who cooperated with you and Mr. Brewer in that set-up, wasn't he?

A. Roy Heffner was a friend of mine; he had some Paramount pictures to sell and I bought them.

Q. He was one who helped to arrange for you and Mr. Brewer to go into business together, wasn't he?

A. Well, I don't know as he helped a whole lot.

Q. Well, he brought you together, didn't he?

A. No, we were all three living neighbors, next door together, on North Harvey Street.

Q. Mr. Brewer did continue to buy and book pictures for your theater at Stillwater as long as he was connected with First National, is that true?

A. I don't know whether it is or not.

Q. You don't know whether that is true, or not?

A. I don't know.

Q. You testified in the Momand case, didn't you?

A. Yes, sir.

Q. In the case of Momand vs. Griffith Amusement Company?

A. Yes, sir.

Q. I will ask you if you were asked this question in
1580 that case, on or about January 19, 1943, "How long did that partnership arrangement with Mr. Brewer continue", and your answer, "about two years"?

A. Uh-huh.

Q. Do you remember testifying to that?

A. Yes, sir.

Q. Is that correct?

A. I think it is. I don't know. I wouldn't swear to it.

Q. If that is correct, that would terminate your partnership about October of 1930, wouldn't it?

A. It was about a year and a half or two years.

Q. I am asking you if you testified to that in the Momand case? Did you so testify?

Mr. KALLIS. If the Court please, this witness on cross-examination specifically answered Mr. Cochran's question by saying he thought the partnership between himself and Mr. Brewer ended in 1929 or 1930. And I submit the question has been clearly and sufficiently answered. There is no reason for going over this, and trying to impeach him by some improper method.

The COURT. I think he has answered the question. He said a year and a half or two years.

Mr. KALLIS. If I heard his testimony correctly, he said
1581 that Mr. Brewer quit this partnership in 1929 or 1930. That is the story he has told all the way through.

Mr. COCHRAN. The question I was attempting directly to get an answer to here and inquiring about, he had stated here on the stand that he didn't know whether this buying arrangement with Mr. Brewer continued until he discontinued his relationship with, until Mr. Brewer discontinued his managership with First National, he answered he didn't know. Then I asked him if in the Momand case he didn't testify it did so continue and he has not answered the question.

The COURT. Let him answer the question. You may answer the question.

A. I don't know definitely.

By Mr. COCHRAN:

Q. Did you so testify in the case of Momand vs. Griffith Amusement Company?

A. I don't know.

Mr. KALLIS. If the Court please, I object to that.

The COURT. It is closed; he said he didn't know; that is all there is to it.

Mr. KALLIS. He hasn't stated anything that is inconsistent with it.

The COURT. Well, that is immaterial. He just asked him if he made that statement and he said no, and that answers it.

1582 Mr. COCHRAN. That's all the answer I want, your Honor.

By Mr. COCHRAN:

Q. Now, how long did you continue to operate the theater after Mr. Brewer ceased to buy and book pictures until you made the arrangement with Griffith Amusement Company represented by the——

A. (Interrupting.) A little over a year.

Q. Beginning in 1930?

A. About then.

Q. And extending to about what date?

A. I suppose it extended to the date we went in partnership with Mr. Griffith.

Q. What was that date?

A. That was in '31.

Q. What date was that in '31?

A. In October of 1931.

Q. Did you license any season's product for the theater prior to the time that—I mean a contract which was negotiated and executed by you, prior to the partnership arrangement with Griffith Amusement Company?

A. Yes, sir, we bought pictures, the old F.B.O. pictures, which were later RKO pictures.

Q. When did you license those?

A. When we first went into business, in '28-29.

Q. Mr. Brewer negotiated those, didn't he?

1583 A. No, we negotiated them together with Sam Benjamin, manager for F. B. O.

Q. Do you have those contracts?

A. I haven't got them with me, I don't believe.

Q. Mr. Russ, you didn't notice my question. I want you to tell me what pictures, if any, you licensed on a sea-

son's contract after you severed your relations with Mr. Brewer and prior to the time you made your deal with Griffith Amusement Company?

A. I think I bought some Universal pictures.

Q. For what season?

A. I think I bought some Universal pictures.

Q. For what season.

A. '31.

Q. Do you have that contract?

A. Yes, sir.

Q. Let's see it, will you, please?

A. Have you got that? I think it is Universal '31-32.

Mr. KALLIS. I don't recall seeing any Universal '31-32. There is a first run, '31-32 RKO contract here.

Mr. COCHRAN. No, I am asking about Universal right now.

Q. Are you mistaken, Mr. Russ, about having a '31-32 contract with Universal?

A. If that contract isn't there, I believe it can be found. I don't know for sure.

Q. What other product?

1584 A. Well, we had some old F. B. O. pictures.

Q. I am not asking you what you had; I am asking you what contract you negotiated in that period between the cessation of your connection with Mr. Brewer and the time you made the deal with Griffith in October 1931?

A. There was some Universals, RKO, some independent product, Tiffany Star.

Q. Do you have the contract with RKO which you say you negotiated?

A. I think the RKO contract of 1931-32 is there.

Q. Let us have it.

Mr. KALLIS. All right (handing).

By Mr. COCHRAN:

Q. Don't you know that the RKO contract which you had, which you negotiated in the fall of 1931, was the only major contract which you had executed prior to the time you made this deal with the Griffith Amusement Company?

A. No, I don't think so; I think there was other contracts in there.

Q. What other contracts do you think you had?

A. Well, we had an F. B. O. contract I know.

Q. The F. B. O. at that time was known as an independent, was it not?

A. I don't know, I guess so. It later merged with RKO.

1585 Q. That was a concern that later became the RKO, was it not?

A. That's right.

Q. In other words——

A. (Interrupting.) We had some Universal pictures, I remember definitely, running some Tom Mix pictures and Hoot Gibson pictures.

Q. I am not asking you what you had; I am asking you for contracts that you executed in the fall of '31 for the '31-32 season?

A. I don't know.

Q. Did you have any other major company's product that you made a contract for in the '31-32 season?

A. Other than RKO?

Q. Other than RKO?

A. I think I had Universal.

Q. But you can't locate the Universal contract?

A. No, sir, I haven't got it with me, but I am pretty sure we had Universal.

Q. Now, isn't it a fact that you made that arrangement with Griffith Amusement Company because, first, that the depression had commenced to be felt very seriously in the motion picture business?

A. No, sir, that was not the reason I joined them.

1586 Q. It is a fact that the motion picture industry in Oklahoma was very seriously feeling the effect of the depression at the time you entered into that agreement, isn't it?

A. We knew there was a depression on; it wasn't serious at that time.

Q. At that time you were losing money, were you not?

A. No, sir.

Q. The second reason, wasn't it, the further reason you entered into it was because you had no experience in the licensing of pictures and that you desired to have the services of some one that was experienced in licensing pictures?

A. I was inexperienced, yes, sir.

Q. Now, you have told us that you had a conversation with Mr. R. W. Clark late in the summer of 1931. Mr. Clark is dead, isn't he?

A. Yes, sir.

Q. Then you say you had a conversation with Mr. L. C. Griffith?

A. When?

Q. Well, you said after you had the conversation with Mr. Clark, you had a conversation with L. C. Griffith?

A. Not that day, no, sir.

Q. Did you have more than one conversation with Mr. R. W. Clark?

A. I had lots of conversations with Mr. Clark.

1587 Q. Well, I am talking about the conversation relative to the pooling of the Camera and the Mecca.

A. I talked to him several times about it, yes.

Q. What?

A. I talked to him several times about it.

Q. You remember detailing the conversation, the first conversation you had with him about that, don't you?

A. The first conversation?

Q. On direct examination, in the summer of 1931?

A. When I proposed that we join?

Q. In the coffee shop?

A. Yes, sir.

Q. You say you approached him at that time?

A. Yes, sir.

Q. Who was the next person connected with the Griffith organization that you talked to about that matter?

A. Mr. L. C. Griffith.

Q. Where was that?

A. In his office.

Q. When?

A. The same day, if I remember right, or it might have been the next week.

Q. And who was present at the time of that conversation?

A. Mr. Clark and Mr. Griffith.

Q. Anybody else?

1588 A. I believe his brother, H. J. Griffith.

Q. What is that?

A. I believe his other brother, H. J. Griffith, was there, there in his office; I don't remember who all was there.

Q. Who was present at the time this conversation took place between you and L. C. Griffith?

A. Mr. Clark.

Q. Who else?

A. The office was full of people, working there.

Q. Well, was Mr. H. J. Griffith there?

A. I don't know whether he was or not; he might have been.

Q. Was Mr. McKenna there?

A. I was up there so many times, I don't remember whether he was there on that particular time or not.

Q. What was the conversation at that time?

A. We talked over making a partnership agreement.

Q. Just what was said?

A. Well, I don't remember the exact conversation, that has been a long time ago, but I know what impressions were left.

Q. Can you give us the substance of the conversation?

A. Well, they said it would be a very advantageous deal for me if I did join them, and it would mean just
1589 one more, one less spot where they had opposition, and they were tickled with that, and I told them it was a little bit rough that we had to go 50-50 on the deal, and they said, "You will make more money in the long run; we will furnish you better business; we are experienced show men; we will give you better methods of exploitation, more advertising; we can buy things cheaper for you; we can book your pictures; you won't have to run back and forth to Oklahoma City to do that." All of these things were talked over.

Q. Did he say anything about the advantages of having efficient bookkeeping and auditing?

A. Yes, sir, they had a very efficient bookkeeping and auditing system.

Q. Can you recall anything else that was said on that occasion?

A. We worked out the details of the contract, and I don't know, I came back then in a week or maybe a couple of weeks later, and Mr. Leachman and his brother were in there and we went down and signed the contract at the lawyer's office downtown.

1590 Q. What lawyer's office was that?

A. Mr. Johnston's; Keaton, Wells & Johnston, somebody.

Q. How long was that before Thanksgiving of 1931?

A. I couldn't tell you. It was in the fall sometime, along in there; I don't know.

Q. Well, can you give us some estimate of the length of time?

A. I imagine it was before Thanksgiving.

Q. Well, how long?

A. I don't know.

Q. Did you put that contract in evidence?

Mr. KALLIS. Yes, it has been offered in evidence. September 12, 1941, referring to Plaintiff's Exhibit No. 341.

A. This contract was drawn up before we opened the show under the partnership in October, so I imagine it was done in September sometime.

By Mr. COCHRAN:

Q. So the show was opened up under the partnership in October, 1931?

A. That is right.

Q. Do you remember the date?

A. October, I believe.

Q. Why was it you delayed that length of time after the contract was signed before opening up the theater?

Mr. KALLIS. I don't think that is material.

The COURT. Overruled.

1591 A. I don't know whether there was any lapse of time in there or not; as soon as we got the booking straightened out and changed around we took over. I think it was the first of October.

By Mr. COCHRAN:

Q. Then there was about a month of operation between the time the Griffith Company started to licensing and booking pictures for the Camera Theater until Thanksgiving of '31. Is that correct?

A. It was around about that, yes.

Q. You say that on that date, on Thanksgiving day, 1931, you had a conversation?

A. I think it was a year later. It was the next Thanksgiving.

Q. No, it was in 1932. Is that correct?

A. It was after we had operated the partnership quite a while.

Q. In your direct examination you said it was Thanksgiving, 1931.

A. I think it was a year later, '32. I think it was after we operated the theater quite a little while. I am not sure it was Thanksgiving.

Q. So you were just mistaken when you said it was 1931 that that conversation occurred in Mr. Leachman's office with Mr. Clark?

A. It was later than Thanksgiving, 1931.

1592 Q. Who was present at that conversation?

A. Mr. Leachman.

Q. Anyone else?

A. Ish Clark.

Q. Who else?

A. Nobody.

Q. Which Mr. Leachman was that?

A. Claude.

Q. There are two Leachman. They are brothers, aren't they?

A. Three.

Q. You are sure Claude was the one that was present?
A. Yes, sir.
Q. You say you were dissatisfied at that time?
A. Yes, I was dissatisfied.
Q. What was said in that conversation?
A. Well, we had been talking about the operating of theaters and pictures and one thing and another and I told him I didn't like the way things were going; I didn't like the quality of pictures I was getting; I thought I would get some A pictures once in a while, as long as I was in partnership, and I had been getting B and C pictures. Mr. Clark said "Russ, you ought to consider yourself lucky, you are partners with us." I asked him why and he said:

"Well, we are going to make it tough on all inde-
1593 pendent exhibitors and eventually control the ter-
ritory." I said, "How are you going to do it?" He said, "By controlling the product." I said, "That is fine if it works out that way."

Q. That statement was made by Clark in the presence of Mr. Claude Leachman?
A. No, made by me.
Q. I mean the statement of Clark that "Russ, you ought to consider yourself lucky. We are going to make it tough on all the independents" and so forth.
A. That is right.
Q. That statement was made by Clark in the presence of Mr. Leachman?
A. I don't know whether Claude was in the room or not. It was a big room and the hall goes back of the projection room and whether Claude was in there at the time or not, all the time, I don't know. The three of us were together that morning.
Q. Awhile ago you told us that Mr. Leachman was present during that conversation. Do you want to change your mind on that?
A. He was around in the building. Whether he heard the conversation or not, I don't know. There were only three of us there at any time.

Q. I want to know if during that conversation
1594 there was anybody present other than Mr. Clark, de-
ceased?

A. Leachman was there in the office. Whether he heard it or not, I don't know.
Q. Now, you say you later had a conversation with L. C. Griffith about the Paramount product?
A. Yes, sir.
Q. When was that?

A. Well, that was along in the summer. It was hot weather I remember, about 32-33. It was the summer, the last summer of our partnership agreement. I can give you the date approximately. We terminated the partnership in May, 1933. I imagine it was around March or April, it began to get warm weather; in April, maybe.

Q. Where was that conversation?

A. In Mr. Griffith's office.

Q. Who was present?

A. Mr. Griffith.

Q. Anybody else?

A. I don't remember whether there was anybody else in the office at that time or not.

Q. You say later on you had another conversation with Mr. L. C. Griffith about the same matter?

A. I talked to him several times, yes, sir.

Q. How long was that after the first conversation you had?

1595 A. It wasn't very long; probably the next time I was down on film row.

Q. About how long?

A. A week or so.

Q. Who was present at that time?

A. Mr. Griffith.

Q. Anybody else?

A. I don't remember. I don't think so.

Q. Do you recall that in the trial of the case of Momand against Griffith Amusement Company, about January 19, 1943, that on cross examination you were asked this question: "The disagreement between you and Griffith arose out of the fact you thought the pictures ought to be exhibited at your Camera rather than at the Aggie". Do you remember that question?

A. No, sir.

Q. And your answer: "Our difference was, I had RKO pictures bought on our own contract and the clause in the contract, I was to use them exclusively in my theater."

"Q. They contended they had the right——

"A. They wanted three pictures the latter part of the year at the other house and took them.

"Q. So at any rate there was a disagreement there where the pictures should be played?

"A. That is right."

1596 Do you remember those questions and answers?

(No reply.)

"Q. And you terminated your relations with them in 1933 and since that time you have been operating this theater yourself?

"A. That is right."

I will ask you if in that examination you said anything about your disagreement with the Griffith Amusement Company arising because L. C. Griffith forbade you from licensing Paramount pictures?

A. No, sir.

Mr. KALLIS. I object to that until there is a showing made as to what specific questions were put to this witness in the Momand case.

The COURT. He has already answered it.

By Mr. COCHRAN:

Q. I will ask you if this question was not asked you by Mr. Smith, an attorney for Mr. Momand,—by the way, Mr. Smith at that time was representing you in arbitration proceedings, wasn't he, with Paramount?

A. He represented me just before or afterward.

Q. Wasn't he representing you at that very time?

A. I am not sure about the date.

Q. Didn't he at that time on direct examination ask you: "Do you recall at this time what was the first company that sold first run pictures away from you?

1597 "A. Well, I believe Paramount at the time I broke with Mr. Griffith and his organization—there were two years of Paramount pictures laying idle. That is, the year preceding and another year coming up, and I bought those two years first run from Paramount, and I was promised the third year by the manager, Mr. Baggett, but I never bought the third year because at that particular time they were friendly with Griffith and they sold the first run to Griffith, but I think Paramount was the first one that sold away from me."

Q. Do you remember that testimony?

A. That year, yes, sir.

Q. After you severed your relations with the Griffith Amusement Company you continued to operate the Camera Theater?

A. Yes, sir.

Q. And you have operated it down to the present time?

A. Yes, sir.

Q. You have operated at a profit each and every year?

A. Yes, sir, made a living.

Q. Now, will you say that the cause of the termination of the contract, the disagreement between you and the Griffith Amusement Company, was in connection with the playing of the RKO pictures?

A. That was one of the reasons.

1598 Q. And that is the only reason you gave in your testimony in the Momand case?

A. I wasn't asked any other reason.

Q. Now, you mentioned something about Warner Brothers product. I understood you to say, when the Camera Theater had Warner Brothers product licensed for the '32–33 season——

Mr. KALLIS. I don't recall any testimony whatever with regard to Warner.

By the WITNESS:

A. I didn't have any Warner Brothers in '32–33.

By Mr. COCHRAN:

Q. You never did have the Warner Brothers product, you never were its account?

A. When I first went into the picture business I ran some old First National pictures. No, I didn't have any Warner Brothers.

Q. You never were an account of Warner Brothers in Stillwater prior to the 1941–42 season, were you?

A. That is right.

Q. You were never an account of Fox?

A. No, sir.

Q. Prior to the 1941–42 season, were you?

A. No, sir.

Q. You were never an account of Metro prior to your second run account in '37–38, were you?

A. Except I bought their short subjects——

1599 Q. I mean feature product.

A. No, not feature product.

Q. In 1937–38, how many of the Metro pictures did you license second run?

A. In '37–38?

Q. Yes, sir.

A. I took the entire group.

Q. Was that a selective contract?

A. No, sir, I run the whole thing.

Q. And that included their best pictures?

A. Their A, B and C pictures.

Q. How many A pictures did Metro produce that year?

A. I don't know. I would have to look on the contract.

Q. You were not an account of Columbia at any time subsequent to the '32–33 season down to the '38–39 season, were you?

A. No, sir. I bought the Columbia one year was all. That was away back in '31–32.

Q. And you haven't attempted to buy Columbia since that time?

A. No, sir.

Q. Speaking of Universal, did you have a contract with Universal in the '32–33 season?

A. Yes, sir.

Q. Do you have that contract?

1600 A. I think we have it there for '32–33, the Universal.

Mr. KALLIS. I don't remember seeing it.

A. That is the one we argued about a little while ago. I am not sure.

Mr. COCHRAN. I thought the one we were arguing about then was '31–32. In other words, the first season after you discontinued your arrangement with Mr. Brewer.

A. We had some Universal pictures. I don't know how many of them or what.

By Mr. COCHRAN:

Q. You have introduced a contract here for some Universal pictures for the '35–36 season. The next year, '36–37, you have introduced a contract covering a number of pictures you had. That covers 24 pictures first run, does it not?

A. I think so. It was a split contract.

Q. You didn't say anything about '37–38 Universal.

A. I didn't have any '37–38 Universal, second run.

Q. Isn't it a fact that Universal attempted to license you pictures for that season?

A. No, sir. I bought some second run of them, 16 or 20, I don't remember which.

Q. Isn't it a fact they tried to license you first run pictures?

A. No, sir.

Q. All except the top A?

A. What year did you say again?

1601 Q. '37–38?

A. '37–38?

Q. Yes, sir, and you didn't license them?

A. No. They offered them to me, yes, but it was a split contract and I wouldn't take them.

Q. They were offered to you but you didn't take them because the top A was excluded?

A. That is right.

Q. In other words, they offered you the same kind of a contract you had for the '36–37 season and you refused to take it?

A. That is right.

Q. After your correspondence with United Artists, about which you testified a moment ago, back in 1934, when was the next time that you attempted to license any of United Artists' product?

A. After 1934?

Q. Yes, sir.

A. I don't remember exactly. Their film salesman called on me. I think I bought some second run pictures in 1935.

Q. Did you license any of their pictures for 1935–36 season, first run?

A. Some foreign made pictures.

Q. How many pictures?

A. I can't tell you exactly; four or six maybe.

Q. Do you have the contracts (Mr. Kallis hands the witness papers)?

1602 A. We have no way of telling which year's product these United Artists' contracts cover. They don't have a date on here except the date they were accepted.

By Mr. COCHRAN:

Q. These items you have here are spot booking items, aren't they?

A. No, sir.

Q. These are not the contracts?

A. Those are acceptance sheets you got after you sign the contract and it is approved. They are all approved.

Q. You don't have the contracts?

A. The contracts are right there—no, the contracts are downstairs. There are four pages on each contract. I thought that would be easier to handle there.

Q. I will go to something else until we get them. Is it not a fact that in the '35–36 season you refused some United Artists pictures which were offered to you because of the price?

A. A ridiculous contract, yes, sir.

Q. Do you remember how many of those pictures you declined?

A. No, I don't remember. There was a few of them there.

Q. They were offered to you but at prices you considered unfair?

A. That is right.

1603 Q. You stated that you attempted to obtain second run pictures from all of the major distributors. Is that right?

A. When?

Q. Prior to '38–39?

A. No, sir, I didn't try to get from all of them. I would go around and get a few to fill out my program as I needed them.

Q. Spot booking?

A. That is right. I bought RKO consistently, 10, 12, 115 pictures as a rule.

Q. On a spot booking contract?

A. No, there was a definite contract. I committed myself definitely each year.

Q. Do you have your second run contract with RKO?

A. They are all right there.

Q. You say you had a contract with RKO for second run pictures for the season of '35–36?

A. RKO, '35–36?

Q. Yes, sir. I am not talking about spot booking. I am talking about the contract for a group of pictures.

A. No, sir, not '35–36.

Q. '36–37?

A. I bought 15 second run in '36–37.

Q. On what date?

A. I don't know. It is on the contract.

1604 Q. In '37–38?

A. In '37–38?

Q. Yes, sir.

A. No, sir.

Q. Did you attempt to license second run pictures from RKO in '37–38, second run?

A. In '38 I bought 15 of their '36–37, second run pictures. Whether we had any of the '37–38 RKO group, I don't remember. I don't think so.

Q. I am asking you if, during that period of '36–37 and '37–38 you applied for pictures, second run, of RKO and were denied?

A. If didn't buy them second run I asked them to buy them because I was deviling them for pictures all the time.

Q. Do you remember any occasion when you did?

A. I don't remember a definite occasion, no, but every time I went into book pictures I would ask them if they had anything to sell. I was booking pictures practically every week.

Q. On their RKO product, '38–39, you were licensed some first run pictures and some second run pictures, weren't you?

A. That is right, 15.

Q. Isn't it a fact that you were delinquent in the playing of that product during most of that season?

1605 A. I was delinquent, yes, sir, I was holding them back on purpose for protection.

Q. They couldn't get you to date second run pictures, could they?

A. I didn't want to date them too soon, no.

Q. On December 12, 1939, did Mr. Peppercorn, the office manager of RKO write to you calling attention to a number of first and second run pictures of Paramount which were delinquent?

A. Mr. Peppercorn didn't work for Paramount.

Q. If I said Paramount I made an error. RKO.

A. Yes, sir, he wrote me several times.

Q. And you were delinquent at that time?

A. I was delinquent, yes, sir.

Q. And he continued writing you in regard to that matter?

A. Yes, sir.

Q. For a number of months thereafter, didn't he?

A. Yes, sir, and I eventually played the pictures.

Q. Finally played them all?

A. Yes, sir.

(Hereupon Court adjourned until 10:00 o'clock a. m. May 23, 1945.)

1606 PROCEEDINGS

May 23, 1945, 10 o'clock a. m.

RAY H. RUSS, recalled, further testified as follows:

Cross-examination (cont'd) by Mr. COCHRAN:

Q. I notice there were certain questions which I read from the testimony in the Momand case to which there was no reply. That is, it is indicated in the record there was no reply, so I want to re-ask in regard to that matter. When you testified in the Momand case I will ask you if you did not state, referring to the cause of the culmination of the contract between you and the Griffith Amusement Company, involving the operation of your Camera Theater, if you did not answer:

"A. Our difference was I had RKO pictures bought on our own contract and the clause in the contract, I was to use them exclusively at my theater."

The question was then asked: "And have contended they have the right—(interrupted).

"A. They wanted three pictures the latter part of the year at the other house and took them.

"Q. So that anyhow there was a disagreement over where the pictures should be played?

"A. That is right.

1607 "Q. And you terminated your relations with them in 1933, and since that time you have been operating this theater yourself?

"A. That is right."

Did you so testify in answer to those questions?

A. I testified that way, yes, sir. That was not the only reason we terminated the contract.

The COURT. The question is, did you answer as has been asked you in that other testimony?

A. That is right, as far as it goes.

1608 By Mr. COCHRAN:

Q. When did you first tell anyone that in a conversation which you had with Mr. Clark in the office of Mr. Leachman at Aggie Theater that he said, "Russ, you ought to consider yourself lucky that you are affiliated with us", and I said why and he said, "We are going to make it tough on all independent exhibitors and close them out".

A. Who did I talk it over with?

Q. Who did you first make that statement to?

A. I think I talked to my operator first about it, he was around there right close, and we talked it over.

Q. Who else?

A. My wife.

Q. I am talking about connected with the Government or your attorney in the arbitration suit or your attorney in the Momand case?

A. Well, I think I talked it over with Mr. Momand; he asked me questions at different times, and we discussed it, and Mr. Smith, who was an attorney in the arbitration case.

Q. Mr. Smith was the attorney who was examining you in the Momand case?

A. Yes, sir.

Q. Wasn't he?

A. Yes, sir.

1609 Q. And at that time he knew about that statement and these other statements that you have mentioned?

A. Yes, sir.

Q. Yet you testified nothing in regard to that in that case?

A. I wasn't asked.

Mr. KALLIS. If the Court please, I object to that unless there is a showing first as to precisely what Mr. Russ told this attorney Smith, and just exactly what Mr. Smith——

The COURT (interrupting.) Overruled; this is cross-examination; it merely goes to the credibility of the witness.

Mr. KALLIS. It doesn't throw much light, your Honor, on it unless we know just exactly——

The COURT (interrupting.) It is immaterial what he said; the question is if he knew that and you told him that

and didn't say anything about it. Now, that is proper cross-examination, and that is as far as it goes.

Mr. KALLIS. Well, now, it appears—but the exact function that Mr. Smith had in connection with the case that he may have handled for Mr. Russ in 1943, or whatever the date was, doesn't appear to have any relationship with the purchase of Paramount pictures in 1932.

The COURT. Not a thing; it merely goes to the credibility of this witness.

1610 By Mr. COCHRAN:

Q. You knew in the trial of the Momand case that one of the contentions was that there was an attempt to monopolize theater operations in the State of Oklahoma, didn't you?

A. That's right.

Q. And you knew that when you testified?

A. Yes, sir.

Q. Who is the first person connected with the United States Government that you ever——

A. (Interrupting.) I think it was a man by the name of Simon.

Q. Did you make any statement in writing?

A. We talked the whole thing over, he wanted me to make a statement, and we sat down in the office and I talked to him.

Q. Did you make any signed statement at that time?

A. I believe I signed it, yes, sir.

Mr. COCHRAN. Do you have the statement that was prepared, the signed statement?

Mr. KALLIS. I have some——

A. (Interrupting.) I think there is a record of it.

Mr. KALLIS. Statements of Mr. Russ, but they were left downstairs.

Mr. COCHRAN. May I see them, please.

A. I have a copy of it right there in the folder. I think the original is there.

1611 Mr. WRIGHT. You can ask the witness for whatever quotations he has.

By the WITNESS:

A. I think the original is there with Mr. Simon's name on it.

By Mr. COCHRAN:

Q. Did you sign it?

A. I would have to look and see to be sure.

Q. Let's see it.

The COURT. He has the right to see it. He testified he made it.

Mr. KIME. It is not a signed statement.

By Mr. COCHRAN:

Q. Is that the statement which you did make?

A. That is the statement I made. That is copy Mr. Simon took the copy off of. Whether I signed it or not I don't know.

Q. Did you sign the original?

A. There is a place it should be—I don't know.

Mr. KIME. I will say we have the statement Mr. Russ signed on about August 1, 1939. It has Mr. Russ's signature. We have it down in the Department of Justice files in the office of the United States Attorney.

By the COURT:

Q. Is that the identical copy?

By the WITNESS:

A. That is the one we worked out and that is the copy he made his off of; just the same as the work sheet.

1612 Mr. COCHRAN. Why cannot we examine the copy?

Mr. KALLIS. If you will declare a recess for five minutes we will be glad to go down and bring that file upstairs.

The COURT. Can you proceed with something else while they are doing that?

Mr. COCHRAN. Yes. I can ask some other questions.

The COURT. Of course, that would be competent only for one purpose. That merely goes to the credibility of this witness as to the correctness of the statement that he has testified to here.

By Mr. COCHRAN:

Q. Mr. Russ, you testified that sometime after the partnership arrangement between you and the Griffith Amusement Company that you discussed with Mr. L. C. Griffith the matter of licensing some Columbia pictures. You mentioned in particular "Blond Captive." As a matter of fact, you discussed with him the advisability of licensing for your theater a number of Columbia pictures did you not?

A. That is right, a whole year's product.

Q. And he made no objection to you doing that?

A. No, sir.

Q. And on September 26, 1932, or about that time, you entered into the contract which has been introduced in evidence as Plaintiff's Exhibit No. 345 with Columbia

1613 covering 32 pictures?

A. That is right.

Q. When did you commence to play those pictures?

A. Well, sir, I don't know. I imagine we commenced right away. I would have to check my bookings to find out.

Q. Your idea is you commenced right away?

A. That is right.

Q. Now you say that he forbade you to license any pictures from Paramount and you went ahead and licensed some anyhow?

A. That is right.

Q. Prior to the time of the termination of your agreement?

A. That is right.

Q. And you said that was the product for the 1932–33 season?

A. Yes, sir.

Q. And you identified Plaintiff's Exhibit 342 as covering the product which you licensed at that time and stated that the application date as shown on the document was April 24, 1933?

A. That is the date on there.

Q. Do you know what date that contract was approved?

A. Is it marked on there? I don't know when it

1614 was approved.

By the COURT:

Q. What is the contract?

Mr. COCHRAN. This is Exhibit 342.

By Mr. COCHRAN:

Q. When did you start to playing those pictures?

A. Soon after I broke the partnership with Griffith.

Q. You didn't start playing any of them until after you had broken the partnership?

A. No, sir.

Q. Did he know you had licensed those pictures?

A. I don't know whether he did or not.

Q. You didn't tell him you had licensed them, did you?

A. I don't remember of telling him, no.

Q. And you had not played any of those pictures before May 1, 1933?

A. I don't know whether I played them before May or not because the deal was made long before that contract went through.

Q. But the point I am making is, before you terminated the contract with Griffith you had not played any of those pictures in your theater?

A. No, sir.

Q. So far as you know the Griffith organization and Mr. L. C. Griffith did not know that you had gone ahead and licensed any Paramount pictures?

A. I think they knew it.

1615 Q. How did they know it?

A. I think they heard about it from Paramount.

Q. Why do you say you think that is true?

A. Well.

Q. Do you have any knowledge that they knew it?

A. Not direct, no.

Q. Now, isn't it a fact that you licensed those pictures in anticipation of the termination of the contract, which termination you had based upon dissatisfaction about booking pictures?

A. I licensed those pictures because I needed some product to run of that quality.

Q. Yet you licensed them in April and didn't start to play them until later?

A. I started to playing them as soon as I could.

Q. Why couldn't you play them any sooner?

A. I think the date on that contract is away later than when the deal was made; I may have played some pictures off of that contract before that date.

Q. You think the contract was early and you may have played some pictures on it?

A. Yes.

Q. Because you didn't need those pictures?

A. I certainly did.

Q. You made this contract in order that you could have product to play in that theater immediately, didn't you?

A. That is what I wanted.

1616 Q. Those pictures were pictures of the 1932–33 season, were they not?

A. That's right.

Q. In other words, they were pictures which you licensed here which had been released as early as September of 1932?

A. They were pretty near a year old.

Q. There was no reason why they couldn't be booked in your theater at once, was there?

A. They could be booked any time.

Q. Any time?

A. Yes, sir.

Q. It is customary to write into these contracts the date when you will start playing off the contract, isn't it?

A. Sometimes they do.

Q. I will ask you to examine this contract and state what the exhibition arrangement is.

A. 6–1–33.

Q. In other words, it says here "pictures to play at the rate of five per month, starting June 1, 1933".

Mr. WRIGHT. Has that an exhibit number?
Mr. COCHRAN. Yes.
The COURT. 342.

By Mr. COCHRAN:

Q. That is what it says, isn't it?

A. That is what it says, yes, sir.

1617 Q. Can you tell us then why these pictures which were immediately available, which you desperately needed to play, which you licensed for the purpose of immediately playing, notwithstanding L. C. Griffith had told you that you mustn't buy any of them, you specifically agreed in your contract to not start playing until after the termination of your contract with Griffith; why was that?

Mr. KALLIS. Just a minute. Will you read the question again?

(Question read by the reporter.)

Mr. KALLIS. If the Court please, I object to that question because that is not what the contract with Griffith provided. The agreement by its own terms specifically provides that it is to terminate in September of 1932; it was a contract for one year, and the terms of this contract were no longer in force after September 28, 1932.

Mr. COCHRAN. His testimony yesterday was that he terminated it on May 1st, I believe it was, that was his testimony, and that it was terminated because of his licensing of these pictures.

The COURT. You may answer, if you can. The question, I think, is not very clear, but you may answer it, if you can.

A. The starting date on these contracts—lots of

1618 times pictures are run before the starting date; we will get a contract and we will put a starting date on it, and we may run the picture sometimes a month or two before that.

By Mr. COCHRAN:

Q. Mr. Russ, will you please answer my question, why you signed a contract which specified that it was not to start until June 1, 1933?

A. The specifications of the starting date in there didn't mean a thing; it was wrote in there for their own protection; they wanted a date when we would start it, and we would run them within a year from that time. Paramount put that in there themselves.

Q. You were very anxious to have a starting date as early as possible, weren't you?

A. Yes, sir. I knew I could get any one of those pictures when I wanted to book them.

Q. Isn't it a fact that you didn't play a single picture under that contract prior to June 1, 1933?

A. I don't know; I would have to check that.

Q. Do you have any record from which you could tell?

A. We terminated our partnership in May; you would have start them in June. We broke off the partnership sometime in May; they were booking the pictures then.

Q. What time did you terminate your contract?

A. In May 1933.

Q. You said May 1st, didn't you?

A. I don't know whether it was May 1st or when.

1619 Q. In your direct examination?

A. I beg pardon?

Q. You said May 1st in your direct examination?

A. I think it was in May; I don't know whether it was May 1st, or not.

Q. Do you want to place it later than May 1st now?

A. I don't know; I would have to check that date; it was a long time ago.

Q. At the time you made this contract in April 1933, you knew then that you were going to terminate your arrangement with Griffith, didn't you?

A. Please state that again.

(Question read by the reporter.)

A. Yes, sir; Mr. Griffith told me it would mean a direct break.

Q. You had made up your mind that you were going to terminate it, had you?

A. That's right.

Q. The second contract that you executed, Plaintiff's Exhibit No. 343 for identification, bears date as of July 25, 1933; that was after your relations with Griffith had terminated, wasn't it?

A. I think so.

Mr. COCHRAN. Now, may I have that statement, please?

Mr. KALLIS. This statement, with the exception of

1620 the pencil notes which are in Mr. Wright's handwriting and mine, is in a condition as it was in the files of the Department of Justice. (Handing to counsel.)

By Mr. COCHRAN:

Q. In that statement which you made did you say anything about the contract being terminated, the contract with the Griffith Amusement Company being terminated on account of the fact that you licensed Paramount pictures?

Mr. KALLIS. If the Court pleases, the letter speaks for itself and I object to the question unless the showing is made as to just what questions were put by Mr. Seymour

Simon of the Department of Justice who interviewed Mr. Russ just prior to the execution of this statement.

Mr. COCHRAN. I asked this witness who was the first Government authority to whom he first made a statement about Mr. L. C. Griffith before the licensing of Paramount pictures and he said Mr. Simon. Now I am asking him if he said anything in regard to Mr. L. C. Griffith, any conversation with L. C. Griffith at all.

Mr. WRIGHT. What he said appears in the statement.

Mr. KALLIS. Let's have it marked and put in evidence.

Mr. COCHRAN. The statement is not admissible in evidence. I asked him a simple question. I am just
1621 asking him if he finds anything in the statement in regard to the conversation with L. C. Griffith. He said the first man he told that was Mr. Simon. I am trying to find out if it is in the statement.

By the WITNESS:

A. In talking with Mr. Simon we didn't go into the Griffith partnership very thoroughly.

By Mr. COCHRAN:

Q. So there was no statement made by you to Mr. Simon about the conversation you have detailed with L. C. Griffith, either one of them, regarding Paramount pictures?

A. I can't answer that question.

Q. Look at the statement.

A. That takes in too much territory.

Mr. WRIGHT. What he examined about, he called for the statement in connection with the conversation with Mr. Clark. That is what he was interrogating him about, when he asked him if he made a statement about that conversation to Mr. Simon. There is no point in his arguing with the witness as to what is or is not in the statement. The statement is there and it can be offered and it will show exactly what is in it and what isn't in it.

The COURT. I think we are spending a lot of time on very immaterial matters. I think three-fourths of this testimony is absolutely immaterial. Is there anything further with this witness?

1622 By Mr. COCHRAN:

Q. Mr. Russ, what product are you now playing in your theater?

A. I am playing Metro second run, and any third run pictures that I want to go and buy.

Q. In other words, you are playing now second run Metro?

A. Yes, sir.

Q. And second and third, or some second and third?

A. Third run from the others.

Q. Third run from any of the others you want to play?

A. Yes, sir. It seems to be an open market for third run.

Q. In 1938-39, did you license any Grand National pictures?

A. Yes, sir, I licensed some Grand National.

Q. First run, did you not?

A. Yes, sir.

Q. Did you license any Monogram?

A. I licensed some A and M, first run, and Gaumont British, first run.

Q. What others?

A. I am doubtful about Monogram. I don't know.

Q. If you didn't license Monogram in '38-39 for each season subsequent to that time, you had Monogram available to you?

1623 A. Yes, sir.

Q. And have licensed all the Monogram product you wanted?

A. I could have bought Monogram.

Q. And have played it?

A. I have played lots of Monogram and will play some more.

Q. You say you played some A and M?

A. Yes, sir.

Q. What other product did you play, first run?

A. Gaumont British and Republic, Square Deal.

Q. All those were first run pictures?

A. Yes, sir.

Q. That is all.

Re-direct examination by Mr. KALLIS:

Q. Mr. Russ, what is the A house of Griffith in Stillwater?

A. The Aggie Theater.

Q. With reference to box office values, can you tell us whether Square Deal, A and M, British Gaumont, Grand National are top pictures?

A. As box office values they are very poor.

Q. And are those pictures played at the Griffith A houses in Stillwater?

1624 A. No, sir.

Q. I show you what has been marked as Plaintiff's Exhibit No. 348 for identification and ask you if you recognize that as an RKO first run for the '38-39 season.

A. Yes, sir. This is the RKO contract for the '38-39 feature productions.

Q. What run?

A. First run.

Q. I show you Plaintiff's Exhibit No. 349 for identification and ask you if you recognize that as an RKO contract for the '39–40 season, first run, which you received from that company?

A. Yes, plus all other comedies and newsreels.

Mr. KALLIS. I offer those in evidence as Plaintiff's Exhibits 348 and 349.

Mr. COCHRAN. No objection.

The COURT. Those are RKO contracts?

Mr. KALLIS. RKO, first run for the seasons respectively of '38–39 and '39–40.

By Mr. KALLIS:

Q. In addition to those first run contracts you received from RKO for the '38–39 season, did you receive second run contracts for 30 features each for the same seasons from RKO?

A. I received contracts second run, but I don't believe it was 30 pictures.

1625 Q. 20 pictures?

A. 20 pictures, yes, sir.

Mr. COCHRAN. We object. The contract will be the best evidence.

The COURT. It is already in evidence.

Mr. COCHRAN. No, the second run contract is not in evidence.

Mr. KALLIS. We have them here.

The COURT. Well, it was 20?

By the WITNESS:

A. Yes, sir, it was around 20 pictures.

Mr. COCHRAN. Let's have the contract.

The COURT. I don't know why you want to increase this record by the introduction of all these contracts.

Mr. COCHRAN. Because counsel insists on having the witness answer questions which are not exactly in accord with the records. If he would be accurate about it, it would be all right. He testified yesterday he licensed for each one of those years, 10, 12, or 15 RKO pictures, second run. Now he asked him if it was 30 and the witness says 20.

Mr. KALLIS. I didn't ask 30. I said 20. The record will so show.

By the WITNESS:

A. Will you tell me what year that is? I will try to answer it exactly. I think the confusion is due to the fact it was two different years of 15 each.

1626 By Mr. COCHRAN:

Q. Defendants' Exhibit No. 67 is the second run contract for the 1938-39 season, isn't it?

A. That is right, 15 features. '38-39, that is right.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 67.

The COURT. That is RKO, second run?

Mr. COCHRAN. RKO, September 1, 1939.

By the WITNESS:

A. But it was the '36-37 production.

1627 Mr. COCHRAN. Fifteen features. And No. 68, Defendant's Exhibit 68, which is dated November 23, 1929, and covers 20 second run pictures with preview privilege. That's all.

Mr. KALLIS. That's all.

By the COURT:

Q. Now, Mr. Russ, just one question, it may not be pertinent to the case. Since November 20, 1940, the date of this consent decree, have you been able to procure pictures?

A. Not first run, no, sir.

Q. Why haven't you been able to secure first run?

A. I can't buy any. I can buy all the third run I want, but I can't buy any first runs, except Monogram.

Q. Have you ever gone to the arbitration board for that purpose?

A. We had an arbitration case, yes, sir; it never was settled, it never was carried through. I lost RKO pictures right there.

The COURT. That's all.

By Mr. COCHRAN:

Q. Do you know that arbitration was dismissed for want of prosecution?

A. That was what was on the ticket. The first notice I had of it was that I had lost it.

Q. That arbitration case was on file at the time you testified in the Momand case, was it not?

1628 A. Yes, sir.

Mr. COCHRAN. That's all.

The COURT. Stand aside.

(Witness excused.)

JESS JAMES HALE, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. Would you state your full name and address?

A. Jess James Hale; 711 Northeast 17th Street.

Q. (By the Court) Oklahoma City?
A. Right.

By Mr. WRIGHT:

Q. You were formerly in the theater business at Hobart, Oklahoma, were you?
A. Yes, about 1929, in the fall of '29, I believe, something like that.
Q. That is, you went there in '28 or '29?
A. '28 or '29, yes.
Q. And you were connected with what theater there?
A. The Palace Theater.
Q. Who owned the theater?
A. Mr. Baker, he is dead now; Mr. Baker remodeled and rebuilt the theater at that time.
Q. That was the Palace?
A. Yes, sir.
1629 Q. And you managed it?
A. Yes, sir.
Q. Do you also have an interest in it?
A. I had a 49% interest in it.
Q. And how long did you operate the Palace there?
A. How long?
Q. Yes.
A. About '36, up to '36.
Q. When it was opened in '29, what other theaters were operating in Hobart?
A. Well, the Oklahoman and the Rialto and oh, the Cozy, I believe it was, the other one.
Q. Who was operating the other theaters?
A. Mrs. Tolbert was operating the Rialto and Charley Mahone the other.
Q. Was the Kiowa built there about that time?
A. It was built there soon after that, after I opened.
Q. Soon after you went there with the Palace?
A. Yes, sir.
Q. Do you know who built that?
A. It is my understanding that the Griffith Amusement Company.
Mr. COCHRAN. We object to that unless he knows, because, as a matter of fact, that isn't correct.
1630 By the COURT:
Q. Do you know of your own knowledge who built it?
A. Well, it would be, it was Griffith Amusement Company —I don't know whether it was under that name, but it was the Griffiths that bulit it.

Q. Do you know of your own knowledge who built it, that is the question?

A. Not exactly the company, the name they were under, I don't suppose I do.

Q. Is what you know just the rumor?

A. Well, I suppose that is it.

The COURT. Objection sustained.

By the COURT:

Q. It was built by some one else?

A. Well, it was built by the Griffiths.

Q. You didn't build it?

A. No, it was built by some one else, by the Griffith connections, or subsidiary or something or other, I just wouldn't know how it was.

By Mr. WRIGHT:

Q. In any event, in 1929, after the Kiowa was built, you continued to operate the Palace, did you?

A. Yes, sir.

Q. And Mohone was operating the Oklahoman?

A. The Oklahoman and the little Cozy.

By the COURT:

1631 Q. Did I understand that this Kiowa Theater was a new theater?

A. Yes, sir.

Q. When was it built?

A. It was built after I opened, it must have been '29 or '30, something like that; I wouldn't say positive because I didn't keep a record of it.

The COURT. Proceed.

By Mr. WRIGHT:

Q. Then, calling your attention to the years from 1930 through 1934, the houses that were operating there in addition to your Palace, were the Kiowa and the Oklahoman?

A. Yes, the Kiowa and the Oklahoman. The Kiowa was closed there, I don't know, a year and a half or two years.

Q. What period was it that the Kiowa was closed?

A. It must have been '31 or '32, or along in there, about two years, something like that, or two and a half.

Q. Then do you remember about when it reopened?

A. It must have been in about '33, the fall of '33, or something like that; I wouldn't say positive the date, because I just don't remember.

Q. Could it have been '34?

A. Something like that.

Q. Calling your attention to the '33–34 season, do you recall at this time what, if any, major product you were playing in the Palace?

1632 A. '33–34?

Q. Yes.

A. I think we had Warner Brothers, First National, Columbia, major product.

Mr. COCHRAN. I can't understand what he says.

A. Do I talk loud enough?

By Mr. WRIGHT:

Q. Speak louder.

A. Warner Brothers, First National, and Columbia, major product.

Q. I will show you these contracts that have been previously identified as Plaintiff's Exhibit 248 for identification, respectively, and ask you if you recognize those as the contracts that you made for the Palace, for the Warner-First National product for the '34–35 season?

A. Yes, sir.

(Plaintiff's Exhibit No. 350 for identification marked by the reporter.)

The COURT. What season, Mr. Wright?

Mr. WRIGHT. I believe he has there the '34–35.

The COURT. Very well.

Mr. WRIGHT. We will offer these in evidence.

The COURT. Those exhibits are both Warner Bros.?

Mr. WRIGHT. Yes, sir; while one is designated First National Productions and the other is designated

1633 Warner productions, they are both made the same date, with the same agency, Vitagraph, Inc.

Mr. COCHRAN. In other words, there will be no contention between us that the same distributor was licensing the pictures represented by both of these contracts?

Mr. WRIGHT. Yes. It appears on the face.

Mr. COCHRAN. First National and Warner had consolidated at that time, that's correct, is it?

Mr. WRIGHT. I think they both show they were made by Vitagraph, Inc.

Mr. COCHRAN. I mean so far as the productions are concerned?

Mr. WRIGHT. That's right.

Mr. COCHRAN. First National and Warner Bros. had consolidated.

Mr. WRIGHT. Yes.

By Mr. WRIGHT:

Q. I will show you this contract with Columbia, dated July 30, 1934, which is Plaintiff's Exhibit No. 350 for

identification, and ask you if you recognize that as the copy of the Columbia deal you had for the '34–35 season?

A. Yes, this is a copy.

Mr. WRIGHT. I will offer Plaintiff's Exhibit No. 350 in evidence.

Mr. COCHRAN. No objection.

1634 The COURT. They will be admitted.

By Mr WRIGHT:

A. Now, Mr. Hale, with reference to the next season, '35–36 season, were you offered a season's deal for the first run pictures of the Warner-First National productions?

A. I tried to buy them, but they said they had sold them to the other——

Mr. COCHRAN (interrupting.) We object to what was stated.

The COURT. Don't say what was said. You did try to buy them?

A. I tried to buy them from the salesman, and he informed me——

The COURT (interrupting.) Don't say what was said. You couldn't buy them?

A. I couldn't buy them.

By Mr. WRIGHT:

Q. Did he take an application from you?

A. No, sir.

Q. Was there any discussion of terms?

A. No, I don't think so.

Q. How about Columbia, was the next season's product for 1935–36 offered to you?

A. I don't believe it was; I didn't have a chance to buy them, I don't think.

Q. Then, what did you have for the '35–36 season?

1635 That was the last season you were in operation there?

A. Yes; I was cleaning up on these contracts, and I got those cleaned up as soon as I could, and after that I didn't have anything but independent pictures, all I could get.

Q. You didn't have any major product for the '35–36 season, that is, of that season's releases?

A. We bought Paramount stuff, but I don't remember whether that was the '34–35 or the '35–36. I believe it was the '34–35, although I am not sure.

1636 Q. You had that at the same time you had the Columbia and Warner?

A. Something about the same time.

Q. Were you offered the Paramount for the '35–36 season?

A. Either '35–36 or '34–35. Now I just don't remember.

Q. Were you offered it for the succeeding season, whichever it was?

A. No, I wasn't.

Q. It was during the year 1936 you had nothing but independent product?

A. That is all I had.

Q. And what happened to your operations then, what did you do in '36?

A. I sold out to Charlie Mahone; give it to him almost.

Q. Mahone took the Palace over?

A. Yes, sir.

The COURT. Sold to whom?

A. Charlie Mahone.

By the COURT:

Q. In '36?

A. Yes, sir.

By the COURT:

Q. What month, do you remember?

A. I believe it was in March. I am sure it was.

By Mr. WRIGHT:

Q. Do you know what theater played the Warner and Columbia and Paramount product that was not
1637 offered to you?

A. The Kiowa played the Warner Brothers. I wouldn't be sure about the Columbia but I believe they played it.

Q. How about Paramount?

A. I don't remember whether they were playing Paramount when I closed or not. I just wouldn't say for sure.

Q. That is all.

Cross-examination by Mr. COCHRAN:

Q. Mr. Hale, you owned the building in which the Palace was operated, didn't you?

A. I did not.

Q. Who owned the building?

A. Mr. Baker. He remodeled it.

Q. What date in 1929 did you open the Palace Theater?

A. Well, it was opened in March, I believe. We remodeled it the last part of the year, and opened,—it was either '28 or '29, maybe '30; I don't know. We opened it in March.

Q. You cannot come within two years of being positive of when you opened?

A. I beg your pardon.

Q. You cannot give us within two years of when it was opened?

A. I was under the impression it was '29 after we
1638 remodeled, following that, we got it opened in March.

Q. You spoke of remodeling it. Had it been a theater before that time?

A. Yes, sir.

Q. Who had been operating it?

A. Charlie Mahone.

Q. Was the other theater bought from him?

A. He discontinued that when he put in the Oklahoman. The building belonged to Mr. Baker.

Q. At that time Mahone—prior to that time Mahone had operated all the other theaters in the town. Is that right?

A. Except the Rialto.

Q. The Rialto was operated by Mrs. Tolbert?

A. Mrs. Tolbert, yes, sir.

Q. She was the wife of Judge Tolbert?

A. No, I believe she was a sister.

Q. A sister to Judge Tolbert?

A. I wouldn't know. I wouldn't say.

Q. What became of the Cozy?

A. It was torn away.

Q. When?

A. Oh, at the time that Charlie Mahone was out there, a year or two, it was torn away soon, right after, about the time he was out there, must have been about '30, I guess, or '31.

1639 Q. Did he operate the Cozy for a time?

A. Yes, sir.

Q. At the time he was operating the Cozy what other theaters was he operating?

A. The Oklahoman.

Q. The Oklahoman? And the Cozy?

A. Yes, sir.

Q. Was he also operating this theater you opened up as the Palace?

A. No, he wasn't operating it. That was closed. We closed that to remodel before I went over and taken it over.

Q. Did he ever operate the Palace?

A. Yes, he operated it for several years before it was remodeled.

Q. During that time he was operating that did he also have the Cozy?

A. He had the Palace and the Cozy and the other place was there before he put in the Oklahoman. I don't remember the name of it.

Q. How many of those places was he operating at one time?

A. He just operated two.

Q. And the other was closed?

A. Charlie Mahone was operating the Cozy and
1640 Palace, and then he put in the Oklahoman and he closed the Palace and continued the Cozy and the Oklahoman.

Q. How long did he continue the Cozy after closing the Palace?

A. The Cozy must have closed along about 1930 or '31; I am not sure.

Q. Did it close before you opened the Palace?

A. No, it continued for sometime after I opened it.

Q. Was it operating first run or second run pictures?

A. Well, I think mostly first run.

Q. And your theater operated on first run pictures, didn't it?

A. First and second.

Q. Mostly on first run, wasn't it?

A. Well, yes, when it first opened, first and second run.

Q. You were not an established second run account with any distributor during the time you operated the Palace Theater, were you?

A. You mean when I first opened it?

Q. At any time during the time you operated the Palace, did you have a contract with any company for second run pictures?

A. I certainly did, several of them.

Q. Do you have those contracts?

1641 A. I don't have them.

Q. You mean, do you not, that you bought some second run pictures, the better pictures, on a spot booking contract?

A. Well, I would buy eight or ten pictures, yes, if you would call them spot bookings. I bought the pictures and run them second run, the best Grade A features.

Q. You spoke of the Kiowa theater being built. Don't you know it is a fact that the Kiowa was simply the Rialto Theater, which was owned by some member of the Tolbert family and remodeled?

A. Yes, sir, remodeled and a lot added to it.

Q. But that Rialto became the Kiowa?

A. Yes.

Q. How long had Mrs. Tolbert been operating that Rialto before you opened your theater?

A. I wouldn't want to say for sure; two or three or four years, maybe; I wouldn't know because she was oper-

ating when I went there. I remember the time she opened but I couldn't say when.

Q. Now, you closed your Palace Theater on what date in March, 1936?

A. I couldn't tell you the date. It was the first of March. It seems to me like it was about the 6th of March; I wouldn't say for sure.

Q. How long did it remain closed before Mahone
1642 opened up a theater in it?

A. Before he opened the Palace?

Q. Yes.

A. It never was closed, I don't think, unless it was just a day or two between——

Q. He continued to operate it right straight through?

A. Yes, sir.

Q. Do you recall in connection with the Columbia pictures which you licensed for the '34–35 season, that you were not able to carry out that contract, the playing of those pictures?

A. I don't remember why I wasn't able to carry it out.

Q. Do you recall that in the fall of 1934 there was a very poor cotton crop in that county in which Hobart is located?

A. I suppose there was. Hobart wasn't as bad as the country around it.

Q. I asked you, if around Hobart there wasn't a bad crop that year?

A. I suppose there was. I don't remember.

Q. Wasn't the same thing true for 1935?

A. It might have been.

Q. Don't you know that because of the poor crop conditions and the adverse business conditions in the town of Hobart that you requested and obtained from Co-
1643 lumbia a 25 percent reduction of the rentals that you had agreed to pay on those pictures?

A. Since you mention that I believe I did; I am sure I did.

Q. And at that time didn't you agree you would pay the balance of the rentals for the unplayed pictures in weekly installments?

A. If there was anything like that came up, I don't know. I just don't remember.

Q. At the time you closed your theater on March 15, 1936, the payments which you had agreed to make on that '34–35 product had not been completed?

A. I just don't remember, if I ever asked for weekly payments or anything like that.

Q. Do you remember when you closed your theater in March, 1936, that you had not fully paid the amount of

the rentals which you agreed to pay at the time of that reduction?

A. For the Columbia pictures?

Q. Columbia pictures.

A. I just don't know if it is that way. I am sure I don't know.

Q. Don't you know that at the time that reduction was made that the balance of the rentals amounted to $1577.20?

1644 A. Maybe that was on the pictures I had not played or something, or other, when I sold out, but as far as the payments is concerned, everything was paid right up to now.

Q. I asked you if at the time they made this reduction, if at that time you didn't agree on the amount that would be paid for the balance of the pictures which you had under contract, and that amount was $1577.20?

A. Am I supposed to pay that on weekly payments or what?

Q. Yes, sir, play the pictures and pay the money.

A. If I played the pictures, I was supposed to pay the money.

Q. I am asking you in regard to the pictures which were unplayed at the time the reduction was made.

A. I don't remember how many pictures was unplayed, it has been so long ago.

Q. Don't you know the time you sold out to Mahone in 1936, there was still a balance due under the agreement which you reached at the time the reduction was made on pictures which you had not played?

A. There might have been but I don't know why because I done my best to get pictures to play.

Q. Don't you know you had unplayed pictures on your '34–35 contract at the time you sold out in March of 1936?

A. I might have had some Paramount pictures.

Q. I am asking you about Columbia.

1645 A. I just don't know if I did.

By the Court:

Q. When you sold to Mahone did he assume your contract?

A. No, I don't think he did. I am sure he didn't. There was nothing said to me about it if he did.

By Mr. Cochran:

Q. Now, who was the salesman for Warner Brothers back in 19——

A. Mr. Slocum was after he quit Columbia. I don't know when he went with them.

Q. Who was the salesman in 1935–36 season?

The Court. You mean for Columbia?

Mr. COCHRAN. No, for Warner.

By the WITNESS:

A. I wouldn't know whether Mr. Gibbs was. I always bought pictures from Mr. Slocum.

Q. Did you know Mr. Rohde, Branch Manager for Warner?

A. Yes, sir.

Q. Do you understand Mr. Rohde is now dead?

A. Yes, sir.

Q. Did you talk to him about getting '35–36 product?

A. I was in the office a time or two, whoever the salesman was. Of course, I would buy from them all the time.

Q. You said you tried to get Warner Brothers pictures for the '35–36 season. To whom did you talk repre-

1646 senting Warner Brothers?

A. I don't remember whether it was Mr. Slocum or whoever had taken it over——

Q. If you don't know, say so.

A. I just don't know.

Q. Isn't it a fact that Warner Brothers or representatives of Vitagraph who distributed for Warner Brothers attempted to license you the product for '35–36, negotiated with you and that you were unable to agree on the prices on that product, for the '35–36 season?

A. That is Warner Brothers?

Q. Yes, sir.

A. I don't remember. I will say he didn't.

Q. You will say he didn't?

A. That I don't remember.

1647 Q. Did you tell us the date the Kiowa was opened, first opened in Hobart?

A. The first time?

Q. The first time it was opened, that is, immediately after the Rialto was remodeled and changed to the Kiowa?

A. Well, I wouldn't know the exact date; about '30, I guess, something like that, '29 or '30. That was after I opened.

Q. Do you know how long after you opened?

A. Well, you see they changed—they operated—well, I believe they operated the Rialto before they remodeled maybe, I wouldn't say for sure though.

Q. All right. You were operating the Palace in 1932–33, were you not?

A. Yes, sir.

Q. You didn't have the Paramount product for that year, did you?

A. No, sir.

Q. You didn't have Warner Bros. for that year, did you?
A. 1932–33?
Q. Yes, sir.
A. I am sure I did; I believe I did.
Q. Isn't it a fact that the first year that you had Warner Bros. was for the season 1933–34?
A. That may be correct; I am not sure.
1648 Q. At any rate, you know that you did not have Warner Bros. product until after the Kiowa was closed?
A. That's when I got it, I think, after the Kiowa closed.
Q. Prior to the time it was closed Warner Bros. products had been playing in the Kiowa, had it?
A. The Kiowa or Rialto, yes, I guess that's right.
Q. And then you continued to play Warner Bros. through the '34–35 season?
A. Yes, sir.
Q. The Kiowa was reopened in November 1934, was it not?
A. About that time, I think, '33 or '34, when it was reopened.
Q. Had you made any attempt to obtain the Warner pictures prior to the time the Kiowa reopened?
A. I tried to buy the Warner Bros. pictures for the next season.
Q. Isn't that the time that you were unable to agree on the price?
A. There wasn't anything about the price, I don't think, said about prices; anyway, when I tried to buy them, they said they were sold.
Q. Well, now, we object to the statement of what was said. At that time the Kiowa had not reopened, had it?
A. I don't remember.
1649 Q. The Paramount pictures which you spoke of having licensed, don't you know that those pictures were played in Mr. Mahone's theater for the '32–33 season?
A. '34, I guess '34 and '35, is when I got them.
Q. I am asking you if you don't know that those pictures were played in Mr. Mohones theater for the '32–33 season?
A. I imagine they were, yes.
Q. And that in the '33–34 season, was the season which you licensed Paramount pictures?
A. About that time; I don't just remember, '33 or 34, or '34 or '35.
Q. You only licensed Paramount pictures one year, is that right?

A. That's right; that is, outside of second run; I run second run.

Q. Will you say that wasn't the '33–34 season that you licensed them?

A. Paramount?

Q. Yes.

A. It was either '33–34 or '34 and '35.

Q. All right.

A. If I knew for sure, why, I would say so, but I don't.

Q. Do you remember that in the spring of 1936
1650 that the wheat crop in Kiowa County was a complete failure?

A. It might have been.

Q. Do you remember anything about that?

A. Yes, it was bad there a year or two.

Q. During each of the years 1934–35 and '36, up until the time you sold out, crop conditions were bad, were they not?

A. Yes.

Q. And business conditions were bad, is that correct?

A. To a certain extent, yes.

Q. You spoke of Warner Bros. pictures being played in 1935–36 in the Kiowa Theater. Where were the Metro pictures played that season?

A. At the Oklahoman—that is '35–36, you say?

Q. Yes, sir.

A. The Oklahoman, I am pretty sure.

Q. First run?

A. Yes, sir, he played them all the time.

Q. And where were the Fox pictures played?

A. The Oklahoman.

Q. Prior to, well, I will say prior to the closing of the Kiowa, had your Palace Theater at any time had first run of any of the major product?

A. Prior to the time they closed the first time?

Q. Prior to the time the Kiowa closed.
1651 A. I opened up with first and second run.

Q. What product did you have first run when you first opened up?

A. I was thinking I had Columbia pictures, and some United Artists.

Q. What else?

A. Well, I can't call to mind just now what product I did have.

Q. Speaking about the United Artists pictures, who played United Artists pictures in 1933–34?

A. I played United Artists pictures along most all the time I was there, but the Kiowa reopened there, when Mr. Gillam reopened it, he played United Artists pictures some, I don't know just how many.

Q. Who played the United Artists pictures for the season '34–35?

A. I played them along all the time we were there.

Q. Did you play them for the season 1934–35?

A. I suppose I did, yes.

Q. Did you attempt to license those pictures for the 1935–36 season?

A. Not the entire group.

Q. Did you attempt to license any of them?

A. Just a few of them along.

Q. Did you get them?

1652 A. Yes, I got them and played them.

Q. You got such United Artists as you desired for the '35–36 season, is that right?

A. I played them along all the time, I wouldn't say just when.

Q. I asked you if for the '35–36 season.

A. '35–36?

Q. Yes.

A. No, I don't think I had any of them in '35–36.

Q. Did you make any effort to license any of United Artists pictures for the '35–36 season?

A. I think I did, yes.

Q. Don't you know that United Artists pictures were not played in Hobart by anyone for the '35–36 season?

A. I couldn't say about the '35–36.

Q. I am talking about at the time, during the season when your theater closed.

A. Yes.

Q. That's the '35–36 season.

A. I think the only United Artists' pictures that was played there was played at the Kiowa, but I couldn't tell you when they were played there. He played a few of them, not very many.

Q. If they were played, they were played while Mr. Gillam was operating it?

1653 A. Yes, sir.

Q. If he played any, it was only a few?

A. I don't think he played very many.

Q. So you know that the United Artists' product for the 1935–36 season was open in that town, and somebody could arrange to buy them, don't you?

A. They might have been.

Mr. Cochran. That's all.
The Court. Anything further?

Re-direct examination by Mr. Wright:

Q. What was the population of Hobart back there when you started and during that period from '29 through '36?
A. Oh, was right around 5,000, maybe 4,000 and something, right close to five.
Mr. Wright. That's all.
The Court. Stand aside.
(Witness excused.)

1654 Joe Love, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Wright:

Q. State your name and address.
A. Joe Love, Seminole, Oklahoma.
Q. What is your occupation?
A. I run the Chief Theater.
Q. At Seminole?
A. At Seminole, yes, sir.
Q. How long have you had that theater?
A. A little over eight years.
Q. You went in there in '36?
A. The last part of '36, October.
Q. Is that the theater you built up?
A. Yes, sir, remodeled an old building.
Q. What other theaters were there when you went in there?
A. Well, the Rex, called the Seminole now, the State and Rialto.
Q. Who operated those theaters?
A. The Griffith Amusement Company, I guess.

By the Court:

Q. What was the name of your theater again?
A. The Chief.

By Mr. Wright:

1655 Q. Can you describe those other theaters and the policies they were playing under then?
A. You mean as to seating capacity?
Q. Yes.
A. Well, the Seminole was an A house and the Rialto was a second run house and the State Theater was a B house.
Q. The Seminole was also known as the Rex?
A. I think it was the Rex.

By the COURT:

Q. The Seminole and Rialto were operated by the Griffiths at the time you opened your theater?

A. And the State Theater also.

Q. Who operated the State?

A. Griffiths.

By Mr. WRIGHT:

Q. The first runs, the A pictures were played first run at the Seminole and the B pictures, first run, at the State? And the second runs at the Rialto, is that right?

A. Yes, sir, that is right.

Q. How large was that theater of yours?

A. At that time I believe it was 362 seats.

Q. How did it compare with the Rialto?

A. I think I had just a few more seats than the Rialto.

Q. Well, in respect to equipment and location and so forth?

A. Well, I suppose about the same; maybe I had just a little better location; probably a little larger.

1656 Q. When you opened the Rialto what kind of a policy did you open it on?

A. When I opened the Chief you mean?

Q. The Chief, yes.

A. Well, at that time, of course, I was trying to play first run pictures.

Q. Did you get any?

A. Well, I got some, yes, sir.

Q. From what company?

A. At that time I bought Republic. I had some Republic pictures and I bought Grand National along in there and some British Gaumont and also some independent pictures of different people that had them.

Q. What, if any, major product did you have?

A. Well, I had no major product at all. I tried to buy Universal, if that is a major, but at that time I had no major product.

Q. You say you tried to get some Universal?

A. Yes, sir, I tried to buy Universal before I opened up.

Q. What Universal product was that?

A. That was the year it was left out of Seminole, I believe it was '34-35; '35-36.

Q. '35-36 season?

A. Yes, sir. It had been left out and never played.

1657 Q. Did Universal take an application from you for that product?

A. Yes, sir, they took an application but I never got the pictures.

Q. When was that they took the application?

A. Well, it had to be prior, a few weeks prior to when I opened up there in October. It must have been probably around the first of October, I would have an idea. I would say it was in October.

Q. Of 1936?

A. Yes, sir.

Q. Then that application was not approved?

A. No, sir.

Q. Did you try to find out what happened to it?

A. Sure. I wanted the pictures and I tried to find out and I finally bought pictures a year later, but it took me that long before I got the pictures.

Q. You finally got them in '37?

A. In '37. I think about October of that year; just a year later.

Q. Those were the '35–36 features you got then?

A. Yes, sir.

Q. You also got some '36–37 product?

A. Well, it is possible I bought some of the lower bracket pictures. I think I did at the same time.

1658 Q. Were you offered any of the upper bracket pictures of the '36–37 season?

A. No, sir.

Q. What other major product did you try to buy?

A. I tried to buy all the major product; that is, what I could get all the time.

Q. Did you try to get any third runs?

A. Yes, sir, later on I did.

Q. When did you first try to buy the major third runs?

A. Well, probably started sometime in '37.

Q. Was Griffith using any third run major product in its theaters?

A. No, they were using second runs.

Q. They were using no third runs?

A. No, they didn't use third runs.

Q. Did any of these major companies take any applications from you for third runs?

A. No, they wouldn't sell me third runs. They said the town was too small and one thing and another.

Mr. Griffing. Object to what they said and move it be stricken.

(No ruling.)

By Mr. Wright:

Q. They wouldn't take any application from you anyway?

A. No.

1659 Q. No discussion of terms?

A. That is right, no discussion.

Q. How large was the town, do you know?

A. Around ten or eleven thousand. That is, Seminole. The trade territory was quite large around there.

Q. Did you finally get some third run major product there?

A. Finally in 1940 I started getting some and that ran all the way to '41 until I finally got Metro.

Q. What third run did you finally get?

A. I started playing Fox, I believe it was, in June of '40 and Paramount in September of '40 and Warner Brothers in August of '41, and Metro in November of '41.

Q. Were those the companies you had been trying to get third run from since '37?

A. Yes, sir. These were the A pictures, you understand, I was trying to get.

Q. The top pictures were the ones you wanted to play third run?

A. That is right.

Q. Calling your attention to the year 1937, did you do anything about going into the motion picture business over at Henryetta?

A. Well, I went to Henryetta and I acquired a lease on a building over there and put in a show.

1660 Q. When was that?

A. That was either the last part of '37 or the first of '38. All my records were burned. I know it was at that time, however.

Q. Was there a theater operating there then?

A. There was two there.

Q. Who was operating those?

A. That was by Griffith.

Q. When you made this lease did you have any conversation with anybody from any of the Griffith Companies?

A. I had some conversation with Mr. Folgham at that time.

Q. Where did this conversation occur?

A. At Seminole, in front of the show there one day.

Q. What was said then?

A. He came by and was asking me something about it, and I told him I had acquired a lease, or he had heard I had one over there, so he said, well, they had two shows over there and at that time they were not making too much money and they had a big investment and he didn't see why I wanted to go in there. I told him it looked like another

show would be all right and he said if I did go in they would break me out, and he went on to state if I did change my mind he would be glad to pay what expenses I had
1661 been out in acquiring this lease, and that was as far as the conversation went.

Q. What did you tell him about that?

A. Well, I didn't say too much.

Q. Did you go ahead with your theater at Henryetta?

A. No, I cancelled the lease.

Q. Then did you later go into the town of Wewoka?

A. Yes, I bought a show there in April of 1938.

Q. What was that theater?

A. That was the Pix Theater.

Q. Who did you buy that theater from?

A. Tom Ward and Mr. Nave.

Q. They were operating there?

A. Yes, sir, I think they had been operating a few months.

Q. What other theaters were being operated in Wewoka?

A. The Griffiths had three there, the Key, Paramount and State, I believe.

Q. What was the situation there as to the policies of the various theaters?

A. Well, they were the same as in Seminole. The Key paid the A pictures and the State played second run pictures and Paramount had B pictures.

Q. And the others playing A and B pictures were playing them on first run?

A. Yes, sir.

1662 Q. What did you have at the Pix?

A. Well, they had bought United Artists first run, and I believe that was the only major company.

Q. When you say "they" you are referring to the people that sold the Pix to you?

A. Yes, I assumed their contract.

Q. You had United Artists first run there then for what season's product, '37–38?

Mr. COCHRAN. We object to counsel leading the witness.

The COURT. Overruled. I think it is immaterial.

By the WITNESS:

A. Probably the '37–38. I bought it in April of '38. It would be '37–38 product.

By Mr. WRIGHT:

Q. Did you have any other major product of that season?

A. No.

Q. Then were the United Artists pictures offered you for the next season there?

A. No, sir.

1663 Q. Coming down to the '38–39 season, you were then still operating the Pix at Wewoka and the Chief at Seminole?

A. Yes, sir; I sold the Pix in 1940; I was operating it in '39.

Q. For the '38–39 season what, if any, major pictures did you have?

A. I bought RKO for the '38–39.

Q. You got these for both towns?

A. Yes, sir.

Q. I will show you these contracts that have been marked for identification as Plaintiff's Exhibits Nos. 213 and 221, and ask you if you recognize those as the first run deals you made for that season with RKO for the theater at Seminole and the one at Wewoka respectively?

A. Yes, sir.

The COURT. For what season?

Mr. WRIGHT. '38–39.

The COURT. First run or second?

A. First run.

By Mr. WRIGHT:

Q. I will show you this Exhibit No. 222 for identification, and ask you if you recognize that as the second run contract you made with RKO for the same season for your theater at Wewoka?

A. Yes, sir.

Mr. WRIGHT. We will offer in evidence Plaintiff's

1664 Exhibits Nos. 215, 221 and 222.

The COURT. What was 221?

Mr. WRIGHT. 221 is the first run deal at Wewoka with RKO for the '38–39 season.

Mr. COCHRAN. I don't see the run on this No. 221. No. 221 doesn't show the run, your Honor.

By Mr. WRIGHT:

Q. I call your attention to the fact that this Plaintiff's Exhibit No. 221 which you identified as the first run deal for Wewoka, doesn't have anything specified there under the word "run". Do you know that that was the first run contract?

A. This is the first run, yes, sir.

Q. And that was the way you played the pictures?

A. Yes, sir.

Mr. WRIGHT. Is there any objection to those?

Mr. COCHRAN. No, sir.

The COURT. They will be admitted.

Mr. COCHRAN. Do you have any second run contract for Seminole?

Mr. WRIGHT. No, that one, I don't think was produced.

Q. You played the RKO pictures that you bought first run here for this '38-39 season in Seminole, second run in Seminole too?

A. Yes, sir, all of them.

1665 Q. You had Seminole second run?

A. Yes, sir.

Q. You say you sold out the theater at Wewoka in 1940; that was the Pix?

A. Yes, sir.

Q. Who did you sell it to?

A. To Chet Humphreys.

By the COURT:

Q. You sold what at Seminole?

A. I sold the Pix in Wewoka on May 5, 1940.

Q. What was the name of that?

A. The Pix.

Q. P-I-X?

A. Yes, sir.

By Mr. WRIGHT:

Q. And prior to the time you sold out there, can you tell us what the admission price policies of the theaters in that town were?

A. Well, originally, I, do you mean for all of them?

Q. Yes.

A. I think at that time I was charging 10 and 15 or 10 and 20, and their A house, I believe, was 10 and 25, and their B house was about 10 and 20, the same as mine, and the second run house, I believe, was 10 and 15. Later on, why, they started a two-for-one; that is, you could go to the Paramount show and buy a ticket and they would give you a free pass to one of their other shows.

1666 Q. What period was that?

A. I can't give you the exact date; I would say it was the year before I sold out.

Q. Did it continue throughout that year?

A. It continued up until the day I sold. The day I sold, they quit that policy. Because the man that bought me out, I told him about it, and he said, "Don't have any worry about it; when I buy it, that policy will be discontinued" and it was.

Q. Was the same policy in effect——

Mr. COCHRAN (interrupting.) We move to strike the statement made by the man to whom he sold the house as hearsay.

THE COURT. Sustained and exception allowed.

By Mr. WRIGHT:

Q. Was the same policy in effect at Seminole during the same time?

A. In Seminole, yes, sir.

Q. What were the theaters involved in the free tickets there?

A. Well, you could go to the State Theater and you would get a free pass to the Rialto Theater, and this continued about the same time; they both went into effect, I believe, about the same time. They kept it up,—of course, when I sold the Pix two weeks later, their Rialto Theater burned up, and when they reopened again, six
1667 months later, they didn't continue that operation.

Q. That is, their Rialto Theater at Seminole, you are talking about?

A. Yes. sir.

Q. That was the one from which the free tickets were being given?

A. Yes, sir.

Mr. WRIGHT. You may cross-examine.

Cross-examination by Mr. COCHRAN:

Q. At the time you had the conversation with Mr. Fulgham in Seminole which you have detailed, was anyone else present?

A. No, sir.

Q. Was he living in Seminole at that time?

A. Was what?

Q. That was in Henryetta that you had the conversation with him, was it?

A. No, sir, it was in Seminole.

Q. In Seminole?

A. Yes, sir.

Q. But it related to your situation at Henryetta?

A. Yes, sir.

Q. Do you know where Mr. Fulgham is now?

A. I hear he is in the Navy.

1668 Q. In the Navy?

A. Yes, sir.

Q. What was the operating policy of your theater, the Pix Theater, at Wewoka during the year 1939?

A. Do you mean as to prices?

Q. The entire operating policy. How many changes a week?

A. I had three changes a week, Sunday-Monday-Tuesday and Wednesday-Thursday and Friday-Saturday.

Q. Single program?

A. Well, I think so, most of it single program at that time.

Q. And what were your admission prices?

A. I believe it was 10 and 15 or 10 and 20 as for Sunday-Monday-Tuesday, and then I believe on Wednesday-Thursday I started a two-for-one policy at the same time, for that day only, called "penny" day; one adult would pay 15 cents and two could go in for 16 cents.

Q. When was this two-for-one policy started by Griffith in Wewoka, would you say?

A. I am not sure when they started it.

Q. About when?

A. I guess about a year before I sold.

Q. When would that make it?

A. Well——

1669 Q. You sold out on May 5, 1940, is that correct?

A. Yes, sir.

Q. So it would be about the 5th of May 1939?

A. It might be.

Q. At that time, isn't it a fact that you were operating your Friday and Saturday program on an admission price of 5 cents for children and 10 cents for adults?

A. No, sir.

Q. Didn't you have those admission prices in that theater beginning with March 18, 1939, and continuing only during that week, for 5 cents for children and thereafter during the entire year 1939, you charged 10 cents for children and 10 cents for adults at all times on your Tuesday, Wednesday-Thursday, and Friday-Saturday changes?

A. Well, I don't think so, I don't know, it might be. I haven't checked back on it, and I just don't remember.

Q. You don't remember?

A. I tried everything in the world, I know, after we got started, trying to get somebody in there, but I don't remember.

Q. Won't you say that you did charge a 10-cent straight admission price all the time during all of 1939 after about the 1st of March?

A. That was on what changes now?

Q. On the changes you mentioned, Wednesday-Thursday, and Friday-Saturday?

1670 A. Where did the 5-cent admission price for children, where did that come in?

Q. I am asking you now about the 10-cent price; I will come back to the 5-cent price.

A. I am not sure just what I did charge; I believe it was 10 or 15 cents.

Q. Didn't you have a 5-cent admission charge for a short time, probably only one week, just prior to that time?

A. Well, I could have had for one week or something like that, I don't know. I have had several different family nights and everything.

Q. Weren't you operating on a week-end policy of 10 cents at all times for all persons in your Pix Theater in Wewoka prior to the first of January 1939?

A. I believe when I bought it they were charging 10 cents, and I was under the impression I raised that later, but I don't know what the deal was.

Q. In other words, when you bought the Pix Theater, you now believe they were operating on a 10-cent policy?

A. That was on Friday-Saturday; it seems to me they were operating at 10 cents on Friday-Saturday, but I don't know.

Q. When did you increase the admission price on the week-end pictures, at the Pix Theater?

1671 A. I don't have any idea. I think, when I said at first it was 10 and 15 cents, but I don't remember.

Q. Isn't it a fact that continued until about the 1st of January 1943?

A. '43?

Q. Yes.

A. What is that?

Q. That your 10-cent admission price for week ends in your Pix Theater in Wewoka continued until the ——

A. (Interrupting.) We sold out in 1940.

Q. All right; when you sold it out, you were still charging 10 cents admission prices, weren't you?

A. As I say I don't know whether I was or not. I know some pictures we got as high as 30 cents over there for.

Q. Now, in 1940 when you sold out your Pix Theater at Wewoka, you state that you were playing Grand National pictures?

A. In Wewoka?

Q. What pictures were you playing?

A. I said I had United Artists first run the first year I went in there.

Q. I am asking you when you sold out what pictures were you playing?

A. RKO.

Q. What else?

1672 A. I don't remember what I had; I know that that was the only major company.

Q. Well, were you playing Grand National?

A. I bought Grand National in Seminole at first.

Q. I am asking you——

A. (Interrupting.) I don't know; I have lost all my records, I had them all burned up, I don't know.

Q. You know that Grand National, Monogram and Allied and Sachs and a number of other companies' products were available for your first run in Wewoka, don't you?

A. Yes, sir.

Q. Your complaint is that you were not able to obtain first run?

A. No, I didn't say that. There was plenty of first run pictures that were not good pictures; they were first run pictures that no one else would have, Griffith cutbacks, but they were not good pictures.

Q. Those are companies that are operating nationally, aren't they?

A. I suppose; Square Deal, I don't know, that was another company, I don't think that was national; that was here in Oklahoma City; he had a bunch of pictures.

Q. Their pictures were produced in Hollywood and other producing areas, weren't they?

A. Yes, sir, and England and a few other places,

1673 English pictures.

Q. There were very few English pictures in those so-called independent companies, weren't there?

A. There were quite a few from United Artists that I bought.

Q. United Artist is rated as a major company, isn't it?

A. They make some good pictures, and they have a bunch of English pictures.

Q. I asked you if United Artist is rated as a major company?

A. Yes, sir.

Q. And it has been all the time since you can remember, hasn't it?

A. I think so.

1674 Q. Now at Seminole when did you start the 10 cent admission?

A. The only time that I ever had any 10 cent admission was after they started the two for one policy, and I probably tried everything in the world then, but I never had any 10 cent admission up until then or after they quit.

Q. Did you play any two for one?

A. Only on Wednesday and Thursday change, yes.

Q. When did you start playing double bills at Seminole?

A. Just when I couldn't get any first run product that would hold up.

Q. When did you?

A. I couldn't give you the exact date: I would say that it would go back to probably three or four years ago. I am practically all double bill now.

Q. Isn't it a fact you were playing double bills as early as '42?

A. Yes, sir.

Q. And had been prior to that time?

A. Possibly so. It is possible that I did.

Q. What product are you using in the Seminole Theater now? In your Chief Theater at Seminole?

A. That is all runs you are talking about?

Q. Yes.

1675 A. I have some Monogram pictures bought first run and I have some third run product from the major companies.

Q. Name the companies you have third run product from.

A. Fox, Paramount, Warner and Metro. I also have some third run from Universal; some first run and second run.

Q. Some first and second from Universal?

A. There are always a few pictures Griffiths don't buy they let me buy, and I bought those. That is from all the companies.

Q. Do you have some United Artists?

A. Yes, sir, a few.

Q. Isn't it a fact in 1944 you played a number of United Artists pictures?

A. Yes, sir, I played United Artists pictures ever since I have been in over there.

Q. And you also played some PRC, didn't you, first run?

A. I did, two years, I believe. I lost those a couple of years ago.

Q. Did you play PRC's in '44?

A. I played some they left out. I went in there and they told me it was all they had left——

Mr. Cochran. We object to his statement of hearsay testimony. He is repeatedly making these statements

1676 that are hearsay and he has been in Court and heard your Honor's admonition.

The Court. Don't make any statements made by the other patries.

Mr. Wright. I think this is all examination about what he is playing now. It is not proper cross examination and is not within the issues of the complaint.

The Court. It merely goes to his ability to secure pictures at this time.

By Mr. Cochran:

Q. Since November, 1940, the pictures of all the major companies have been available to you on some run, have they not?

A. Yes, sir.

Q. And you have licensed on some run such of those pictures as you desired to play?

A. Yes, sir.

Q. Your theater in Seminole continues to operate?

A. Yes, sir.

Q. And you are operating at a profit?

A. Yes, sir.

Q. Are you playing any RKO pictures?

A. Yes, sir.

Q. In November of 1940 were you playing any RKO pictures?

A. Yes, sir.

Q. And from the time of these contracts which you
1677 have introduced in evidence, you have continued to play RKO pictures?

A. Well, I bought RKO for three years, first run.

Q. I just asked you if you continued since the time of these contracts to play RKO pictures?

A. Off and on. I am still playing them. There was a period there I didn't play any for a while but I am still playing them now.

Q. You did license some RKO pictures for the '37-38 season, didn't you?

A. '37-38?

Q. Yes, sir.

A. I don't know.

Q. Not '37-38—pictures of the '34-35 season.

A. I could have. I don't know.

Q. Do you recall having licensed some major product for the season of 1936-37?

A. I have. I bought a few Metro pictures, not the A pictures but a few pictures along, one or two.

Q. What was the season you licensed 22 pictures, second run?

A. I don't know.

Mr. WRIGHT. What town is this?

Mr. COCHRAN. Seminole.

By the WITNESS:

1678 A. It may be I bought some from them but I don't know.

By Mr. COCHRAN:

Q. Isn't it a fact that on May 31, 1938, you had had those pictures under contract for more than a year and you had not given a play date on a picture during that time?

A. That is possibly so. The salesman came over and sold me a bunch of pictures that were not any good.

Q. There were 22 pictures, weren't there?

A. They were pictures, I think all second run. They were not any of the A pictures.

That was their lower bracket pictures and he sold them to me, and after I saw what they were I refused to play them. I believe that is the way it was.

Q. At that time you were having a great deal of controversy with Loew's because you would not play those pictures according to your contract?

A. Probably so. I have always had a lot of trouble with them and I probably did then.

Q. You have always had a lot of controversy with Metro?

A. I never could get their pictures. They would always want me to play the sorry pictures, and I couldn't get their good pictures.

Q. You know you didn't play all that contract, don't you?

A. I don't know what took place on it.

1679 Q. You know Mr. Jim Byrd, don't you?

A. Yes, sir.

Q. Isn't it a fact after they tried repeatedly to get that contract played out, it was cancelled?

A. I don't know what they done on it. I know he came over and sold me a bunch of——

Q. Answer my question.

A. I say I don't remember. I can't remember these dates because I don't have any records on it.

1680 Q. Did you play a single picture under that 22-picture contract?

A. If I would see the pictures I might be able to tell you. I don't know. I don't know if I can remember it or not.

(Counsel hands witness document.)

A. You say, did I play any of these?

Q. Yes, sir.

A. I believe I did. I know I played some of them.

Q. Do you recall that in May of 1938 you were delinquent on all of these pictures which you had under contract for more than a year?

A. No, I didn't know it. There were about four pictures there that were good. I played those and the others I didn't play, if I remember right, four or five.

Q. Do you remember what season's product that was, those pictures?

A. Do I remember?

Q. Yes.

A. No, sir, I don't have any idea.

Q. After that failure to play those pictures which were unplayed under that contract, how long was it then before Metro licensed you any other pictures at all?

A. I couldn't tell you that. It seems to me we had some kind of a deal when he sold me the pictures that I
1681 was to play or pay for the pictures, so many a month.

Q. You said you didn't know. That answers my question.

The COURT. Let him go ahead and explain.

A. They made a deal. Mr. Byrd made some kind of a deal. I was either supposed to play them or pay for them—I was pretty new in the business—and I went ahead and bought them, and after I bought them and saw what I had bought, I tried to get some other pictures instead, have some other pictures substituted and they wouldn't do it. They said, "Go ahead and pay for those pictures whether you play them or not," and I refused to do that, and I just made a bad deal.

Q. My question was, how long was it when you had that controversy before you licensed any other Metro pictures?

A. I don't know. I don't know when I started to play them. I kept trying to get pictures.

Mr. COCHRAN. If the Court pleases, if you want to hear him I do not object, but I object to him responding to something I didn't ask him about.

The COURT. There is a lot of this I am not particular about hearing but I think he has a right to make his explanation. Answer his question. How long after this until you began doing business again with Metro?

1682 A. I don't know, sir.

By Mr. COCHRAN:

Q. Isn't it a fact you didn't do any further business with Metro until after the consent decree?

A. It might be. I tried to get pictures before that all along, but I don't know the first picture I played. I tried to buy third run pictures ever since I was in business over there from Metro and they refused to let me have them.

(Hereupon Court recessed until 2:00 o'clock p. m. this day.)

1683 AFTERNOON SESSION

May 23, 1945, 2:00 o'clock p. m.

PROCEEDINGS

JOE LOVE, a witness for plaintiff was recalled and was examined and testified as follows:

Further Cross-examination by Mr. COCHRAN:

Q. Prior to the time that you were able to license third run pictures from certain of the major companies other than Metro, did you attempt to license the second run pictures which were not used by Griffith?

A. No, sir.

Mr. WRIGHT. This is in what town?

Mr. COCHRAN. This is in Seminole we are talking about.

Q. Your answer is no?

A. Let me see; I understand that as pictures that they didn't use second run, did I ask for them?

Q. Yes.

A. No.

Q. Did you request those pictures?

A. No, sir.

Q. You preferred to have third run of the A pictures than to have second run of the so-called program pic-

1684 tures, did you?

A. That's right.

Q. And that was true as to each and every one of these majors that you were not getting third run from?

A. Yes, sir.

Q. You even preferred to have better pictures, of such companies as Monogram and Republic, to having the C, D, and E pictures second run of the major distributors other than Metro?

A. I never wanted any Monogram pictures third run.

Q. I said first run; you preferred to have Monogram first run, the better pictures, Monogram first run, than to use pictures other than the top pictures of the distributors other than Metro second run?

A. Yes, sir.

Q. Now, Metro, during all the time that you have been in business at Seminole, was considered by you as producing the greatest number of best box office pictures of any distributor, was it not?

A. Not necessarily. They made a goodly number, but Fox and Warner also made——

Q. (Interrupting.) Didn't you consider Metro was tops among the distributors?

A. Well, I don't know; they are among the tops, that's right.

1685 Q. And have been during all the time you have been in the motion pictures business?

A. Oh, yes.

Q. Was your answer yes?

A. Yes.

Mr. COCHRAN. That's all.

Mr. WRIGHT. That is all.

(Witness excused.)

1686 W. P. MORAN, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. WRIGHT:

Q. State your name and address.

A. W. P. Moran, 1149 Northwest 36th Street.

Q. What is your occupation?

A. Well, at the present time nothing.

Q. You were formerly engaged in the motion picture theater business?

A. Yes.

Q. What was the name of your corporation?

A. Southwestern Theaters.

Q. Mr. Isley was also interested with you in that?

A. Yes, sir.

Q. That is sometimes known as the Isley and Moran circuit?

A. No, that was known as the Southwestern Theaters but Isley and Moran owned it.

Q. You operated theaters in Chickasha?

A. Yes.

Q. What were the theaters?

A. The Midwest and the Ismo.

Q. Those were being operated by your company there in 1937?

1687 A. Yes.

Q. Who operated the other theaters in the town then?

A. Well, Griffith operated some and I know there is a man by the name of Milne who operated a theater down there at one time; I don't know the exact year.

Q. He was not still in business there in 1937, was he?

A. That I wouldn't know. I know he was in business down there while we were in business.

Q. Isn't it a fact in 1937 your company and the Griffiths were the only two people operating theaters there?

A. I know we were there. I don't know whether the year 1937 is right or not.

Q. One of the theaters the Griffiths operated there was called the Ritz?

A. That is right.

Q. Was there a pooling agreement made between your company and Griffith under which the Ritz was operated, pooled with the Midwest and Ismo?

A. Yes.

Q. Do you remember when that was made?

A. What year, you mean?

Q. The nearest date you can fix for it.

A. I don't know the exact year, no.

Q. Have you a copy of the agreement?

A. No, I haven't.

1688 Q. There was a written agreement?

A. Yes.

Q. Setting forth the terms of the pool?

A. Yes.

Q. Have you made a search to find that?

A. I know that I destroyed it.

Q. Can you tell us in substance what the terms of the agreement were?

A. We were to operate the Ritz Theater and Midwest Theater and we were to split the profits.

Q. And the Ismo was to be closed.

A. The Ismo was to be closed or something done with it because it was a loser.

By the COURT:

Q. Which one was the loser?

A. The Ismo.

By Mr. WRIGHT:

Q. You each paid half the rent——

Mr. COCHRAN. Object to the leading questions.

The COURT. Well, I think you can state the substance of this agreement.

By Mr. WRIGHT:

Q. What was the agreement with respect to rent on the Ismo?

A. They were to pay half and we were to pay half.

Q. You later sold all of your theaters to Griffith?

Mr. COCHRAN. We object to that unless he specifies to whom he sold it. He didn't sell any theater to Griffith.

1689 The COURT. Let him state what he did.

By Mr. WRIGHT:

Q. You later disposed of all of your theater interests, the Southwestern Theaters?

A. Yes, sir.
Q. When was that?
A. That was in March, 1940.
Q. Whom did you sell out to?
A. Griffith Southwestern Theaters.
Q. That was the company in which Mr. H. J. Griffith was interested?
A. I don't know who was interested in the Griffith Southwestern Theaters.
1690 Q. Do you know who you made that deal with?
A. Yes, sir.
Q. Who was that?
A. B. J. McKenna.
Q. Did this pooling agreement you have referred to in Chickasha continue until the time you made the sale to this company represented by McKenna?
A. I believe so.
Mr. WRIGHT. That's all.

Cross-examination by Mr. COCHRAN:

Q. Mr. Moran, at the time that this agreement was made between Southwestern Theaters, Inc., and Consolidated Theaters, Inc., wasn't it?
A. Well, I don't recall, Judge, whether it was Consolidated or Griffith.
Q. Well, either the Consolidated or Griffith Amusement Company, whichever it was?
A. That's right.
Q. You were operating theaters in how many different places?
A. Springfield, Missouri, Picher, Pawhuska, Tulsa, Chickasha, Oklahoma City, and I believe that's all.
Q. How many theaters were you operating in Oklahoma City?
1691 A. Two.
Q. Were they subsequent run houses?
A. Yes, sir.
Q. You were operating two theaters in Chickasha, were you?
A. Right.
Q. Were they subsequent run houses?
A. Yes, sir.
Q. How many were you operating in Tulsa?
A. Seven or eight.
Q. Were they subsequent run houses?
A. Yes, sir.
Q. In Pawhuska, how many were you operating?
A. One.
Q. Was that a first or second run house?

A. First.

Q. In Picher, how many were you operating?

A. Two.

Q. Were both of those first run houses?

A. One was first run and the other was first and second.

Q. In Springfield, Missouri, how many were you operating?

A. Two.

Q. Were they subsequent run houses?

1692 A. Subsequent run.

Q. How long had you been operating those theaters, that is, how long had you been operating a group of theaters in various towns?

A. Oh, I think since about '25, or somewhere around in there.

Q. During the time that you were operating theaters in the towns that you have mentioned, you specialized in subsequent run operations, didn't you?

A. Right.

Q. That is the playing of pictures later than second run, and in some instances as late as seventh or eighth run, is that true?

A. Right.

Q. Did you operate those pictures, those shows successfully?

A. I think so.

Q. Did you make money?

A. Yes, sir.

Mr. WRIGHT. If the Court please, this, I take it, is all a part of the Defendants' case. The sole purpose for which we put the witness on the stand was to establish the pooling arrangement as it had not been produced in response to the subpoena by the defendants, and he couldn't find it himself. All the rest, it seems to me, is improper

1693 at this time.

The COURT. Well, he sold all of his business to Griffith. I think it is proper cross-examination. It might leave the impression that he was forced to sell, or something like that.

Mr. WRIGHT. There was no suggestion as to that on direct examination.

The COURT. No, but I think it is proper cross-examination.

By Mr. COCHRAN:

Q. In Chickasha, you were operating, so far as the two theaters were concerned, on a profitable basis when you made the pooling arrangement, were you not?

A. Do you mean the Midwest and the Ismo?

Q. Yes.

A. The Midwest was at a profitable basis, but the Ismo sure wasn't.

Q. But your total operation was on a profitable basis, wasn't it?

A. Yes.

Q. When you said you sold the Southwest Theaters, sold out to Griffith, you finally said that was to the Griffith Southwestern Theaters. You know those are separate concerns from either the Griffith Amusement Company or the Consolidated, do you?

A. That's right.

1694 Q. You know that?

A. Yes, sir.

Q. And that concern, you know that concern was organized at the time these theaters were acquired?

A. That's right.

Q. From your concern?

A. Yes, sir.

Q. Tell us about that Ismo Theater that you said was a loser in Chickasha. What type of building was that?

A. It was a 25-foot theater and I think seated around about 250 people, and was just run down, and we leased it equipped, and the equipment was all run down, and we tried to operate it; we thought we could operate it better than the Griffith outfit, so we attempted it to our sorrow.

Q. Did you attribute the failure of the Ismo to be a profitable operation on a subsequent run basis to the type of house you had?

A. Did I what?

Q. The type of house you had—did you attribute your failure to operate the Ismo on a profitable basis to the type of house and equipment that you had there?

A. Yes, sir, I think that had a lot to do with it.

Q. Isn't it a fact that at the time you made this operating agreement with Consolidated Theaters at Chickasha, that prior to the time you had any negotiations in

1695 regard to that matter at all, you had decided that you would, that you were going to abandon the Ismo?

A. That's right.

Q. And that you had determined that it was unsuitable for a theater operation?

A. That's right.

Q. Now, in the theaters which you were operating there in Chickasha, were you desirous of the major high price pictures, or did you prefer the cheaper action pictures?

A. The cheaper action pictures.

Q. Were they the ones that you found you could use at a greater profit?

A. Yes, sir, because our theater wasn't suitable to the bigger pictures.

Q. Did the various independents, so-called independent companies, such as Monogram and Republic and Grand National and companies of that kind, did they, during that period that you were operating this Ritz and Ismo, produce a large number of action pictures?

A. Yes.

1696 Q. And at the time you made this pooling arrangement with Griffith did you have a large number of those pictures under contract for exhibition in the Ismo and the Ritz?

A. Yes, I believe we did.

Q. When you decided you were going to abandon the Ismo Theater that left you with more of those action pictures than you needed for the week end operations in the Ritz, didn't it?

A. Yes, it did. In the Midwest, you mean?

Q. In the Midwest, yes.

A. Yes.

Q. In a town like Chickasha and theaters the character of the Ritz and Midwest, what were the best kind of pictures to play on week end programs for the best box office returns?

A. Strictly westerns.

Q. In making the pooling arrangement between the Midwest and the Ritz, what effect did that have on the booking of pictures into those two theaters?

A. Well, Griffith was to do the buying and booking under our supervision and we were to OK the contract and we were to OK all bookings.

Q. What I am talking about, you said that action pictures were most desirable in theaters of that type. Now, before you made that arrangement do you know the type of pictures that the Ritz was playing principally?

1697 A. Yes.

Q. They were pictures of the major companies, weren't they?

A. Some of them, yes.

Q. And they had a fewer number of the action type of pictures than you had for the Midwest?

A. That is right.

Q. Did this operating agreement you had enable you to operate those two theaters with a better possibility of booking the pictures to advantage, the action pictures to advantage in both theaters?

A. Well, it gave us a larger variety.

Q. And do you consider that would enable you to increase the box office results from the two theaters?

A. I thought we would make more money by having the two theaters than by just having the one.

Q. I say, the fact you did have the two theaters or were able to have that interchange of bookings, enabled you to increase your box office returns, or did you think it would?

A. Yes, I imagine so.

Q. What effect would the operating agreement have on the more efficient and economical operation of those two theaters and the service to the public?

A. Well, it saved a lot of expense, such as one
1698 manager operating both theaters instead of two managers, and in the lot shipment on express and advertising and buying and things like that.

Q. Did the matter of eliminating competition which existed or might have existed between your theaters and that of Consolidated in the licensing of pictures, have anything to do with you entering into that agreement?

Mr. WRIGHT. That is purely an argumentative question and I don't think this witness could possibly answer it. It is perfectly clear he made it because he thought it was going to be more profitable.

Mr. COCHRAN. There are several ways a thing can be profitable——

Mr. WRIGHT. We would not represent to your Honor that in all circumstances competition was more preferable than monopoly. I assume monopoly would be more preferable or there would not be any urge to embrace it.

The COURT. It is owing to what you call monopoly and what you call competition.

By the COURT:

Q. Were you motivated in this transaction by anything other than with a regard to good business?

A. No, Judge. I thought it was a good transaction.

Q. Had you had any trouble in securing sufficient product to operate your theaters in Chickasha?

A. No, judge.

1699 Q. Proceed.

By Mr. COCHRAN:

Q. I will re-ask my question. You never ruled on it and I will re-ask it.

The COURT. Read the question.

(The previous question read as follows: "Did the matter of eliminating competition which existed or might have existed between your theaters and that of Consolidated in

the licensing of pictures, have anything to do with you entering into that agreement?")

A. Yes, I think it would help the situation because it would give us more variety to select from——

By Mr. COCHRAN:

Q. I asked you if the matter of eliminating competition, doing away with competition in the buying and licensing of pictures entered into the making of that agreement?

A. Oh, no.

Mr. WRIGHT. I submit it is perfectly clear they intended to do exactly what they did and have one party book both theaters.

The COURT. Suppose there are only two theaters in the town and the owners went into partnership to operate them together, there wouldn't be any element of monopoly there, would there?

Mr. WRIGHT. I think there would when they are both circuits, yes. I submit it is entirely a question of
1700 legal argument. It isn't anything that can be established by the testimony of this witness or anyone else.

The COURT. This witness is the one that made the transaction. He perhaps would know what impelled him to do it.

Mr. WRIGHT. I submit it is perfectly clear what impelled him to do it. The question that counsel has put to him involves a matter of economic theory that I don't suppose he would be competent to establish or disestablish.

The COURT. He might give his own judgment. You may answer the question.

Mr. COCHRAN. He has already answered.

By Mr. COCHRAN:

Q. When was it you sold the Midwest Theater in Chickasha to the Griffith Southwestern Theaters?

A. In March, 1940.

Q. Was there any change in the number of programs, changes of programs in the Ritz Theater and the Midwest Theaters after the partnership arrangement with the Consolidated than there was before?

A. Not that I recall. It remained the same.

Q. And you were operating the two theaters?

A. Yes.

Q. Was there any decrease in the number of pictures that were used in the two theaters?

A. No.

1701 Mr. COCHRAN. That is all.

Re-direct examination by Mr. WRIGHT:

Q. Mr. Moran, as I understood your testimony on cross examination, you said that one of the benefits you got from

that pooling agreement was you had a greater variety of pictures for your Midwest Theater than you would have otherwise been able to get. Is that correct?

A. No, than we had by operating one theater.

Q. I say, by pooling the theaters you were able to get a greater variety of pictures for the theater you continued to operate, the Ritz, than you would otherwise have been able to get. Is that right?

A. He got to use some of the product we had under contract and we would get to use some of his.

Q. There was an advantage in pooling the product you had and he had. Is that right?

A. Well, yes.

Q. It is a fact then, under the pooling agreement product was made available to you that you otherwise would not have been able to play in the Ritz Theater?

A. No, we would have to——

Q. Will you read the question?

(Previous question read.)

1702 A. I don't know whether we would have been able to play it or not but I know we had enough product in the Midwest.

Q. See if you can answer the question. Read it again.

(Previous question read.)

A. Well we operated the Midwest Theater, you mean for the Midwest instead of the Ritz?

Q. The Midwest, yes, I should have said the Midwest.

A. Well, as I say, it is more or less the same answers. They had certain product under contract and so did we.

Q. The question can be answered yes or no.

A. Yes.

Re-cross-examination by Mr. COCHRAN:

Q. The Ritz Theater was the one that needed some action pictures, wasn't it?

A. That is right.

Q. It was considered by you to be of greater value in that type of theater?

A. That is right.

Q. Were you threatened or coerced in any manner in making that agreement?

A. Absolutely not.

Q. Or in selling out later?

A. Absolutely not.

(Witness excused.)

1703 THOMAS F. MURRAY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your name and address.

A. Thomas F. Murray, 7617 Dittmar Boulevard, Jackson Heights, Long Island, New York.

Q. What is your occupation?

A. Manager of branch operations for the Universal Film Exchanges, Incorporated.

1704 Q. Were you the man who supervised the preparation of the answers that Universal filed to the interrogatories submitted by the Government in this case?

A. I was.

(Plaintiff's Exhibits Nos. 351 and 352 for identification were marked by the reporter.)

Q. First I will show you this book marked for identification as Plaintiff's Exhibit No. 351 and ask you if you will explain to the Court what information is reflected in that book, and where it came from?

Mr. COCHRAN. If the Court please, we object to that until it is first shown how these documents were prepared and we point out that these are mere answers to certain interrogatories, and our position is that, so far as these answers are concerned, it doesn't make any difference if the witness prepared them from his own personel knowledge, they are inadmissible in this lawsuit against these defendants, because the company he represented at the time he made these answers has been dismissed from this lawsuit and is no longer a party to it.

Mr. WRIGHT. That, I think, is a mistake.

Mr. COCHRAN. I beg pardon?

Mr. WRIGHT. I think you are mistaken; they were parties at the time the answers were filed.

Mr. COCHRAN. They were parties, but are not par-
1705 ties now. In other words, these answers to interrogatories are admissible against no one except the person who answered the interrogatories, because they are purely ex parte, they are not taken on a notice to take depositions, and so forth, and no opportunity has been afforded for cross-examination and so forth at the time they were made.

Mr. WRIGHT. That is just what we are getting to if we can get the questions answered.

The COURT. I have no idea what the book is. You can tell us what the exhibit is, No. 351 is.

A. This is a transcript of the record for the information required under the interrogatories that were served upon Universal Film Exchanges, Incorporated, compiled by auditors under my supervision, and from an examination of the records of our home office and the exchanges.

By Mr. WRIGHT:

Q. Can you tell the Court what is reflected there, what information is shown in the various columns?

The COURT. We will proceed with this, and if it is determined by the Court that it is not competent, he will entertain a motion to strike. I don't know what it is. It is just a book to me. It is rather a large exhibit to go into the record.

Mr. DUDLEY. If the Court please, it gets down to one simple question. May you submit interrogatories to
1706 a defendant in a lawsuit, let him answer them and file them, and then go out of the case, can they be offered in evidence against the other defendant?

Mr. WRIGHT. Nothing is being offered at this point at all; we are merely establishing what this is.

Mr. DUDLEY. But you are fixing to.

The COURT. I understand the objection, but let's see what this is; I don't know what it is, I haven't any idea what it is.

A. This is a record of the sales and transactions in the situations that were called for in the interrogatories, beginning with the year 1934, 1934–35, '35–36, '36–37, '37–38, and '38–39, listing for each season's product the licensing of Universal product in the situations indicated in the record, to any and all of the situations located in these locales, indicating the product bought, the play-off of the product, the dating of the product, the rental of the product, any alterations in the original terms of the contract as to rentals, the actual rentals received, the time the subject was made available, the date on which it was dated, the date of delivery of the print to the exchange, and the date of national release, indicating by title and also by cast.

By Mr. WRIGHT:

Q. This book that has been identified here as Plaintiff's Exhibit No. 351 for identification is
1707 the one that contains the Texas and New Mexico situations, is it not?

A. All of the situations in New Mexico that were served out of Dallas.

Q. And the Texas towns?

A. And the Texas towns.

Q. And the particular towns that are covered are designated by the white tabs here with the name of the town?

A. Yes, sir.

Q. Then for each town you have one of these sheets representing a season?

A. Each town, one of the sheets representing a season, by color as well as by season.

Q. The blue is the '34–35 season?

A. That's right.

Q. And the yellow is the '35–36 season?

A. Yes, sir.

Q. And the green is the '36–37 season?

A. That's right.

Q. And the blue the '37–38, and the pink '38–39?

A. That's right.

Q. On each one of those sheets, the left-hand column contains the titles of the features released, is that right?

1708 A. That's right.

Q. Then opposite each title is the play-off date that you referred to before, and the date the picture is played and the rental received?

A. That's right.

Q. Then at the top of the page is a statement of the dates and parties to the contracts under which the pictures were played?

A. That's right.

Q. Then what are these figures at the bottom of each page?

A. The recapitulation per situation.

Q. The season's total rentals received from each situation?

A. Yes, sir.

Q. And this Plaintiff's Exhibit No. 352 for identification, that's the same kind of record for the Oklahoma situations that are listed on the tabs, is it?

A. Yes, sir.

Q. Now, with respect to this information that is reflected in these two exhibits, are they the most accurate records that Universal has of the facts that are set forth therein?

A. Yes, sir.

Mr. WRIGHT. You may cross-examine.

1709 Cross-examination by Mr. COCHRAN:

Q. Those are merely tabulations taken from the original records of the company, are they not?

A. Yes, sir.

Q. Then why do you say they are the most accurate records that the company has?

A. That is what the company possesses and that is all.

Q. Doesn't the company possess the original records?

A. They do possess the original records and these are taken from them.

Q. I am asking you why you say that these are the most accurate records, more accurate than the original records?

A. I didn't make such a statement; if I did, I want to correct it.

Q. You said they are the most accurate records they had, didn't you?

A. I said they are a transcript of the most accurate records they have.

Q. If that is your statement, we will accept that. You don't have the original records from which these purport to have been made, do you?

A. No, sir, not here.

Q. But those records are in the possession of the company?

A. Yes, sir.

1710 Mr. COCHRAN. We now object to the admission of any part of these documents, for the reason that——

Mr. KIMR. (interrupting.) They haven't been offered.

Mr. COCHRAN. I thought they were. What is the purpose, if you are not going to offer it?

Mr. WRIGHT. If the Court please, we have subpoenaed the records on which these tabulations are based, and if that is the objection we, of course, will be glad to see that counsel has an opportunity to examine any and all of those records that he wanted to. It does seem to us, however, that it is a waste of valuable time to have those records brought in here when they have been given a careful audit and check and the results have been incorporated in this form. I should think that any examination with respect to the original records ought to be limited to specific items that they might wish to challenge.

The COURT. What is the purpose of this exhibit now?

Mr. WRIGHT. Well, this exhibit is a complete picture of the play-off of the Universal films in the Griffith towns for the years involved in the suite here, for the period '34 through '39.

The COURT. Let me ask the witness a few questions.

By the COURT:

1711 Q. This is a record now, you say, of your product in the territory indicated, to the various exhibitors?

A. Yes, sir.

Q. Did you make contracts with anybody except exhibitors?

A. No, sir.

Q. Now, what was your practice and your plan in selling your product in any town?

A. Well, as to the sales, I wouldn't be a satisfactory witness for that, because my duties are confined strictly to the liquidation of contracts after the sales have been made.

Q. What I am getting at is this, did you have any understanding with any exhibitor that he would be furnished your product, and that some other competing exhibitor would not be furnished any part of your product?

A. If any such thing happened, it wouldn't come within the relation of my position with the organization.

Q. You wouldn't know anything about it?

A. No, sir.

The COURT. Then all that this shows is the product that this corporation sold in the various towns during this four-year period?

Mr. WRIGHT. That's right.

Mr. DUDLEY. If the Court please, it seems to me
1712 it is well settled that before this compilation could be introduced in evidence here, the books and records from which that is compiled must be produced here and tendered to the other side and introduced in evidence, and a tabulation made from that. We have had no opportunity or right to cross-examine the parties who prepared this schedule; we have had no right or opportunity to cross-examine on the books and records from which this was taken, and it certainly deprives the defendant of nearly every fundamental right they are entitled to, and it is not the best evidence.

The COURT. The Court will reserve its ruling on that point. Was that all that you want with this witness?

Mr. WRIGHT. Yes, to authenticate those records, that's right.

The COURT. The Court will reserve its ruling on that. I am not satisfied that they are competent, but, of course, if the defendants are satisfied after an examination of these records that they are an accurate reflection of the original records, it might present another question.

Mr. COCHRAN. Counsel inquired of us before this case started whether we would agree, and we told him we would not agree; that as far as we have been able to get the original records, we were convinced there were dis-
crepancies between these records and the originals
1713 sufficient that we would not be willing to waive the production of the original documents, we told them that, and that is our position now.

Mr. WRIGHT. And I have told counsel that if there were any items in there that they questioned, and they would call them to our attention, that we could probably agree as to any; if there were any discrepancies or errors, that is certainly something that could be very easily straightened out, if they would point them out, but they have never undertaken to tell us of any specific figures or instances of errors or discrepancies herein.

1714 Mr. COCHRAN. The trouble about that is, as I have said, we have only been able to get access to a limited amount of the original records. This company has not made available to us the original records and we have been endeavoring to see the contracts and the other original records and they have not been made available. I mean this company. I don't mean this witness.

By Mr. WRIGHT:

Q. As far as you know, your company has no objection to making available to counsel for the defendants in this case whatever records you have that are involved in this tabulation. Is that right?

A. No, the company will respect any subpoena served on it for that purpose.

Q. You have no objection to them seeing their records, or such records as they want to inspect?

A. No, sir.

By Mr. COCHRAN:

Q. You do not have those records in your possession, do you?

A. Not at present, no, sir.

Q. They are not in Oklahoma City?

A. I doubt if they are. There may be some of them.

Q. How many auditors did you have preparing this information?

A. I think I had three.

Q. For how long?

1715 A. Oh, they were at intervals; probably a duration of two and a half or three months.

Q. Were you present during the time they were making the audit?

A. No, sir. I organized this form and supervised the work.

Q. I asked you if you were present during any of the time that they were making these tabulations.

A. Part of the time.

Q. Did you check those tabulations against the original record?

A. I did not.
Q. And haven't done so today?
A. No, sir.
Q. That is all.

By Mr. WRIGHT:

Q. How voluminous are these records that these tabulations are taken from? Can you give us some idea of the scope and size?

A. I think the organizing and developing and typing and transcribing of those records took a little over eight months.

Q. I am talking about the records from which these are made up.

By the COURT:

Q. What volume do they occupy?

A. Well, they would originate from the contract.
1716 The contract would be accompanied by a recommendation and a recommendation would show the sales representative who negotiated the contract; the district manager who approved it; the division manager who approved it; final home office approval; dates of the contracts; the date of the approval; the transcribing of that contract and approval to a booking record; print cutoff; the booking of the individual subject, whether there be 20 subjects sold or whether there was a whole year's product sold; the entry of the alterations; the checking back from the contracts and the booking records to the ledger; the pencil copying of that information; the notations from the contract and booking record as to the run and the clearance; also the corporate or individual ownership in each situation; the tabulating or compiling of the total rentals in each particular year. I think that is about all of the detail I can remember.

By Mr. WRIGHT:

Q. Can you give us an idea about how many different numbers were selected?

Mr. COCHRAN. We object to that for the reason that counsel in this case has specified certain towns that should be investigated, an inquiry as to the total volume involved in all of the towns in the several situations, many situations have nothing to do with it. It isn't a question as to these towns involved here and the volume of records in regards to that.

1717 Mr. WRIGHT. That is what I asked him.

Mr. COCHRAN. He has not specified these particular towns.

By the COURT:

Q. How big a volume would the original records constitute, a truckload or two truckloads?

By the WITNESS:

A. I imagine it would be reasonably a truckload.

The COURT. We are to have a recess tomorrow and during this recess you could check these as tendered against the original records if the witness states the original records are available for your inspection.

Mr. COCHRAN. That is imposing a burden on us that we should not have at this time when we are trying to prepare our defense. We have tried for months to have access to them. We tried up to the very time this case went to trial.

The COURT. What effort have you made to see the original records?

Mr. COCHRAN. I have gone down time and time again and phoned time and time again to their office here and they would say they were in New York City, and then New York would say they were sent here. The Government has subpoenaed them. Those are the best evidence. I say it is not a burden that should be placed on our shoulders. We have done a lot of checking in this case and we have a
1718 big job ahead of us to get ready for trial, and we say that is not just fair. This witness talks about all of these documents. He knows that most of this stuff is represented by contracts and one record covers each town for each season, and counsel for the Government knows that, and those documents can be brought here just as they have done as to these other companies. They don't have any such stipulation as to that as to Paramount and those companies. They have been bringing the contracts here, and that is what we want them to do so far as Universal is concerned.

The COURT. The Court will reserve his ruling on this. He is not satisfied this is competent evidence, and at the same time I do not want to commit error in refusing it if it is. I can investigate it a little myself during the recess, but getting back to the case proper, it seems to me the gist of this lawsuit is the character of the contract that is made by these distributors and what kind of understanding there was with the distributor and individual exhibitor at the time the contract was made. I don't know how this volume here is going to assist the Court. I don't think it makes very much difference how many towns there were that they sold their product to. The question is, what did these defendants do that constituted a violation of this Act under which
1719 this case is brought. Evidently it is not what the

distributors did because they are not parties to the suit. It is what these defendants did. Now if you can show me that this distributor entered into a contract, say with these defendants, whereby as a part of the consideration of that contract they would not sell anybody except the Griffiths, that would certainly be competent, but just to say a man operated three theaters in a town or four theaters in a town, and someone else operated two or three—in your consent decree there is a provision that the distributor may sell to the exhibitor that will, to use an expression we all understand, make him the most money. In other words, he is not expected to sacrifice his profits in order to accommodate everybody. The distributor is the man who has absolute control over this situation. He can sell or refuse to sell, and naturally, if a man is operating a theater he wants to get the best product he can, and if he owns two theaters he might have a slight advantage.

The chain stores are operating here every day and here is a man who is buying for eight or ten stores who might have an advantage over a little suburban grocery store because he can buy in larger quantities. Now, is it a violation of the law for him to do that? Does this Act prohibit anything like that? It is not the volume of business that is done in this circuit. It is what these people did
1720 who were handling it. The ruling will be reserved on this as indicated.

Mr. WRIGHT. If the Court pleases, do you want to hear anything from me at this time as to how I thought this would establish that?

The COURT. Yes, I will be glad to hear any statement you wish to make.

Mr. WRIGHT. We would state, if Your Honor is waiting in this case for any contracts expressed in writing between the Griffiths and these defendants where the defendants set out in writing or the distributors set out in writing that as a consideration in making this contract with you "I agree that we will not sell anybody in opposition to you," we do not have that kind of evidence. We never have had it and never expect to get it, but what we expect to show from the evidence we do put in is that by the use of the combination of these defendants in combining their theaters together in making deals with these distributors, they have been able to prevent the distributors from dealing with independents in individual situations, who would otherwise have been able to buy the distributors' product, had it not been for the buying power of this combination exerted through concerted action. Now, the contracts themselves, I submit, do not always tell the whole story. This play off here,

1721 for example, some of these sheets we have would show that the distributor did actually sacrifice revenue in a particular situation as the result of dealing with Griffith, and the only reason they have sacrificed that revenue was in order to get into the Griffith circuit, to make a circuit deal, and it was necessary to exclude the independent in opposition. Now that is what the case is about.

The COURT. Let us assume here is a town where the Griffiths have four theaters and also two independents. Is it your contention that Griffiths would not have the right under this Act to make the best deal they could make in order to get the product that was desired for those theaters?

Mr. WRIGHT. If they were negotiating independently for those theaters that would be true, as to a single exhibitor negotiating independently for theaters in that town, but that is not the situation you have here.

The COURT. Let us suppose in addition to that that Griffith has the same situation in a dozen towns, and it is this corporation that owns these theaters. Now you say that under this Act they would not have the right or power to make a deal for all of those theaters?

Mr. WRIGHT. We are not dealing with one corporation owning a number of theaters. They are separate exhibitor groups of all who combine their theaters in these film
1722 buying deals. I don't think those deals are comparable to where one exhibitor owns a number of theaters in a number of situations and makes a deal.

The COURT. Suppose these were all one corporation?

Mr. WRIGHT. I think that would be a different case.

The COURT. If the major factors in these various corporations are the same and they just operate in different territory and under different names, but still they are the same people who are handling it, and they buy for the entire circuit, it is your contention that the power they would have because of the great number of theaters and their ability to buy, to get the production they desire, that that is a violation of the Act?

Mr. WRIGHT. To the extent that power was used to prevent the competitive distribution of films in any situation in which they operated, yes.

The COURT. What do you say about the distributor then? Is he relieved of all responsibility? He can sell to whom he pleases.

Mr. WRIGHT. We dispute that contention quite strongly. The only reason the distributors are not defendants in this case at the present time is because they are defendants in a proceeding in New York. They were not dismissed

as defendants here on the theory they were any
1723 less subject to the Sherman Act than the defendants who are left in the suit, but there is another proceeding against them in which relief against can be more properly given than in these various regional suits. The other suit covers their activities on a national scale.

The COURT. Well, just let this matter stand as it is at the present.

(Witness excused.)

1724 Mr. WRIGHT. If the Court please, we are calling Mr. McKenna as an adverse witness under rule No. 43 B.

B. J. McKENNA, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. Will you state your full name and address?

A. B. J. McKenna; Oklahoma City, Oklahoma.

By the COURT:

Q. B. J. McKenna?

A. B. J. McKenna, M-c-K-e-n-n-a.

Q. B. J.?

A. Yes, sir.

By Mr. WRIGHT:

Q. And your occupation?

A. General manager of the Griffith Theaters.

Q. You prepared or supervised the preparation of the interrogatory answers that were filed in this case by both Griffith Amusement Company and Griffith Consolidated Theaters, did you not?

A. Yes, sir.

Q. You are connected with both companies?

A. Yes, sir.

Q. In what capacity?

A. Well, I am the vice president of Consolidated Theaters, and the general manager of Griffith Amuse-
1725 ment Company.

Q. And how long have you been employed by those companies respectively?

A. Well, I have been with the Griffith Amusement Company since 1928, the summer of 1928. I am not employed by the Consolidated Theaters in the sense of being employed.

Q. You merely act as an officer?

A. That's right, yes, sir.

Q. How long have you been an officer of Consolidated?

A. I believe since about 1939.

Q. Did you also participate in gathering together the material that was produced here in response to subpoenas duces tecum that were served by the Government on Consolidated Theaters and Griffith Amusement Company?

A. Yes, sir, I assisted on it.

Q. Are you familiar with those agreements that were produced, showing operation of the Griffith Theaters?

A. I think so, yes, sir.

Q. One of them is an administration contract, marked as Plaintiff's Exhibit No. 10, dated in June 1942, between Griffith Amusement Company and Griffith Consolidated, and W. T. Spears, of Altus, Oklahoma, and I call your attention to this second and third paragraphs where it says, "Whereas the second and third parties have been operating the Delta, Plaza, and Ritz Theaters in Altus, Oklahoma, and have been using the services of the first party in the administering, supervising, of theater management and the rendering of auditing and bookkeeping service and in the licensing and booking of films and entertainment attractions for exhibition in said theaters and in rendering of exploitation and advertising services in connection with said attractions, and whereas the parties hereto now desire to reduce their agreement to writing"—

1726

the parties mentioned in that agreement had been operating under an agreement such as described there for how long, do you know?

A. Let me see that again. (Referring to paper.) Do you want to know how long they had been operating under an agreement such as this? Since about 1930.

Q. Was there any prior written agreement of any kind?

A. I believe there, yes, sir.

Q. Do you know what the date of the prior agreement was?

A. No, sir, I do not. I do not know the date.

By the COURT:

Q. Do you know what the oral agreement was that was in existence prior to the execution of that?

A. Well, this is the same agreement that we have always had; in other words, basically what is in this agreement is the same type of agreement that we have always had.

By Mr. WRIGHT:

Q. Well, you say you think there was a prior written agreement though?

1727

A. I think there was an agreement with Altus, Oklahoma.

Q. What was done with the prior written agreement?

A. I don't know about that, Mr. Wright, I don't know.

Q. You don't know whether you have that agreement or not?

A. No, sir, I do not.

Q. Do you know what the occasion was for making a new agreement there in 1942?

A. Well, I can't remember at this time.

Q. Who do you think would know?

A. Well, Mr. Griffing could probably answer that question; he wrote the agreement, I believe.

Q. Have you any records at all which would show when the agreement was first made?

A. No, I do not have any records on it.

Q. Do the companies, either Griffith Consolidated or Griffith Amusement Company, have?

A. All our legal records are kept by our attorney.

Q. Do you know what records you have—I am not talking about legal records, I am talking about your ordinary business records of your company?

A. Well, this is a legal record, is it not?

Q. Well, I assume it is.

1728 A. Well, I know nothing about the—I mean the legal records are with our attorney and I know no where else that they might be.

Q. What do you mean by legal records?

A. Well, a contract like this, that is what I call a legal record.

Q. All of your contracts, all the records that relate to your contracts?

A. Yes, sir.

Q. When were they placed in the hands of your attorney?

A. They always have been.

Q. Don't you or any other representative of your company know what records you have, or what records are in his possession?

A. Well, I wouldn't know unless I would have an opportunity to check on the matter, the particular records.

Q. Could you find out for us what, if any, records the company has as to when that agreement that is referred to in Exhibit No. 10 was first made?

A. Well, I am sure I could, yes, sir.

By the COURT:

Q. Does this agreement, this written agreement, refer to a prior written agreement?

Mr. WRIGHT. No, it simply, the only reference it has on its face, it just says that they have been operating, I will

1729 read it again, "Whereas the parties have been using the services of, the second and third parties have been using the services of the first party in the administering and supervising of theater management and

the rendering of auditing and bookkeeping service and in the licensing and booking of films and entertainment attractions for exhibition in said theaters and in rendering of exploitation and advertising services in connection with said attractions, and whereas the parties hereto now desire to reduce their agreement to writing", it doesn't indicate whether or not——

By the COURT (interrupting):

Q. Do you know whether there was a written agreement originally?

A. I don't know for sure. Let me review this now, think in my mind, just a moment, Judge. Remembering back, as I recall, Consolidated, Griffith Consolidated Theaters, which is the partner of W. T. Spears that is referred to in this agreement, had an administration contract with the Griffith Amusement Company, which is the other party that is referred to in this agreement, and that administration contract covered all of the towns that were involved in the Griffith Consolidated Theaters, among which was Altus, Oklahoma. And as to this date in 1942, about it being reduced to writing, I stated it has always been in writing in my mind. Now, this brings it to an individual basis. It is just probable that the partner, I don't recall at this time, but it is probable that the partner requested
1730 that it be made on an individual basis where he was included in this administration contract.

By Mr. WRIGHT:

Q. Now, that prior blanket agreement between Griffith Consolidated and Griffith Amusement Company, do you have the copy of that agreement?

A. No, sir; I do not know.

Q. You say there was such an agreement in existence?

A. That is my understanding about it, yes, sir.

Q. Do you know why that wasn't produced in response to the subpoena that was served here calling for all the agreements made between the defendant companies?

A. No, I do not, I do not know.

Q. At the time the subpoena was served did you make any kind of search for that agreement?

A. Well, Mr. Wright, there was a lot of things asked for in that subpoena, and I just don't recall each and every one of them. I would be glad to check it back and see what the items were. I didn't intentionally intend to leave out anything that you asked for.

Q. Could you make a search for that agreement and see if you can locate it for us?

A. Sure.

Q. Do you remember about when it was made?
A. Well, the agreement would be made in 1930.
Q. About 1930?
1731 A. About 1930. Yes, sir, that was the time that Consolidated Theaters began operating.
Q. And you think they continued under that agreement until these individual agreements were made?
A. Yes, sir.
Q. Then I notice there are a number of these made in 1942, Exhibit No. 11, one dated August 1942, relating to Ardmore. Would your explanation as to that be the same as to Exhibit No. 10?
A. Let me see that, Mr. Wright.
The COURT. Did you mark this other as an exhibit?
Mr. WRIGHT. The other one is already in evidence as Plaintiff's Exhibit No. 10.
The COURT. But this last one.
Mr. WRIGHT. The last one is Plaintiff's Exhibit No. 11, in evidence.
A. Read the question.
Mr. WRIGHT. Just strike it out.

By Mr. WRIGHT:

Q. This Exhibit No. 11 has a similar clause there in it, referring to certain services that have been rendered in the past and saying "Whereas, the parties hereto now desire to reduce their agreement to writing", do you recall whether there was a prior written agreement in that connection, other than this general agreement which you have referred to?
1732 A. This general agreement that I referred to awhile ago is a specific reference, if you recall, as affecting Griffith Consolidated Theaters, Inc.
Q. Yes.
A. Now, this Ardmore has nothing to do with Griffith Consolidated Theaters, Inc., so far as a general agreement in effect concerns that.
1733 Q. What was the prior agreement there, if any?
A. Well, I believe there was an agreement there similar to this. If not, practically the same in effect on Ardmore with the possible exception that I think one of the parties, a sister of Mr. Lowenstein, died. That probably would reflect the difference. Otherwise, it would be just about the same.
Q. Is the prior agreement in writing?
A. My memory says it is.
Q. Do you know where that agreement is?
A. No, I do not at this time.

Q. Do you know when it was made?

A. No, sir, I do not.

Q. Could you find out for us?

A. I will look for it.

Q. Then I will call your attention to Exhibit 15, administration contract dated November 30, 1942, which is a similar recital to the theaters, I believe in Claremore, Oklahoma, and ask you just what prior agreement there was there.

A. I believe that this town of Claremore, Oklahoma, was included in with the general agreement which I mentioned relative to Altus. This is one of Consolidated's towns.

Q. In addition to that general agreement was there
1734 any written agreement between one of the defendants and the local partner there such as this one you have in your hand?

A. No, sir, I don't think there was. I think the general agreement covers the——

That general agreement will show when the——

Mr. COCHRAN. We object, if your Honor pleases. If the general agreement is in existence Mr. McKenna said he would search for it and it will speak for itself.

Mr. WRIGHT. I want to find out what other records we need to complete the picture as to when one of the defendants started to book for the other for the theaters in question.

The COURT. You may proceed.

By Mr. WRIGHT:

Q. That general agreement would show when the particular company involved, that is the Griffith Amusement Company or Consolidated first began to book pictures for the theaters there?

A. Yes, I believe it would.

Q. If it appears when you find that agreement that it does not, could you find out if there are records which show that?

A. Yes, sir, I will.

Mr. COCHRAN. I am just wondering if you cannot state what additional information you want in regard to
1735 that so he can get up the information over night, because personally I am doubtful if there is any such written agreement and Mr. Griffing thinks not. There is a conflict between these gentlemen so if you will give us the specific information you want——

Mr. WRIGHT. I think I have indicated very clearly the information we want.

Mr. COCHRAN. You want the time they started booking for that particular town?

Mr. WRIGHT. And whatever prior written agreement there is.

Mr. COCHRAN. But you also want to know what time the Griffith Amusement Company started booking that particular town.

Mr. WRIGHT. That is right, what is in the records there which shows what the agreement was.

By Mr. WRIGHT:

Q. I show you this exhibit, Plaintiff's Exhibit 16, bearing the date August, 1944, an administration contract, making similar recitals about reducing an agreement to writing with respect to theaters at Clinton. Will you tell us whether that town was covered by this general agreement or whether there were others prior written agreements relating to it?

A. I am of the opinion that there was another agreement but the parties were different. Mr. F. G. Rob-
1736 erts, who was the original partner died and was replaced, and his wife took over, and this agreement here sets out the same terms and conditions as the former agreement except that the wife is in it where he was in it before.

Q. Do you know when the former agreement was made?

A. I believe it was made about 1933 or '34, possibly.

Q. Will you see if you can locate that agreement for us?

A. Yes, I will.

Q. I show you this Exhibit 18, which is an administration contract containing similar recital and refers, I believe, to the operation of theaters at——

Mr. COCHRAN. What town is that?

By the WITNESS:

A. Clinton.

Mr. WRIGHT. Also Clinton. Exhibit 16 is the one that supersedes Exhibit 18. Is that right?

By the WITNESS:

A. Which one did you give me first?

Mr. WRIGHT. The first one I gave you was the '44 agreement and the '42 agreement. Is that the agreement you refer to as one that was made before the death of this party?

The COURT. What is the date of 18?

Mr. WRIGHT. I think it is September, '42. 16 is August 8, '44.

By the WITNESS:

1737 A. September 30, 1940. What was the question?

By Mr. WRIGHT:

Q. You will notice this Exhibit 18 refers to the prior rendering of these services, and of reducing the agreement to writing. Was there a written agreement that preceded that exhibit you have in your hand there, 18?

A. I believe there was.

Q. And you will endeavor to locate that for us?

A. Yes, sir.

By the COURT:

Q. What is the date of 15?

Mr. WRIGHT. 15 is November 30, 1942.

By Mr. WRIGHT:

Q. I call your attention to Plaintiff's Exhibit 24, an agreement dated May 24, 1942, relating to certain theaters at El Reno, Oklahoma, which refers to the rendition of certain services and reducing the parties' agreement to writing. Was there a prior written agreement in that situation?

A. Yes, sir, I think there was.

Q. Do you know when that was made?

A. The prior agreement?

Q. Yes.

A. I don't know exactly, no, sir.

Q. Do you know what the occasion for making this superseding agreement was?

A. No, I don't remember.

1738 Q. I show you this Defendants' Agreement 33, an agreement dated July 30, 1942, relating to the operation of theaters at Hominy, Oklahoma, which contains a similar recital about prior rendition of services and ask you if there was a prior written agreement in that situation?

A. I do not recall but I will check and see.

Q. Do you have any idea when that agreement was first made?

A. This agreement here?

Q. Yes, the prior agreement that was referred to.

A. I don't recall that there was a prior agreement. I will have to check and find out.

Q. I call your attention to this Exhibit 41 which is dated July 17, 1943, and in relation to the Reno Theater in Oklahoma City, and refers to the reducing of a prior arrangement to writing. Was there a prior written agreement in that situation?

A. Yes, sir, there was. This is changing the parties to the agreement. We had a similar agreement except another party has been added.

Q. Do you know when that agreement was made?

A. I believe that agreement was made back in about 1930; somewhere back in there.

Q. Do you have a copy of that?

A. I don't know. I will have to check for it.

1739 Q. I call your attention to Exhibit 41. I see this is marked Exhibit 41 for identification. Apparently that was not offered in evidence. I call your attention to an exhibit which is marked as admitted, an agreement dated April 16, 1942. I believe there are two dates, one May 1, 1942, relating to theaters at Sapulpa, Oklahoma. Was there a prior written agreement in that situation?

A. Yes, I believe there was.

Q. Do you know when that was made?

A. No, sir, I don't know without referring to the records.

Q. Do you know what the occasion was for making this one?

A. No, sir, I do not.

Q. Can you find out for us?

A. Yes, sir.

Q. I call your attention to Exhibit 44, a similar administration contract dated June 1, 1942, relating to theaters at Sayre, and ask you if there was a prior written agreement in that situation?

Mr. COCHRAN. If you will give us a list of that we will get up what you want. My understanding from Mr. Griffing is your subpoena covers certain dates. If you want to go back of that just give us a list of the documents you want and if we have them we will bring them up, However,

1740 we have no objection to your proceeding.

Mr. WRIGHT. There are only a few more here.

By the WITNESS:

A. I believe there was but I would have to check the records to make sure.

By Mr. WRIGHT:

Q. You don't know what the date of it was?

A. No, sir.

Q. I call your attention to this Exhibit 47, a similar agreement referring to theaters at Vinita that is dated in November, 1942. Do you remember whether there was a prior written agreement there?

A. Yes, I believe there was.

Q. Do you know when it was made?

A. No, sir, I would not know exactly.

Q. Do you know what the occasion of making this agreement was?

A. No, I do not but I will check it for you.

Mr. GRIFFING: Did you say the Exhibit 42 was Vinita?
Mr. WRIGHT. The number of the exhibit is 47.
The COURT. What is the date?
Mr. WRIGHT. November 30, 1942.
The COURT. What town.
Mr. WRIGHT. Vinita, Oklahoma.

By Mr. WRIGHT:

1741 Q. I call your attention to this exhibit 48, which is dated September, 1941, and relates to Wewoka, Oklahoma. Was there a prior written agreement in that situation?

A. There was a prior written agreement but not between the same parties. One of the partners sold out.

Q. Which was the partner that sold out, do you know?

A. J. B. Terry.

Q. Who was the prior agreement between?

A. The same parties except J. B. Terry.

Q. Do you know when that was made?

A. I believe that was made in '38

1742 Q. Can you see if you can get a copy of that answer?

A. Yes, sir.

Q. In the interrogatories answers that were filed and signed by you for Griffith Consolidated Theaters, the names of the theaters acquired are listed. I don't believe there is anything to indicate, however, whether the particular theaters were built on the dates listed or whether they were acquired from some one else. Would you know from looking at the list whether any of those theaters you have listed as acquired was a theater that one of your companies had built?

A. Yes, I think so.

Q. Could you pick them out?

Mr. COCHRAN. What page are you on?

Mr. WRIGHT. Beg pardon?

Mr. COCHRAN. Is that Griffith Amusement Company or Consolidated?

Mr. WRIGHT. The interrogatories I handed him are those filed by Griffith Consolidated Theaters, and the page he is now looking at is, well, it is the answer to No. 17.

The WITNESS. Read the question.

The COURT. I don't know that I understand the question. Do you want to know whether or not they were acquired or built?

Mr. WRIGHT. I asked him if he could point out
1743 which, if any, of those theaters listed as acquired there were built by one of the defendant companies.

A. When you say built, you mean own the real estate in fee?

By Mr. WRIGHT:

Q. Whether the theaters were actually constructed by one of the defendants? I would assume normally that the acquisition would mean the theater was bought as a theater from some one else.

Mr. COCHRAN. You also mean where they were built, in the event he made a lease from somebody who constructed a building; if it was a new theater, that would go in that category.

Mr. WRIGHT. I want to get the facts about new theaters.

Mr. COCHRAN. You are making a distinction between new theaters and those which had been in existence and which they acquired from some one else?

Mr. WRIGHT. That's right.

By Mr. COCHRAN:

Q. Do you get that distinction?

A. I think so. The Washita in Chickasha, Oklahoma.

By Mr. COCHRAN:

Q. When you give the name explain it.

A. The Washita Theater at Chickasha, Oklahoma, was built by Consolidated Theaters, Inc. They purchased the property, the land, and built a new theater, a new de luxe theater on the land. The Tower Theater at Drum-
1744 right, Oklahoma.

By Mr. COCHRAN:

Q. Just at that point, how about the Ritz at Chickasha?

A. Oh, I didn't see it. The Ritz in Chickasha.

Q. What about the Ritz?

A. Wait just a minute, I was trying to find it. Oh, I see, the Ritz in Chickasha, yes, we built that from the ground up. The Tower at Drumright we built that theater. The Ector at Goldsmith, Texas. The Ute at Sayre, Oklahoma, we built a new A house there. The Sunray at Sunray, Texas, we built that house from the ground up.

Q. How about the State at Sapulpa?

A. Just a minute. The State at Sapulpa, we built it, bought the lot and built the theater. On the next page, the Lindsey at Lubbock, we built that from the ground up. At the top of the page. There is no page number. The Texas at Texas City, we built it from the ground up. I believe that's all on this list.

By Mr. WRIGHT:

Q. Now, could you do the same thing for us with this list of the Griffith Amusement Company's acquisitions? (Handing.)

By Mr. COCHRAN:

Q. How about—excuse me just a minute, if I may suggest, how about the American at Cushing? That is on the list?

A. Well, the American in Cushing was rebuilt, but
1745 it burned down. If his question is in order, we built it back, but originally it wasn't built by us. The Osage at Bartlesville, we built that as a de luxe A house in Bartlesville. The Rex Theater in Borger, Texas, it is our A house, I mean our B house. The Rig Theater in Borger, Texas. The Elk in Elk City, that is our A house in Elk City, it is the de luxe house. The Cherokee Theater in Enid. The Erie Theater in Hugo, Oklahoma.

By Mr. COCHRAN:

Q. How about the Aztec in Enid?

A. Well, now, let me ask you. The Aztec in Enid was originally built and leased to us. That doesn't answer Mr. Wright's question.

Q. He wants every place that was originally, that you occupied first as a theater.

A. Well, all right, the Aztec in Enid, that is right.

Mr. COCHRAN. I thought we made that clear.

A. You didn't make it clear to me; I didn't understand it that way. I want to go back over the list.

Mr. COCHRAN. Again, let us explain. Mr. Wright, as I understand it, is seeking to make a distinction between theaters which had been operated by some one else and which you acquired, and theaters which you initially operated as a theater, whether built by somebody else and leased to you or built by you on property which you owned. Is that clear?

1746 A. Yes, it is clear now, but I didn't understand it that way at first. What was the last one?

Mr. COCHRAN. You are in Hugo.

A. The next one is the Kermit Theater at Kermit, Texas. The next is the Arcadia at Maud, Oklahoma. The next one is the Sooner at Norman, Oklahoma. The next one is the University at Norman, Oklahoma. The next one is the La Nora Theater at Pampa, Texas. The next one is the Rex at Pampa, Texas. The next one is the Seminole Theater, at Seminole, Oklahoma. The Bison in Shawnee, Okla-

homa. The Avon in Shawnee, Oklahoma. The Aggie in Stillwater, Oklahoma. The Campus in Stillwater, Oklahoma. The Ritz in Wellington, Texas. The Rig in Wink, Texas. I believe that catches all of them. Let me review that list.

By Mr. WRIGHT:

Q. Do you want to make any other list?

A. I want to go over that again. Yes, on that other list, Mr. Wright.

Q. You are referring to the interrogatory answers of what company?

A. Griffith Consolidated Theaters.

Q. All right.

A. The Greer at Mangum. The Reno Theater in Oklahoma City. The Axtec Theater, in Vinita, Oklahoma. I believe that catches all of them.

1747 Q. Now, calling your attention again to this same Consolidated list, you show the Delta Theater acquired at Altus, Oklahoma, on November 1, 1930. Do you know whether that had been operated in opposition to your Paramount Theater there before you acquired it?

A. Repeat that question, will you? Read the question to me.

(Question read by the reporter.)

A. No, sir, it hadn't been operated in opposition.

Q. Who had been operating it, do you know?

A. The Griffith Consolidated Theaters and W. T. Spears operated the, it is referred to here as the Delta, formerly the Rex, or old Empire, those are names it had.

Q. Yes?

A. But this Delta and this Plaza and the Paramount you refer to was formerly known as the Wigwam; these three theaters were all operated and owned in partnership by W. T. Spears and the Griffith Consolidated Theaters as of this date.

Q. The date of acquisition that you show for the Paramount there is '28, is it not?

A. Well, this date of acquisition on the Paramount, Mr. Wright, in my opinion is incorrect, because Griffith Consolidated Theaters didn't begin to operate as a corporation until April 27, 1930.

1748 Q. You think all the theaters there were acquired at the same time?

A. I know they were all at the same time, yes, sir.

Q. Calling your attention to Chickasha there, the date of acquisition you have for the Ritz is in May 1933. Be-

fore you acquired that Ritz, was that operated in opposition to the other theaters you had there?

A. Yes, sir, I believe that theater was operated by an individual by the name of Milne.

Mr. COCHRAN. That is one of those you testified you built.

A. He said prior to the time we built this new theater.

Mr. COCHRAN. Go ahead.

A. Isn't that right, Mr. Wright; prior to that date, aren't you asking about?

By the COURT:

Q. Was the Ritz operated by some one else before you acquired it?

A. It wasn't this same Ritz, your Honor; it was on the same location but it was not this same Ritz; in other words, the theater was operated by Mr. Milne, as I recall.

Q. When you bought out Mr. Milne, you tore it down——

A. We didn't——

Q. The theater and built a new one?

A. We didn't buy out Mr. Milne. I think Mr. Milne had become in some way financially involved on his equip-
1749 ment or something and the building was in the hands of a receiver.

Q. Well, you acquired the building that he had operated as a theater and then you rebuilt it, is that correct?

A. Yes, we rebuilt it from the ground up.

Q. And used the same name?

A. I was trying to think whether that was the same name or not. I think so, I believe that was the same name.

1750 By Mr. COCHRAN:

Q. This theater which you remodeled and called the Ritz, prior to the time you acquired the Ritz, was it being operated as a theater by anyone?

A. No, I don't think it was.

By Mr. WRIGHT:

Q. At the time you acquired it, it had been operated just prior thereto by Mr. Milne, had it not?

A. I don't know how far ahead. You heard Mr. Moran testify. He referred to Mr. Milne himself.

Q. Do you recall when that pooling agreement was made with Mr. Isley and Moran of the theaters in Chickasha, involving the Ismo and Ritz and Midwest?

A. Yes, I recall.

Q. Do you know what the date of it was?

A. I believe it was in December of '37.

Q. Have you a copy of that pooling agreement?

A. No, sir, I have not.

Q. Do you know what happened to it?

A. Well, any of those records or contracts would be in our attorney's office.

Q. Do you know why that one was not produced in response to the subpoena?

A. I didn't know it was asked for.

Q. I think it was clearly covered by the subpoena.

A. It is possible I made a mistake on it. I will check it for you.

1751 Q. Calling your attention to Clinton. The Rialto you show as acquired in January, 1934. Do you know whether that had been operated in opposition to your Del Rio there prior to the time it was acquired?

A. No, sir, it had not.

Q. Who was operating it before you acquired it?

A. I believe the Rialto Theater belonged to Mr. Welch.

Q. You say it had not been operated before you acquired it?

A. I said the Rialto Theater belonged to him. It wasn't operated by him.

Q. Well, was it operated by somebody?

A. Well, I recall years before the Rialto Theater was operated by J. B. Momand of Shawnee.

By the COURT:

Q. Was there a theater in operation at the time you purchased it?

A. Let me think that over just a minute. No, sir, there was not.

By Mr. WRIGHT:

Q. How long has it been closed, do you know?

A. I couldn't say exactly without referring to the record, but it has been closed for some time.

Q. How about the Rex which you later acquired after you got the Del Rio? Was that operated there before you acquired it?

1752 A. Well, we acquired the Rex, I believe in a partnership with Mr. F. G. Roberts. That was the theater he was operating.

Q. Roberts was operating the Rex?

A. We had the Del Rio.

Q. While you were operating the Del Rio, is that right?

A. Yes, sir.

Q. Now, calling your attention to Cushing. You show the Paramount acquired there. Will you read the date?

A. Paramount, 4–27–30.

Q. When that was acquired had that been operated by someone else while you were operating the American and the Duncan there?

A. If you will notice—you have asked that question wrong. The American and Duncan were not acquired until afterward.

Q. That is right. I should have reversed the question. Were the American and the Duncan being operated in opposition to your Paramount prior to the time it was acquired?

A. Yes, sir.

Q. By whom?

A. By Mr. Duncan.

(Hereupon court adjourned until 10 o'clock a. m., May 24, 1945.)

1753 PROCEEDINGS

May 24, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. WRIGHT. We will interrupt Mr. McKenna's testimony. We have a witness here who wants to get a 12 o'clock bus back to Ada.

NONA KYSER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. WRIGHT:

Q. State your name and address.

A. Miss Nona Kyser from Ada, Oklahoma.

Q. You operate a theater at Ada?

A. Yes, sir.

Q. What is the name of it?

A. The Ada Theater.

Q. How long have you operated that theater?

A. Well, we have operated the Ada Theater since '36.

Q. Is that when it was built?

A. Yes, sir.

Q. You were prior to that time engaged in the theater business at Ada with your brother?

A. Yes, sir.

Q. What is his name?

A. E. H. Kyser.

1754 Q. How long were you in partnership with him?

A. Well, from '33 until '36.

Q. He died in that year?

A. Yes, sir.

Q. What theaters were you and he engaged in operating in '33?

A. The Strand Theater.
Q. That was at Ada?
A. Yes, sir.
Q. What other theaters were there in Ada at that time?
A. The McSwain Theater and Ritz Theater.
Q. Do you know who operated those?
A. Well, a Mrs. Killough, Mr. and Mrs. Killough operated the theaters; that is, they were managers.
Q. The Griffith Companies were interested in them?
A. Yes, sir.
The COURT. I didn't get that answer Mr. Wright.

By Mr. WRIGHT:

Q. Did you answer the last question?
A. There were two theaters, the McSwain and Ritz Theater.
Q. The last question I asked was whether the Griffiths were connected with the operation and I think she said yes to that question.
Mr. COCHRAN. Do you have any objection to the record showing the Griffith Amusement Company?
Mr. WRIGHT. No, I understand the company is the
1755 Griffith Amusement Company.
Q. During the period that you and your brother were operating the Strand, who did the booking and the buying of pictures?
A. Well, my brother did the buying and the booking of all the pictures.
Q. Well, what part of the business did you handle?
A. Well, I was cashier.
Q. You were familiar with the product that was played there during that period, though, were you?
A. Yes, I think I was.
Q. And can you tell us what major product, if any, the Strand had for the '33–34 season?
A. Well, we were using Columbia, Paramount, United Artists and a few first run Fox.
Q. Did you have the Paramount first and second run?
A. Yes, sir.
Q. I will show you these contracts that have been marked as Plaintiff's Exhibits Nos. 68 and 69 for identification, and ask you, do you recognize that as your brother's signature on there?
A. Yes, sir.
Mr. WRIGHT. We will offer these exhibits Nos. 68 and 69 in evidence. No. 68 is the first run contract for the '33–34 season, and No. 69 is the second run contract for the

same season, both for the Strand Theater at
1756 Ada.

The COURT. With what company?

Mr. WRIGHT. With Paramount.

Mr. COCHRAN. I notice these are not signed for the Paramount Company.

Mr. WRIGHT. I think they came from their files.

Mr. COCHRAN. Just a moment. Don't you have those contracts in the photostats?

The COURT. Is there any question about them being copies?

Mr. COCHRAN. Just a minute; I am checking.

Mr. WRIGHT. I think we may have the face of them. The other day you preferred to have the full contract in, so I thought we may as well use these.

Mr. COCHRAN. No objection at this time, and I will check it later. That is the best way to save time.

The COURT. They will be admitted on the assumption that these are copies of the original contracts which were signed.

Mr. COCHRAN. That's right. I believe our stipulation covers those two contracts, but I will check later and if there is any question about it I will call it to the attention of counsel, but at present, let it stand.

1757 By Mr. WRIGHT:

Q. Then for the '34–35 season, can you tell us what major film you had at the Strand?

A. Well, we didn't have Paramount, we had RKO first and second run——

Mr. COCHRAN. I think first he ought to establish this witness knows about that.

The COURT. She was cashier and bookkeeper.

Mr. COCHRAN. She was cashier but that is an entirely different job.

The COURT. Do you know about it?

A. Yes, I knew what we were playing. My brother was buying——

Mr. COCHRAN. He asked what they had licensed. She could know what they were playing. I have no objection to her stating what they were playing if she knows.

By the COURT:

Q. Did you see the contracts of the licensed films?

A. No, I didn't see the contracts but I do know we were running the pictures.

The COURT. She can tell what she knows about it.

Mr. COCHRAN. I say I have no objection to her stating they were playing certain pictures but there is a difference

in that and licensing because she would have no way of knowing the number of pictures they had and so forth.

Mr. WRIGHT. Would you repeat that last question?

1758 (Question read as follows: "Then for the '34–35 season, can you tell us what major film you had at the Strand?")

A. In '34——

Mr. COCHRAN. The question was what they licensed.

(Previous question read as above.)

Mr. COCHRAN. I am objecting to that question. I have no objection to her stating what they played; if she knows.

The COURT. He didn't ask for the license. He asked what they played that year.

A. That year we played RKO first and second run, United Artists first and second run, Monogram and Republic.

By Mr. WRIGHT:

Q. Did you have any major companies other than RKO and United Artists?

A. No, we did not. To the best of my knowledge we did not.

Q. Then for the 1935–36 season can you tell us what you played that year?

A. Yes, sir. We ran Universal first and second run, United Artists first and second run, Monogram first run, Republic first run and 22 Metro, second runs in the smaller groups.

Q. Then the '36–37, that was the season in which you——

Mr. COCHRAN. (interrupting.) May I ask the

1759 witness a question about the memo she is reading from?

The COURT. Yes.

By Mr. COCHRAN:

Q. Miss Kyser, I notice you are reading this from a memorandum you have. Is that correct?

A. That is right.

Q. From what did you prepare that memorandum?

A. Well, from the contracts we had and some date books that our dates are in and I hunted up the pictures, the year they were released.

Q. Was this a memo you made from records?

A. Yes, sir.

Q. Do you have those records?

A. Well, I don't have them with me, no, sir.

Q. Do you now have the booking records for your theater?

A. I have a part of them, yes, sir.

Q. How far back?
A. '32.
Q. Down to what date? How far down?
A. Well, I have all the year '32, '33 and '34.
Q. All of the bookings in the theater?
A. Yes, sir, I think I have every one of them.
Q. You have '35?
A. Yes, sir, I think I have.
Q. '36?
A. Well, yes sir. I think I have every one of them.
1760 Q. So you have a complete booking record?
A. I have the complete set of books we kept day by day.
Q. I mean the record showing what pictures were played each day?
A. Yes, sir. I think I can produce every one of them.
Q. You didn't bring any of them with you?
A. No, sir, I didn't know they would be needed.
Q. Weren't they subpoenaed by the Government?
A. I didn't understand it, that it was the date books day by day. I can bring them in any time you want them.
Q. I didn't ask for the date books. You know what a booking record is, do you not?
A. Yes, sir.
Mr. WRIGHT. If the Court pleases, I think we can have a direct examination and then he can cross examine her.
The COURT. He is trying to establish whether she is competent to answer this question. I think she is. She can answer.
1761 Q. That was the season in which you began to buy and book the films for the theater?
A. In 1936, yes, sir.
Q. Your brother died at what time, during that year?
A. In August, August 1936.
Q. Is that the year in which you say you also built the Ada?
A. Yes, sir.
Q. When was that opened?
A. That was opened September 7, 1936.
Q. So that during the '36-37 season, you were operating two theaters, the Strand and Ada?
A. Yes, sir, from September of 1936 on, we were operating both theaters.
Q. Now, was Griffiths still operating just two theaters, or had they put in another one?
A. No, sir, they opened up the Kiva in March 1935.

By the COURT:

Q. Are you operating the Ada now?
A. Yes, sir.
Q. You have been operating that then since 1933?
A. 1936, the Ada was opened in September of 1936.
Q. I mean the Strand, are you operating that now?
A. No, sir.
Q. When did you cease operating the Strand?
A. In 1941.

By Mr. WRIGHT:

1762 Q. Then during the 1936–37 season, there were five theaters being operated there, two by you and three by Griffith, is that right?
A. Yes, sir.

By the COURT:

Q. Did you say three or two?
Mr. WRIGHT. Three.
The COURT. The McSwain and the Ritz.
Mr. WRIGHT. The Kiva, she said, was put in in 1935.
A. Yes, sir, in March of 1935, I believe the Kiva was opened.

By Mr. WRIGHT:

Q. Can you tell us what, if any, major product you had for the 1936–37 season?
A. Well, in '36–37, we had United Artists, first and second run, and a part of Universal first run, which was a lower group of first runs, and Republic.
Q. I asked you what major product you had?
A. United Artists and a part of Universal.
Q. Other than that, you had no major product?
A. No, sir.
Q. Then was the full deal of Universal offered to you that year?
A. Well, to the best of my knowledge, it wasn't.
Q. How about RKO?
A. Well, they were not offered either.

By the COURT:

Q. How is that?
1763 A. I believe we ran some second and third run RKO that year.

By Mr. WRIGHT:

Q. Now, what did you have for the 1937–38 season?
A. Well, in 1937–38, we only had a part of United Artists first run, that was some English made pictures, I think, as well as I remember.

Q. Were you offered any of the United Artists' pictures, first run?

A. No, sir, we were not.

Q. What other major product did you have, if any?

A. Well, we had some Metro second run, which was a lower group, and I believe we had a few, some RKO third run.

Q. Was that all?

A. Well, no, we ran Republic and Monogram.

Q. Then for the '38-39 season, what did you have?

A. Well, we had RKO first and second run, and United Artists, third run, and Monogram, first runs, and some, we ran Columbia and Universal, some second and third runs, and some first run from each one of the Universal and Columbia.

Q. Now, when did you first run third run major product there, if you remember?

A. Well, in 1939, Fox sold some second and third
1764 run pictures.

Q. Do you remember had you been trying to buy Fox third run prior to that time?

A. Yes, sir, I had.

Q. Beginning when, or during what period?

A. Well, a period of several years, we had been trying to buy third run, I would say, at least, three years.

Q. Did they ever take an application from you?

A. No, sir.

By the COURT:

Q. Pardon me, in that connection, by third run you mean a picture that had been run first and second in Ada?

A. Yes, sir.

Q. Before that time?

A. Yes, sir.

By Mr. WRIGHT:

Q. During this period, 1936 through 1939, can you tell us in general what policies those three Griffith houses were operated on?

A. Well, they have two first run houses, the McSwain and the Kiva are first run houses, and the Ritz Theater is a second run house.

Q. They had been playing major pictures second run at the Ritz during that period?

A. Yes, sir.

Q. And these pictures are Fox that you were try-
1765 ing to buy for third run, would be the third run following the second run at the Ritz, is that right?

A. Yes, sir.

Q. Then had you tried to buy any other major third run during that same period?

A. Yes, sir, I tried to buy Metro, and I talked with Warners and Paramount. I don't believe, I don't remember of ever talking to RKO about third run.

Mr. COCHRAN. What was that answer?

(Last answer read by the reporter.)

By Mr. WRIGHT:

Q. Were you able to buy any Metro, Paramount or Warner third runs during that period?

A. No, sir.

Q. '36 through '39?

A. No, sir.

1766 Q. Did any of them ever take an application for third run pictures?

A. No, sir, they haven't.

Q. The product of those companies was being played second run at the Ritz Theater?

A. Yes, sir.

Q. That is, with the exception of the lower part of Metro, which I understand you to say——

Mr. COCHRAN. We object to the leading question, your Honor.

The COURT. Well, it is leading in a way.

Mr. COCHRAN. The trouble is, the question embraces a general statement which will make the record misleading——

The COURT. You may answer.

By Mr. WRIGHT:

Q. As I understood your previous question you stated you played the lower half of Metro second run at your theater, one of your theaters. Is that right?

Q. Yes, sir. We bought 22 that year of Metro in the lower bracket pictures.

Q. What you tried to buy as third run from Metro was what?

A. Well, the third runs are the better pictures.

Q. That is the upper half of the product?

A. Yes, sir.

1767 Mr. COCHRAN. We object to the leading questions. Let her state what she attempted to do.

The COURT. Well, she said the better pictures.

Mr. COCHRAN. He now says the upper half of the pictures.

The COURT. Well, better pictures, were they upper or lower half.

A. The better pictures I would say are upper.

Mr. COCHRAN. She didn't say upper half. In other words, unless the witness states what she knows about it, it is going to call for a long cross examination, which can be avoided if they will just simply let the witness state the facts, because she has a memorandum of the facts and she is telling it very nicely and we will avoid a lot of cross examination.

By Mr. WRIGHT:

Q. Were these pictures which you tried to buy from Metro, third run, the ones having a second run at the Griffith house?

A. Yes, sir.

Mr. COCHRAN. I again object to this leading question.

The COURT. Well, it is somewhat leading.

Mr. COCHRAN. He knows she would reply if she were asked the question that the pictures she attempted to license were not all of the pictures that were played
1768 second run at the Griffith theaters. She wanted to license A and B pictures, is what she wanted to license.

By the COURT:

Q. Just what pictures did you desire to buy, third run?

A. Well, I asked for the larger pictures, the better pictures, third run.

Q. Had all of them been run at the Griffith theaters?

A. Yes, sir.

Q. Did you get any that were not run at the Griffith Theaters?

A. Well, I think in '37 or '38 we bought two first run pictures which were cutbacks from Metro.

By Mr. WRIGHT:

Q. Did you finally get some third runs of the A and B pictures from those companies?

A. Yes, sir.

Q. When was that?

A. Well, to the best of my knowledge I think it was in 1940.

Q. Were you ever approached at any time by any representative of the Griffith Company with reference to the sale or pooling of your theater there?

A. Yes, sir.

Q. When was the first time?

A. Well, I would say it was in 1936. In the winter of 1936 Mr. Red Slocum called on us.

1769 Q. Was this before or after your brother's death?

A. This was after my brother's death.

Q. Where did he see you?

A. Well, he told me who he was, that he was Red Slocum from the expansion department.

Q. I asked you where this conversation was.

A. This was in my office at the Ada Theater.

Q. Was there anyone else there at the time?

A. No, sir. I am sorry, there was no one in the office at the time.

Q. What was said?

A. Mr. Slocum told me who he was and he said he was from the expansion department of the Griffith Amusement Company in Oklahoma City.

Q. What was the substance of the conversation as near as you can recall?

A. Well, of course, he stated his business; that he would like to buy—he wanted to know if we were interested in selling.

Q. What was said about buying or selling?

A. Well, we didn't talk too much. I think he asked me several times—there was no price made as to what the theaters were worth. I think that he quoted two or three prices, if I thought the theaters were worth $12,000 or $15,000 or some price like that. I don't just recall
1770 it word for word, and I told him we had been offered $30,000, and he said "Well, they are not worth it", and he said that the Griffiths didn't want competition in Ada.

Q. Was anything else said as to why he wanted to buy?

A. No, not that I can recall.

Q. Nothing more you can recall?

A. Well, in five or six weeks he came back. I told him when he was there the first time that if we decided to sell I would call him or come into Oklahoma City to see them. I didn't call them or didn't come in and he came back in about five or six weeks and the conversation——

Q. Was this at your theater again?

A. Yes, sir, this was at my theater.

Q. Which one?

A. The Ada Theater.

Q. What was said on the second occasion?

A. Well, the conversation was very similiar to the first. He said they didn't want competition in Ada, and I told him he would have to see my sister-in-law, Mrs. Kyser, and he called at Mrs. Kyser's house and Mrs. Kyser can come in and submit her testimony when you need her.

Q. Your sister-in-law told you he had also talked to her?

A. Yes, sir, and she is ready to come in when you need her on this.

1771 Q. Since that time have there been any other conversations between you and any of the Griffith representatives about a sale or pooling of your theaters?

A. No, sir, not that I know of. I have had an awful lot of buyers. I don't know who they were or where they were from, but to the best of my knowledge I have not been contacted by any of the Griffith representatives since then in regard to selling.

Q. Can you tell us during the '38–39 season there approximately what the price policies of the various theaters in Ada were?

A. Well, no, I don't think I can. I know that in '38 they started a penny day there on Wednesday and Thursday in two of the theaters.

1772 Q. "Penny" day?

A. Yes, sir.

Q. In which theater?

A. In the Ritz and in the Kiva.

Q. What do you mean by "penny" day?

A. Well, that was two adults for the price of one, I would say, or one penny.

Q. Two for the price of one ticket, plus a penny?

A. Well, I think that's the way it was.

Q. What were the prices you were charging at your theaters then?

A. Well, I think in two or three months, why, we opened up a "pal" day which was operated about the same.

Q. What were you charging at the time they began the "penny" day operation?

A. I don't remember.

Q. Do you remember what your prices were with reference to what they were charging at their Ritz and Kiva?

A. Well, I think our prices—I am sorry, I don't remember just what our prices were.

Q. Were they about the same——

A. Yes, sir.

Q. As the Ritz?

A. They were about the same.

Q. Then, you say after the "penny" day was

1773 started you began what?

A. A "pal" day.

Q. And that was two for one admission, was it?

A. Yes, sir; that was just about the same policy as the other.

Q. And how long did those two policies continue?

A. Until 1940 or 1941, something like those years.

Q. Do you know what the population of Ada was, say in approximately 1936, when the Ada was opened?

A. Well, I believe, I would say 16,000 at that time.

Q. And did it have the same population about, through the years 1937, '38 and '39?

A. Well, yes, I would think so.

Q. Well, do you know whether there was any substantial increase or decrease during that period?

A. Well, I would say that there was a decrease.

Q. I should have said 1936 through 1940.

A. Well, I think that would be the after effect of the oil boom that we had there earlier.

Q. What were the years of the oil boom?

A. Well, I think in '34 and '35.

Mr. WRIGHT. You may cross-examine.

Cross-examination by Mr. COCHRAN:

1774 Q. Miss Kyser, what do you call the major distributors of motion pictures, of major motion pictures? Reference has been made here several times to major distributors?

A. Well, I call Metro, Paramount, Warner Bros. and Fox.

Q. Any others?

A. Well, I don't know if United Artists is considered a major company or not.

Q. Well, you were answering questions about the major companies; do you consider United Artists a major product?

A. Yes, sir, I do.

Q. What else do you consider major product?

A. Well, I consider Columbia.

Q. What else?

A. That's all.

By the COURT:

Q. How about RKO?

A. RKO; pardon me, I forgot RKO.

By Mr. COCHRAN:

Q. Now, what other companies, are engaged in licensing motion pictures in this area, other than the ones you have mentioned, that you have named?

A. Well, there is Monogram, Republic and PRC.

Q. And Grand National?

A. And Grand National; and at that time there was the Gaumont British and Allied.

Q. Allied?



A. Yes.

1775 Q. At this time is there also a distributor known, or rather pictures known as Sach?

A. The Sachs Amusement Company, and there was Adams.

Q. And Square Deal?

A. And Square Deal, and Majestic.

Q. What was that?

A. Majestic.

Q. Majestic.

A. Yes, sir.

Q. Victory?

A. Pardon?

Q. Victory?

A. No, sir; I don't know anything about the Victory.

Q. You don't know anything about them?

A. No, sir.

Q. Those companies you don't rate as major companies?

A. Hardly.

Q. Each of those companies produce some good pictures, don't they?

A. Well, I don't know about that.

Q. You don't know about that?

A. No; I haven't happened to run any of them.

Q. You haven't had to run any of them, and didn't run any of them except—well, kill that.

A. No, I beg pardon; I have run some of them, but

1776 I said I hadn't found any good pictures in them.

Q. Oh, that's what you mean? The only ones of those companies whose pictures you ran were Monogram and Republic, and Gaumont British and some PRC's, is that right?

A. That's right.

Q. Now you say that in those companies you didn't find any good product, profitable at the box office?

A. No, sir, I didn't.

Q. During the years 1936 to 1940, to a large extent, you operated your theater on pictures from Monogram, Republic, PRC, and other independent companies, didn't you?

A. That's right.

Q. You operated profitably, didn't you?

A. Well, we didn't close up.

Q. I asked you if you operated profitably.

A. Well, I don't call it a profit.

Q. You made money, didn't you?

A. Well, we were able to pay our bills.

Mr. WRIGHT. If the Court please, I think that is quite immaterial.

The COURT. It might be immaterial.

Mr. COCHRAN. You say, your Honor, that it would be immaterial?

Mr. WRIGHT. The question is whether or not she could compete in buying pictures.

1777 The COURT. The question is whether she operated her theater at a profit. I think she may answer that question.

By Mr. COCHRAN:

Q. Miss Kyser, what was your answer to that?

A. No, sir, on pictures of that type we didn't operate—(hesitating).

Q. Your operation during that period was profitable, wasn't it?

A. Well (hesitating)—well, I don't care to answer that.

Q. You don't care to answer that?

The COURT. I didn't get the answer.

By Mr. COCHRAN:

Q. Will you tell us why you don't care to answer that?

A. Well, because the pictures that were run in those years were not profitable to the box office.

Q. My question is whether your theater operations on the whole during that period were operated at a profit?

A. Well, there was enough profit made to keep our theaters going.

Q. That is as definite as you would want to answer, is it?

A. Yes, sir.

Q. But there was enough profit that you did open another theater, when was it, in September of 1936—didn't

1778 you?

A. Yes, sir. Well, I beg pardon; I thought you were talking about the previous year, before 1936.

Q. All right, we will let your answer stand as to the period previous to the '36, then. During the period of 1936 to 1940, you operated your best theater, which one was that?

A. The Ada Theater.

Q. Which?

A. The Ada Theater.

Q. The Ada Theater, you operated that at a profit, did you not?

A. Yes, sir, I think we did.

Q. Did you operate the Strand Theater during that period at a profit?

A. No, sir, we didn't.

Q. What period was it not operated profitably?



A. Well, from 1937 to 1939 or to 1940, we didn't, there was no profits on the Strand Theater.

Q. Did it operate at a loss?

A. No, it didn't operate at a loss.

Q. Then you closed that theater when?

A. In 1941, in January.

Q. From 1940 to 1941, was that theater operated at a profit?

1779 A. The Strand Theater?

Q. Yes.

A. No, sir.

Q. You stopped your time at 1940?

A. Yes, sir.

Q. I was just wondering why you made the distinction. You closed that theater after the consent decree was in operation, didn't you?

A. Yes, sir, I think we did.

Q. And at that time you had available third run product from all of the major companies that you have mentioned, did you not?

A. That's right.

Q. Now, in listing the companies which you call the major companies, you didn't list Universal. Would you want to call Universal a major company, and was it during the period of 1933?

A. Well, no, sir, I wouldn't call it a major com-

1780 pany.

Q. You would not call Universal a major company. So you had your choice of third run product for Ada from Metro, Paramount, Warner, Fox, United, Columbia, RKO and Universal after the consent decree, did you not?

A. Yes, sir.

Q. And by saying "your choice" that meant their A pictures as well as the pictures in the lower brackets, third run?

A. That is right.

Q. Now, during the period 1936 until—well, during the season of 1936–37 when you stated that you had no major product, second run——

A. No, I beg your pardon. I said we bought 22, Metro second in the lower bracket for '36 and '37.

Q. Well, I think I misunderstood you.

A. I think you did.

Q. I thought you meant it for the season of '37–38. You meant for the season of '36–37?

A. That is right.

Q. Subsequent to that time you had practically the same second run contract with Metro?

A. Yes, sir.

Q. You said something in your answer about you could have played pictures first run that had not first played at Griffith, second run. I believe your answer was you could not. Now, any picture that didn't play Griffith
1781 second run that did play Griffith second run, you could play from Metro third run, couldn't you, after you started playing Metro third run?

A. I don't believe I understand your question.

Q. So far as third run Metro product was concerned, after they started licensing you third run you could play any of their pictures third run, whether it was played at the Griffith house or not?

A. That is right. I bought the third run product. That is right.

Q. Which of these companies you have listed as major companies would you say at the present time produces the choicest pictures?

A Well, I think that Metro's pictures are the most outstanding.

Q. Has that been true during the entire time you have been in the theater business, according to your judgment of the pictures?

A. Yes. I believe they have always taken the lead, to my way of thinking.

Q. In other words, that company, according to your judgment—each year after you got into the theater business, and paid any attention to the quality of the pictures, produced the greatest number of good box office pictures of any of the companies?

1782 A. Yes, I believe so.

Q. Metro, before they started selling their pictures in groups of 5—you understand what I am talking about?

A. Yes, sir.

Q. That is prior to the consent decree, Metro, in years prior to that time, how many pictures would you class as the better pictures which you referred to, did that company produce?

A. Well, I don't know.

Q. Are you familiar with the groupings or classifications of A pictures and B pictures of Metro?

A. Well, I think I would be if I were buying them.

Q. Well, you usually considered that the pictures in the A classification were the most expensive pictures. Is that right?



A. Yes, I imagine you would consider it that way.
Q. Well, did you so consider it?
A. Well, if I were buying the pictures I think I could tell.

By the COURT:

Q. Were their A pictures the most expensive?
A. Yes, I think the A pictures were the higher bracket, which would mean they were the highest priced pictures.

By Mr. COCHRAN:

Q. And the B was the next product?
1783 A. Yes, sir.
Q. Did it frequently happen that even with Metro pictures which were in the A group, were not in your opinion as good box office attractions as the pictures which were in some of the lower brackets?
A. Yes, sir.
Q. But generally speaking they are better pictures, at least the better stars were in the A group?
A. That is right.
Q. And that consisted of about four pictures, did it not, usually?
A. Well, I don't know as to that.
Q. Well, just tell us on the average about how many pictures Metro produced each year that you consider were the better pictures and good box office attractions from the upper brackets.
A. Well, I would say that Metro has at least six or eight outstanding features a year, that are box office attractions.
Q. And those are the ones you speak of as being the upper bracket pictures?
A. Yes, sir.
Q. Which one of the companies would you rate next in importance as the producer and distributor of good motion pictures during the period you are talking about?
1784 A. Well, Warner—pardon me—Paramount.
Q. How many of the Paramount pictures would you say on the average and of the better pictures were produced each year?
A. Well, I think that Paramount makes at least eight or ten good pictures. They make these big box office attractions.
Q. Are those the pictures you referred to as 'upper bracket pictures"?
A. Yes, sir.
Q. Which would you rate third?
A. Well, I would rate Fox third.

Q. How many of those upper bracket pictures would you say Fox produced on the average?

A. Well, they will make six or eight.

Q. And which do you rate fourth?

A. Warner Brothers.

Q. How many did Warner Brothers produce each year?

A. About three I would say.

Q. About three pictures in the upper bracket. And fifth?

A. Well, I guess RKO.

Q. How many RKO pictures were produced on the average in the upper bracket?

A. About two.

1785 Q. And the sixth?

A. Columbia, I would say.

Q. Do you place Columbia ahead of United Artists?

A. Yes, I would.

Q. And you place Columbia above Universal?

A. Yes, sir, in my opinion,

Q. Columbia is No. 6, and how many of those?

A. About two.

Q. Two of those you class as upper bracket pictures. Then which is next in order?

A. Universal.

Q. How many of Universal?

A. I would say two.

Q. Which you class as in the upper bracket.

A. Two.

Q. You haven't mentioned United Artists.

A. They usually have about two.

Q. You spoke of the product which you had in the '36–37 season but you failed to mention Columbia.

A. I believe I said we bought some second and third runs from Columbia, and naturally a few first cutbacks.

Q. I hand you Defendants' Exhibit 69 and ask you to state if that is your signature?

A. Yes, sir.

Mr. Cochran. We offer in evidence Defendants' Exhibit No. 69.

1786 By Mr. Cochran:

Q. That is one of the contracts which you have just referred to as covering first, second and third run product?

A. Yes, sir.

Mr. Wright. No objection.

By Mr. COCHRAN:

Q. This is a contract with Columbia by Miss Kyser and approved October 22, 1936 covering two pictures, first run; ten second run; seven third run. Miss Kyser, these pictures beginning there with the two-reel comedies and so forth, those are not feature pictures from there on, are they?

A. No, they are not. They are the short subjects.

Q. Shorts and cartoons?

A. That is right.

Q. Beginning with 13, two-reel cartoons ending with "Five Stars of Tomorrow"?

A. Yes, sir.

Q. I hand you Defendants' Exhibit 7 and ask you if you signed that contract?

A. Yes, sir.

Mr. COCHRAN. We offer it in evidence, which is a contract dated October 14, 1936, of Miss Kyser with Columbia covering 26 pictures, second run.

Mr. WRIGHT. No objection.

By the COURT:

Q. Your name is Miss or Mrs?

A. Miss.

1787 By Mr. COCHRAN:

Q. In '37–38, did you also have some Columbia pictures?

A. Yes, sir.

Q. Those were first and second runs, were they not?

A. Well, they were the first run cutbacks and seconds and thirds.

Q. And the season 1938–39, you had some first, second and third run Columbia, didn't you?

A. Yes, sir.

(Defendants' Exhibit No. 71 for identification was marked by the reporter.)

Q. I hand you Defendants' Exhibit No. 71 for identification, and ask you if that is your signature?

A. Yes, sir, that's right.

Q. That is the contract you referred to, is it?

A. That's right.

Q. Can you tell us whether there were other second and third run pictures offered to you that year which you didn't buy, by Columbia?

A. No, sir, I think that is the output right there.

Q. Do you mean that you attempted to license other pictures third run and were unable to license them from Columbia in 1938–39?

A. No, sir, I say that is third run and we bought third run, first and second and third run; we bought the
1788 first, you see, the cutbacks, and the second and third; we bought second and third from Columbia that year.

Q. My question was were there other third run pictures available for you which you didn't license?

A. From Columbia?

Q. Yes.

A. Well, I don't think so.

Q. Was Griffith running any third run Columbia that year, 1938–39?

A. No, sir, not that I can remember.

Q. Are these pictures which you licensed second run the only pictures second run which Griffith did run that year of Columbia?

A. Well, this is second and third, and they happened to be third, Mr. Cochran.

Q. Yes, but the point I am trying to make is this, those were the top pictures, were they?

A. Yes, sir, that's right.

Q. And the pictures lower than that, there were other productions lower than that that were available for you, but you didn't want them?

A. That's right.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 71.

Mr. WRIGHT. No objection.

1789 The COURT. That is dated when?

Mr. COCHRAN. It is dated, approved August 24, 1938.

The COURT. That's second and third run?

Mr. COCHRAN. It covers——

A. (Interrupting.) A few first run cutbacks.

Mr. COCHRAN. It covers twelve first runs.

A. Don't forget to say they are cutbacks.

Mr. COCHRAN. And six pictures second or third run.

By Mr. COCHRAN:

Q. And in 1939–40 season, you also licensed a few cutbacks on first runs and a number of second and third run pictures, didn't you?

A. From whom?

Q. From Columbia?

A. From Columbia that's right.

(Defendants' Exhibit No. 72 for identification was marked by the reporter.)

Q. I hand you Defendants' Exhibit No. 72 for identification, and ask you if that is the contract with Columbia?



A. That's right.

Mr. Cochran. We offer in evidence Defendants' Exhibit No. 72, dated February 22, 1939, and it covers four first runs, twenty-two pictures second run.

A. That's second or third, Mr. Cochran.

Q. I think you are wrong about that; it shows sec-
1790 ond here and third here; it shows second or third, though.

Mr. Cochran. The face of the contract has opposite each one first, second or third run, but in the body of the contract it says second or third run.

A. That's right.

Q. On those that are noted third run, it has six Buck Jones' productions; those are westerns, aren't they?

A. That is westerns; that's right; that's not in the feature contract.

Q. And sixteen other second run features?

A. Yes, sir.

Q. The Strand Theater was closed during the summer time of 1941, was that your statement?

A. That's right.

Q. Now, for the season 1940–41 what product did you have, were you playing?

A. Well, I believe we ran some RKO, and we were using all third runs, all third runs that we needed from all the companies.

Q. In other words, at the time the Strand closed, you had available for your use third runs from any and all of the major companies which you might desire to use?

A. Yes, sir.

Q. And you also at that time had certain of the Metro second runs, didn't you?

1791 A. Let me see. Yes, in 1941, we were still using the twenty-two Metro in the lower group.

Q. And at that time if you had desired to use them, you had the privilege or you could have licensed from Paramount pictures second run which were not used by Griffiths Theaters, could you not?

A. Second run Paramount?

Q. Yes; in other words, did you attempt to license any of the Paramount lower bracket pictures second run for 1940–41?

A. No, sir, I didn't.

Q. Did you attempt to license any of the Fox lower bracket pictures second run for 1940–41?

A. No, sir.

Q. Is the same true of RKO?

A. Yes, sir.
Q. And United Artists?
A. Yes, sir.
Q. And Universal?
A. Well, I believe we ran Universal, some second runs.

By the COURT:

Q. Did you get plenty of first runs?
A. No, sir, we didn't.
Q. In '41–42?
A. No, sir.
Q. In '42–43?
A. No, sir.
1792 Q. Are you able to get any first run now?
A. No, sir, nothing but Monogram.

By Mr. COCHRAN:

Q. Miss Kyser, you said you are not able to get anything except Monogram?
A. I said first run.
Q. I understand, but can't you get PRC first run?
A. Well, no, I don't think I could.
Q. Well, have you tried?
A. No, sir.
Q. They are not being played by Griffith, are they?
A. Well, I don't know.
Q. Have you attempted to license any of the product of the various other companies which you have listed, other than the ones you named as major companies, first run; have you tried to license any of that product?
A. No, sir, I haven't this year.
Q. In other words, you prefer to run the third run of the companies which you said you are running, to running the first run of any of the other companies, except Monogram, is that right?
A. No, sir, it isn't.
Q. Which of the so-called independent companies, then, are there that you desire to license product from?
A. Well, I use Monogram because I am not able to buy anything else first run.
1793 Q. Well, now, I am asking you why you are unable to license product of First National?
A. Well, First National is——
Q. (Interrupting) Not First National, Grand National, Sachs and Adams and Majestic, and so forth, first run, if you desired those?
A. Because I don't care to play that product in my theaters.

Q. I thought that was the question I asked you awhile ago?

A. If I can do better.

Q. If you preferred that product?

A. I don't prefer to play that product in my theaters.

Q. My question was if you didn't prefer to play the product which you are playing now, to playing product of those companies you have just been mentioning, first run, and that's the reason you are not licensing any product from the so-called independent companies, except Monogram?

A. Well, that's all that I was able to buy, was the Monogram.

By the COURT:

Q. Have you tried to buy first run of the major companies?

A. I haven't this year; no, sir, I haven't.

Q. Did you in '41–42 and '42–43?

A. Yes, sir, I have asked.

1794 Mr. COCHRAN. If the Court please, that isn't my question. My question is in regard to the so-called independent companies, whether you have attempted to license any of their product which you were unable to get during any of these years?

A. Well, I haven't wanted it.

Q. Beg pardon?

A. I don't want it.

Q. Have you tried to license it?

A. No, there is no use to try to license it if I don't want it. I don't want it to run and I haven't asked for it.

By the COURT:

Q. What I am interested in is this. Now, say since 1940, since this consent decree went into effect, have you tried to buy first run of the major companies?

A. Well, we have bought some first run. I think eleven from Metro since the consent decree has been in, and five from Paramount and five from RKO, first run, since the consent decree went in.

Q. Have you tried to get others?

A. Well, I have talked to Warners; but I haven't this year, I haven't tried to buy the first run.

Q. Have you since this consent decree went into effect been able to buy any pictures that were satisfactory

1795 to you for use in your theaters?

A. Well, none except the years when we bought the Metro, the eleven Metros, and five Paramounts and five RKO; of course, we were satisfied with them, but we haven't been able to buy from them since, the first runs.

Q. Why haven't you been able to buy it?

A. Well, I don't know just why we haven't. They have sold to the Griffiths in Ada.

Q. Have you ever resorted to arbitration on those matters?

A. No, sir, I didn't.

Q. Do you understand that was in the consent decree?

A. Yes, sir.

Q. That you would have certain rights in such matters?

A. Yes, sir, that's right.

The COURT. Anything further with this witness?

1796 Re-direct examination by Mr. WRIGHT:

Q. Did Griffith play any third run in Ada there at any time while you were there? Do they play them now?

A. No, sir, I don't think they are playing them now and I don't recall any time they had first run in Ada.

Q. They never use anything but first and second runs; is that right?

A. Yes, I think that is right.

Q. Now this Defendants' Exhibit 71 with reference to some Columbia pictures, second or third run, how would you know whether you were going to get those second or third run?

A. We didn't know.

Q. When would you know? How were they made available?

A. We wouldn't know until they would tell us the pictures were available for us second or third run.

Q. What would determine whether they were available or not?

A. If the other theaters didn't want to play them we had the right to buy them and run them.

Q. That is, the ones you got second run, you got second run if they didn't play second run in the Griffith Theaters?

A. Yes, sir.

1797 Q. If they played second run there you got third run. Is that right?

A. Yes, sir.

Q. You didn't have any control at all as to whether they played them second run or not?

A. No, sir, I did not.

Q. You wouldn't know then what run they were going to be until after Griffith decided what they were going to do with them?

Mr. COCHRAN. Objected to as leading.

(No ruling.)

A. After they decided whether they wanted to use them we had the right to run them.

By Mr. WRIGHT:

Q. These first runs you referred to as cutbacks. I believe that is what these Columbia first runs were that were introduced here?

A. Yes, sir.

Q. What do you mean by "cutbacks"?

A. That is pictures they didn't want to run as first run pictures in their theaters. That is their picture that has no value at all, whatever, I suppose.

Q. Do you remember when you were being asked on cross examination about the independent pictures that you played and the inability to exhibit them profitably, I think you made some reference to the period prior to
1798 1936. Now, is your testimony the same with respect to the period after 1936? Was there any difference in those two times?

A. You mean in buying the independent product?
1799 Q. As to the unprofitability of the independent product?

A. Well, I don't care to run that kind of pictures, pictures of that type in my theater, Mr. Wright; we established a first run at the Ada Theater, just as the Strand was.

Q. I understand that, but I am afraid you didn't understand the question. When you were asked on cross-examination about inability to run the independent pictures at a profit, you said your testimony, I think, applied to the period prior to 1936. Now, is what you said about inability to play that profitably, does that also apply to the period after 1936?

A. Yes, sir.

Q. That period of '36 through 1939, that was when you had to play the most independent pictures, wasn't it?

A. That's right.

Q. As I understood your testimony on cross examination with reference to Columbia second run, you testified that you could have Columbia pictures second run, that Griffith didn't use second run, is that right?

Mr. COCHRAN. We object to him leading the witness.

A. Well, we——

The COURT. Overruled; it is in evidence, the statement.

Mr. WRIGHT. It is preliminary to the next ques-
1800 tion anyway. Is that a fact?

A. We run second run behind, that is, the second runs that we could have is the ones that they didn't want, and we didn't know if they were second run or third run. We wait and they come as available, as stated on the contract. We never know if they are going to be second run or third run.

Q. Were you offered any of the second runs that they used?

A. No, sir.

Mr. WRIGHT. That's all.

Re-cross-examination by Mr. COCHRAN:

Q. Miss Kyser, the first theater which you and your brother opened in Ada, which was opened as the Strand, was formerly the Hamly Theater, was it not?

A. Yes, sir.

Q. Do you know how long that theater had operated before you acquired it?

A. Well, I think that was the first theater in Ada.

Q. Well, about when was it?

A. It was just about the first theater in Ada. Well, I would say, well, in 1902 or '03, I wouldn't be positive on that, Judge.

Q. But somewhere about 1902 or '03?

1801 A. Yes, sir, 1902 or '03, or something like that.

Q. It was an old house, was it?

A. Yes, sir.

Q. Now, in 1941, when you closed the Strand, were you operating double bills in the Ada?

A. No, sir.

Q. Do you remember when you started to operate double bills in the Ada?

A. Yes, sir, I beg pardon we were operating, we were running double features part time in the Ada Theater in 1940, that's right.

Q. At that time weren't you running double bills as a regular policy on two of your three changes a week in the Ada?

A. Repeat that; I didn't quite understand it.

Mr. COCHRAN. Read it.

(Question read by the reporter.)

A. That was in 1940.

Q. 1940. You closed the Strand in 1941, didn't you?

A. Yes, sir.

Q. All right, in 1941?

A. Yes, sir, that's right.

Mr. COCHRAN. That's all.

Mr. WRIGHT. That's all.

(Witness excused.)

1802 Mr. WRIGHT. If the Court please, I think we can continue now with Mr. McKenna. It may be that we can save some time if we could take a recess and go over some of the documents and material that has been produced here.

The COURT. Very well, we will take a short recess, and you can advise the Court when you are ready.

(And at the conclusion of the recess the proceedings herein were resumed as follows:)

1803 B. J. McKENNA, was recalled and testified as follows:

Direct examination (continued) by Mr. WRIGHT:

Q. You are the same B. J. McKenna who testified here yesterday?

A. Yes, sir.

Q. Calling your attention to Bartlesville, the first theater that you acquired there was apparently the Lyric?

A. Yes, sir.

Q. Then the Odeon that was subsequently acquired, was that operated in opposition to the Lyric at any time?

A. Yes, sir, it was.

Q. Do you remember by whom?

A. Mrs. Blanch Cutler.

Q. Was that true of the Osage?

A. No, sir. The Osage was a new theater.

Q. The Odeon was operated prior to the acquisition by Mrs. Cutler?

A. Prior to July 1, 1929.

Q. That is when you acquired it?

A. Yes, sir.

Q. Now the Rex, I believe also was called the Midwest——

A. Yes, sir.

Q. Was that operated in opposition to your theaters there before you acquired it?

A. Yes, sir.

Q. By whom was that operated?

1804 A. Well, it was operated by Isley & Moran.

Q. That was acquired when?

A. Acquired in April 1931, April 10, 1931.

Q. Then, since that time you have operated all of the theaters in Bartlesville, is that right?

A. Just how do you mean that question, Mr. Wright?

Q. Well——

A. All of these theaters?

Q. No, I say all of the motion picture theaters in Bartlesville have been operated by your company since that date, have they not?

A. No, sir; no, sir.

Q. With the exception of what period?

A. Well, I don't remember the period exactly, but there was a man operated a theater there, by the name of P. C. Crown, and there was a man operated a theater there, name of L. O. Chatham.

Q. Chatham's theater was purchased by you, was it not?

A. No, sir, it wasn't.

Q. When was that theater of Chatham's operated?

A. I believe that was back in the early 30's, about '31 or '32.

Q. He just stopped operating then, did he?

A. As far as I know. I don't know what the occasion was.

1805 Q. When was it that Mr. Crown operated there?

A. I don't recall exactly when, Mr. Wright, but it was in, sometime in possibly '35, '36, somewhere in there. His theater, as I recall, was destroyed by fire, it burned down.

Q. You didn't acquire Crown's theater?

A. No, sir.

Q. With those exceptions, then, you have operated all the theaters in Bartlesville up to the present time, haven't you?

A. Yes, sir, I believe that's correct.

By the COURT:

Q. What became of the other theater, the one that didn't burn?

A. Well, it is still there, your Honor. We later acquired it. That's the one referred to here as the Odeon.

Q. After '31 you operated all the theaters in Bartlesville?

A. No, your Honor. Mr. Chatham I referred to I believe was in there, as I said, about '32 or '33, and this man Crown, I think he was in there about '35 or '36. I think he burned out in '36 or '37. I am not positive of those dates.

Q. And that was never rebuilt?

A. No, sir, it was not.

The COURT. There is nothing here in these answers to the interrogatories relative to the period that they operated in '32 or '33.

A. Well, I don't recall what the question was.

1806 By Mr. WRIGHT:

Q. Well, that interrogatory answer I believe on its face covers only the theaters which they acquired, as I understood it.

A. I thought that is what it was.

Mr. COCHRAN. May I ask a question?

Mr. WRIGHT. Yes.

By Mr. COCHRAN:

Q. Mr. McKenna, is it not a fact that the Crown was not destroyed by fire until about 1940?

A. Judge Cochran, that may be correct. I am not positive of it. I didn't say the date it was destroyed by fire. I said I thought he was in there about '35 or '36, and that it was later destroyed by fire.

By the COURT:

Q. Did he continue to operate as long as long as the theater was there, until it was destroyed by fire?

A. Yes, sir, he did, as far as I recall.

By Mr. WRIGHT:

Q. That was in 1940?

A. I don't know.

By Mr. COCHRAN:

Q. I am just asking you if that is true. If you don't know that is all there is to it.

A. I don't know when it was.

By Mr. WRIGHT:

Q. When he ceased operating, was any arrangement or agreement made with Crown, or did he just stop operating?

A. He just burned down, as I recall, and that is
1807 the last I heard of him. I don't know anything about him.

Q. Calling your attention to Borger. Before you acquired the State and the Circle, were they operated in opposition to the Rex and Rig?

A. Yes, they were.

Q. By whom?

A. The Circle Theater which was acquired first was operated by a man by the name of David Dallis.

Q. And the State?

A. And the State Theater was operated by a man, as I recall, whose name was Evans. In fact, he is the owner of the building.

Q. Since the State and Circle were acquired, has your company operated all the theaters in Borger?

A. No, sir. There was a theater in the residential section of Borger. I think it was referred to as the Phillips Theater operated by one of the witnesses who testified here the other day——Bearden and Smith.

Q. Your contention is that Phillips is a part of Borger?

A. The residential section of Borger, yes, sir.

Q. But I am referring to the actual limits of the City of Borger itself. Were there any others, other than this one you have mentioned about which there is some controversy?

1808 By the COURT:

Q. Do you know whether or not the Phillips was in the corporate limits of Borger?

A. No, I do not. I know all the people live out there. That is where their homes are. They work for the Phillips

Petroleum Company and the better residential homes are all out in Phillips.

Q. You mean the better residential district of Borger is in Phillips?

A. Yes, sir, the residential district. The residential district of Borger is right there. They refer to it as Phillips Camp. That is where the Phillips employees live. That is where the nice homes are. Otherwise, they are just little shacks and things of that kind that surround the town proper.

By Mr. WRIGHT:

Q. Other than that Phillips Theater you have referred to, were there any other theaters in or adjacent to Borger operated by anyone else?

A. Yes, there was a theater operated in Borger by the same P. C. Crown.

Q. When was that?

A. That was in about 1937–38; possibly '40–41; somewhere in there.

1809 Q. What happened to that theater?

A. Well, that theater we leased it from the landlord, sometime in 1943, I believe.

Q. And no deal of any kind was made with Crown?

A. No, sir.

By the COURT:

Q. Did you make any deal at all with Crown?

A. No; I believe we bought some equipment from him, but at the time we bought the equipment, as I recall, he had already lost the lease on this theater that he had in Borger, Texas, and the equipment was for sale.

Q. Did you have any understanding with him of any character that he was operating the business in Borger?

A. No, sir.

By Mr. COCHRAN:

Q. May I ask one question?

A. Yes, sir.

Q. Hadn't the Crown equipment been moved to Oklahoma City at that time?

A. Yes, sir, I believe that's correct; yes, that's correct, he had it in storage down here on California, I believe, yes.

By the COURT:

Q. Before you purchased it?

A. Yes, sir.

By Mr. WRIGHT:

Q. Were there any others in Borger other than those you mentioned there?

1810 A. That's all I can remember.

Q. Now, the Elk at Elk City, was the Elk operated in opposition to your Rex before that was acquired?

A. No, sir; we built the Elk Theater.

Q. Calling your attention to Guthrie, Oklahoma——

The COURT. Pardon me, just a minute, before you leave Elk City.

By the COURT:

Q. You owned the Rex there at one time?

A. We leased the Rex from Mr. Ed Story.

Q. How long did you operate it?

A. We operated it for about, for over ten years; we operated it from 1925 to 1935, and we had a disagreement, or rather Mr. Story and ourselves, the company, had a disagreement over the rental terms and he leased it to another party. We had already started building the Elk Theater, we started building it sometime in 1935. So the other party later took over the Rex, in '36, I believe, right at the beginning of the year.

Q. Was the building of the Rex by you occasioned because you couldn't make satisfactory arrangements with him?

A. The building of the Elk?

Q. Of the Elk.

A. No, sir, it wasn't. The town was badly in need of a theater; the fact of the matter is, it needed an im-

1811 proved theater, and we had contemplated for quite some time to build a better theater, and then we did give them a very nice theater; and we intended to operate the Rex too, but we couldn't get together on rental terms.

By Mr. WRIGHT:

Q. Calling your attention to Guthrie, was the State operated in opposition to the Melba there before you acquired it?

A. Yes, sir, it was operated in opposition to a theater which was the same house called the Pollard; the Melba, it was later named, but at the time we operated it, the State was operated in opposition to the Pollard, which was prior to 1928.

Q. Who was operating it?

A. A man named A. B. Momand, and another party named Pettigo, I believe was his partner, or something like that.

Q. Then the Guthrie, prior to the time that was acquired, was operated in opposition to your other theaters in Guthrie?

A. Well, it was never operated on any consistent basis that I can recall. It was one of those houses that they used for colored patrons more than anyone else; it was an in an outer; it was an old opera house type building.

Q. Do you know who had operated it before?

A. There were numerous parties, Mr. Wright; I don't just believe I could say offhand who they were, without going to the record.

1812

By the COURT:

Q. Was either of these the Royal?

A. No. The Royal?

Q. Yes.

A. No, not to my knowledge.

Mr. WRIGHT. The town is Guthrie.

The COURT. Yes. I know, but the oldest theater there was the Royal.

A. That may be the name, the old Royal, but I don't recall it as that name. It is the old opera house as you go into town on the right, you turn and go towards the hotel, and it is down there in the bottom.

The COURT. That is the old Royal.

By Mr. COCHRAN:

Q. Just one question. Wasn't that Guthrie also operated by Mr. Momand just prior to the time you acquired it?

A. Yes, sir, it was; yes, he had that with the State for awhile.

By Mr. WRIGHT:

Q. Calling your attention to Hugo, was the Ritz operated in opposition to your, was it the Erie Theater, prior to its acquisition by you?

A. Yes, sir.

Q. Who operated that?

A. A man whose name I believe was Weaver, and as I recall, he was convicted of arson and sent to the penitentiary or something like that. The theater was vacant there for sometime; he disposed of it or something.

1813

Q. Since you acquired the Ritz, has there been any theaters in Hugo operated by anyone else?

A. Not to my knowledge.

Q. Calling your attention to Kermit, was the Texas Theater there operated in opposition to your Kermit Theater before you acquired the Texas?

1814

A. Yes, sir.

Q. Who operated that?

A. Mr. Lester Dollison.

Q. And since you acquired the Texas have any other theaters been operated there other than the Texas and Kermit?

A. No, sir.

Q. In Okmulgee, was the Yale Theater operated in opposition to your theaters there before you acquired it?

A. Yes, sir.

Q. By whom?

A. The name of the parties were Haniotis Brothers, Greeks.

Q. Was the Inca also operated in opposition to your theaters there before you acquired that?

A. Yes, sir.

Q. Who operated that?

A. Well, there were different parties who operated that theater. Malcolm Cook, deceased, operated it awhile, and I understand that Mr. Joe Cooper of the Standard Theaters in Oklahoma City operated it awhile, and a man by the name of Hancock. I don't know what his first name was, he operated it awhile.

1815 Q. Which one did you get it from?

A. We bought it from Mr. Malcolm Cook.

By Mr. COCHRAN:

Q. Did you acquire it from Mr. Cook or from the Cook estate, Mrs. Cook?

A. The Cook estate, that is correct.

Q. Then in regard to the Yale Theater, isn't it a fact that A. B. Momand operated that theater, and the Haniotis Brothers, and that property went through court proceedings and was purchased by somebody who then sold it to you?

A. That is correct. Mr. Momand did operate it and it went through court proceedings and was taken over by the owner of the building, Mr. Taylor and his wife, as I recall. That is true.

By Mr. WRIGHT:

Q. After you acquired the Inca, have there been any theaters in Okmulgee operated in opposition to your theaters there since that time?

A. No, sir.

Mr. COCHRAN. But there was some opposition in Okmulgee?

A. He said since we acquired the Inca.

Mr. WRIGHT. You can figure that out during the recess.

(Hereupon court adjourned until 2 o'clock p. m. this day.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 64

THE UNITED STATES OF AMERICA, APPELLANT

vs.

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

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A. Yes, sir.

Q. And at the time it was purchased, was any agreement made with Mr. Crown about future competition?

A. I don't know whether there was or not.

Q. You don't know whether you made an agreement or not?

A. No, sir, I do not.

Q. Could you check that for us?

1818 A. Yes, sir, I think so.

Mr. WRIGHT. Have you got the last questions before the recess?

The REPORTER. Yes, sir.

(Questions and answers read by the reporter as follows:)

"Question (by Mr. Wright): After you acquired the Inca, have there been any theaters in Okmulgee operated in opposition to your theaters there since that time?

"Answer: No, sir.

"Mr. COCHRAN. But there was some opposition in Okmulgee?

"Answer: He said since we acquired the Inca.

"Mr. WRIGHT. You can figure that out during the recess."

By Mr. WRIGHT:

Q. Is that correct?

A. Yes, sir—no, sir, it isn't entirely correct, what I said. There was a theater operated in Okmulgee, I don't know the name—I don't recall the name of it; it was operated by a man named Turner, Arthur Turner.

Q. That was during what period?

A. It was about 1940 or '41, the early part of '41.

1819 Q. What happened to that theater?

A. Well it was a very small store show theater that I don't think was open over a few months and he closed up and left town.

Q. You didn't buy it?

A. We didn't have anything to do with it, no, sir. There was also a question regarding who operated the Yale Theater. That was part of the Okmulgee question. It was operated by Mr. A. B. Momand and later on it was—well, he lost the theater I remember.

Mr. COCHRAN. You covered that.

A. I didn't mean to repeat.

By Mr. WRIGHT:

Q. Calling your attention to Wellington, Texas, was the Texan Theater operated in opposition to the Ritz before you got the Texan?

A. No, sir. That theater was built for us and leased to us. That is a very small house used during the cotton season; that type of house.

Q. With reference to the administration contracts that I asked you about yesterday, as I recall, you stated with reference to Exhibit No. 10, which refers to Altus, that you thought there was a prior written agreement. Have you been able to find out?

A. No, sir, I have not. The files do not disclose a prior written agreement.

1820 Q. Do you think the parties were operating under an oral agreement?

A. The parties were operating under an oral agreement at the time they acquired the interest, which was April 27, 1930, up until the time this administration contract was drawn which you referred to in Exhibit 10.

Mr. COCHRAN. I wanted to know in that connection, you stated the parties operated from '30 something until the time of the agreements which have been designated in evidence. Now interests in additional towns were acquired after 1931.

A. This is only referring to Altus.

By Mr. WRIGHT:

Q. As I understood your testimony yesterday, you stated that there was a written agreement between the Griffith Amusement Company and Consolidated Theaters, Inc., that covered a number of these towns. Is that right?

A. Yes, sir. I said that, but I was incorrect. At the time that Consolidated Theaters was organized, which was in 1930, in April, it was understood that the Griffith Amusement Company would have the administration contract on a certain number of towns that were involved in their original set-up, and I was under the impression that it had been in written form, but going through the files I found I was wrong. It had been carried on an

1821 oral basis until these written contracts were made as you referred to them yesterday.

Q. That is, there was oral agreement with the Griffith Amusement Company, that the Griffith Amusement Company would book the films for the Consolidated towns.

A. Well, they would book and buy and keep the books; keep the accounting records and give what is termed general administration in the supervision of the theaters; also give them the advantage of savings in poster service and things of that nature. It was a general administration contract, not then limited to booking and buying.

Q. You have no written record of that at all?

A. No, sir, I do not.

Q. You have made a search to see whether there is one?

A. Yes, sir, I searched very carefully.

Q. And found no memorandum or anything?

A. No, sir. I searched last night until nine o'clock.

Q. Then with reference to Exhibit 11 which relates to Ardmore, you did locate this prior agreement here?

A. Yes, sir.

Mr. WRIGHT. We will ask to have that marked as Plaintiff's Exhibit No. 353.

1822 Q. This prior agreement you referred to is this document marked Exhibit No. 353 for identification?

A. Yes, sir, that's it.

Q. And that agreement, I notice expired in 1934. Now, was there any—did the parties operate under a written agreement during the period from '34 until the time when this exhibit was executed?

A. No, sir, they operated under an oral agreement until August 15, 1942, when this new contract was executed.

By the COURT:

Q. What is the date of this?

A. This one I have introduced, your Honor?

Mr. WRIGHT. We will offer this in evidence. I take it there is no objection?

Mr. COCHRAN. No objection.

Mr. WRIGHT. Exhibit No. 353 is dated February 28, 1932, and recites that it shall exist for a period of two years from that date.

Q. Then, I also believe you testified with reference to Exhibit No. 15, that relates to the town of Claremore, that you thought there was a prior written agreement. Were you able to find any prior written agreement there?

A. No, sir, I wasn't. We operated on an oral agreement, an oral basis, until this contract was written, in November, November 30, 1942. Incidentally, this town of Claremore the partner is Griffith's brother-in-law.

1823 Q. The oral agreement, you don't have any memoranda as to what that was, other than the exhibit that is introduced as No. 15?

A. No, sir, I have no memorandum.

Q. With reference to Exhibit No. 18, as I understand it, the prior agreement that you referred to in your testimony yesterday, is the one that has been previously marked for identification as Exhibit No. 17, is that correct?

A. Yes, sir. You also referred at that time to Exhibit No. 16, 16 and 18; at least, my notes have two of them.

Q. Yes. Well, in any event, Exhibits 16 and 18 in evidence, and Exhibit 17 for identification, cover all of the agreements that were made with respect to the town of Clinton, is that right?

A. Clinton, yes, sir.

Q. And with reference to Exhibit 24, which I asked you about yesterday, the only prior agreement is the one in evidence as Exhibit No. 23?

A. 23, yes, sir.

Q. And with reference to Exhibit No. 32, which relates to Holdenville, Oklahoma, were you able to locate any prior written agreement there?

A. You didn't ask me about '32. '33 it was.

Q. Was it '33?

1824 A. It is on Hominy, Oklahoma.

Q. Well, with reference to Exhibit 33, did you locate a prior agreement?

A. You inquired about Exhibit 33, and this agreement is explained in Exhibit 34.

Q. Exhibit 34 was the one, the only prior agreement there was?

A. Yes, sir, and that is dated, I believe, October 31, 1938, and prior to October 31st, 1938, the administration contract was on an oral basis.

Q. There was only an oral agreement. Did that oral agreement prevail from the time your interrogatories show the theaters there at Hominy were acquired until October 1938?

A. Yes, sir.

Q. I will ask you now about this Exhibit 32, which relates to Holdenville, and the agreement dated November 17, 1942; do you know whether or not there was a prior written agreement there?

A. There was no prior written agreement; it was operated on an oral basis.

Q. From what period?

A. I believe that's from May 1936 until that new administration contract was drawn there, the one you referred to in Exhibit 32.

Q. Yes.

1825 A. That is Foster McSwain, Consolidated Theaters, and Griffith Amusement Company, is it not?

Q. That's right.

A. Yes, sir.

Q. You say the same parties operated on an oral basis up to that time?

A. Yes, sir.

Q. You have no evidence as to what that agreement was, other than this Exhibit 32, is that right? No written record of it?

A. No written record, no, sir.

Q. In connection with all of these prior oral agreements, you have records, do you, of the amounts that were paid under those agreements?

A. I don't believe the records will show other than the total amount, because we don't keep our checks over five years, and we would not have the information back of that period.

Q. That would show the total amounts paid over what period of time?

A. Well, over each year.

Q. By years while they were in effect?

A. Yes, sir.

Q. The next agreement I asked you about was No. 41, which relates to the Reno Theater in Oklahoma City.

1826 Did you locate a prior written agreement for that?

A. No, sir, I did not. That was on an oral basis. That theater was originally a partnership with a fellow by the name of Ed Brewer, and Consolidated Theaters, and he died in 1933, and we operated with his widow up to the time this administration contract was written on an oral basis.

Q. That is, the parties to the oral agreement were the same, except—who were the parties to the oral agreement?

A. Well, the parties to the oral agreement were Mr. Ed Brewer, Consolidated Theaters, and Griffith Amusement Company, and after he died, well, it became his widow, Mrs. Lotta Sandifer, she changed her name after his death and went back to her original name or something, and Consolidated Theaters, and Griffith Amusement Company. Now, later on, I believe it is covered in the administration contract that you have there, her daughter, Mrs. Brown, is also included in the administration contract.

1827 Q. That is in Exhibit 41?

A. Exhibit 41, I am pretty certain.

Q. Then with reference to Exhibit 43, which is the '42 agreement relating to Sapulpa, did you locate any prior written agreement?

A. No, sir. We operated on an oral contract with Mr. Zartaludes up until the time this contract was written as referred to in that exhibit. I believe it was in April, 1942.

Q. Those were the same parties?

A. Same parties, yes, sir.

Q. With reference to Exhibit 47, Vinita, Oklahoma, did you find any prior agreement?

A. No, sir. That was an oral agreement up to the time it was reduced to writing in November, 1942.

Q. Beginning at what time?

A. Beginning at the date of acquisition by the Consolidated Theaters and the partner, W. J. Moore, April 27. The date that the Consolidated Theaters was formed.

Q. Now, with reference to Exhibit 48, the only prior written agreement was Exhibit 49. Is that correct?

A. Yes, sir, that is correct. J. B. Terry and Consolidated Theaters.

Q. With reference to No. 44, which relates to
1828 Sayre, Oklahoma, and is dated June, 1942, the only prior written agreement there was the one in evidence as Exhibit 45?

A. Yes, sir.

Q. Now, did you prepare a list of certain employees you were asked about last night and bring it with you?

A. I didn't prepare a list. I made some notes. You said you were going to ask me questions.

Q. I was just going to suggest you read into the record the data that you have there as to the dates and terms of employment of those people.

A. Do you want to call the names——

Q. Just read them in the order you have them on your list.

A. C. B. Akers. He started to work with the Griffith Amusement Company in July of 1927, as assistant manager and projectionist, and he was in Borger, Texas, until January, 1928.

Mr. COCHRAN. You said "Assistant Manager." You mean at some time——

A. I said Borger, Texas.

By Mr. GRIFFING:

Q. You mean Assistant Theater Manager?

A. Yes. We use our own terminology; Assistant Theater Manager.

By the COURT:

Q. At Borger, Texas?

1829 A. At Borger, Texas, yes, sir. Then in January of 1928 he was moved to Seminole, Oklahoma, still with the Griffith Amusement Company as assistant manager and stayed there only two months, and in March of 1928 he was transferred to Wink, Texas, as manager of the theater of the Griffith Amusement Company. He stayed in Wink until November of 1928, and went to Shawnee, Oklahoma, still with the Griffith Amusement Company, and was

there for only one month until December, 1928, in the capacity of an artist. In December, 1928, he was moved to Pampa, Texas, and became the theater manager there. He remained there until March of 1932 as the theater manager and then became the theater manager at Lubbock, Texas; worked for the Lindsey Theaters, Inc. He remained theater manager there until December of 1934, and he came to Oklahoma City and worked for the Griffith Amusement Company in the capacity of district manager, and we had him listed as district manager of division A. That is the way we classify divisions.

By Mr. WRIGHT:

Q. During what period?

A. That was December, 1934, until July of 1938.

Q. And what district was that that he covered?

A. That is what we term the southwestern district, south and west of Oklahoma City.

Mr. COCHRAN. Be a little more specific, south and west of Oklahoma City covers a great area.

1830 A. Well, it is in Oklahoma and Texas and extends to this point at Wink, Texas, which I referred to here. Then he left the employment of Griffith Amusement Company in July of 1938, and was gone for a period of nearly a year and a half, until October of 1939. In October, 1939, he returned to work for the Griffith Amusement Company in the capacity of Assistant General Manager, and that has been his position since that time up to the present date. Is that sufficient, Mr. Wright?

Mr. WRIGHT. Yes. What is the next one?

A. H. R. Falls. He became an employee of the Griffith Amusement Company in October of 1926. His position was booker. He subsequently was head booker, what we call a head booker and an assistant film buyer, and later became, and is today, the chief film buyer or head film buyer.

Q. When was that he became the chief film buyer?

A. The summer of—May, rather, of 1931, I believe it was. That is Mr. Falls.

Q. Mr. Horace Falls?

A. Horace Falls, yes, sir.

C. O. Fulgham—he started with the Griffith Brothers—he was with them before they became a company in 1924, and we do not have on the record what capacity he was in with Griffith Brothers, but in March of 1926 with Griffith Amusement Company he was the theater manager in

1831 Okmulgee, Oklahoma. He was transferred from Okmulgee, still with the Griffith Amusement Company, to Enid, Oklahoma, in 1931, and he was theater mana-

ger in Enid, Oklahoma, until 1934, in September. He then came to Oklahoma City, in the home office, to the position of district manager in charge— this was in September of 1934—in charge of the division which we called the "Northeastern Division," which extends in north and eastern Oklahoma only. He remained in that position until May 15, 1942, when he enlisted in the services of the United States and is in the Navy, a Lieutenant Commander in the Navy.

1832 Mr. C. F. Motley is with the Griffith Amusement Company, since September of 1926.

By Mr. WRIGHT:

Q. In each case will you give the full name of these people?

A. I don't know the full names of them; we don't particularly deal in full names.

Q. Do you know Mr. Fulgham's initials?

A. I gave you his initials.

Q. You don't know his name?

A. Yes, I do.

Q. Could you put that into the record?

A. Well, his name is Claude; it so happens that Mr. Motley's name is also Claude, Claude F. Motley.

Q. Go ahead.

A. Would you read what I have stated?

(Last part of witness' answer read by the reporter.)

A. At Norman, Oklahoma, starting as a door man. He was going to the University of Oklahoma and working for us in after hours. In about 1928 he was promoted to assistant theater manager, and continued in that position at Norman, Oklahoma, until the fall of 1932; he then went to Cushing, Oklahoma, to work for the Griffith Consolidated Theaters as theater manager of the Cushing theaters; he continued in that position until November 1936, when he returned to work for the Griffith Amusement Company

1833 as theater manager, in Borger, Texas; he was in Borger Texas, in that position until March 28, 1937, then he was transferred by the Griffith Amusement Company as theater manager at Pampa, Texas, and he remained in that position until July 27, 1938, at which time he came to Oklahoma City to assume the duties of district manager, replacing Mr. Akers, who had left the company.

Q. Did he have the same territory?

A. Yes, sir, and he has continued in that position up to the present time.

Mr. E. R. Slocum, he went to work for Griffith Amusment Company—he went to work for the Griffith Consolidated

Theaters in the spring of 1936, and he worked for this company until January 29, 1938.

Q. That was in what capacity?

A. He was in the capacity of a field man, in charge of acquiring real estate, leases, and so forth, in the field.

Q. He had what was known as the expansion department, did he?

A. No, we never had what could be called an expansion department.

Q. Do you have that designation on your list?

A. Well, there is such a designation on the list, but he was in the field all the time, and there was no department in the home office called an expansion department.

1834 R. M. Clark, deceased.

By Mr. COCHRAN:

Q. I don't think you finished with Mr. Slocum.

A. I said he left our employment January 29, 1938.

By Mr. WRIGHT:

Q. Is that the Mr. Slocum who then became a partner in the operation of the theater in El Reno?

A. Yes, sir, he is the Mr. Slocum.

Q. In that interval, was he operating the theater in El Reno?

A. What interval are you speaking of?

Q. Between the time he went off of your pay roll and then became a partner?

A. Well, I don't really believe he was operating a theater in El Reno from that time up to the time he made the partnership, throughout; I believe there was a period of time, possibly a couple of months or so, that he wasn't operating a theater, but he operated a theater in El Reno and we made a partnership with him.

Q. His nickname was Red, is that right?

A. Yes, sir; he is red-headed.

Q. Go ahead.

A. Mr. R. M. Clark. He came to work for the Griffith Amusement Company in March of 1929 in the position of assistant general manager; he continued in that
1835 position until May of 1931 when he became general manager of the Griffith Amusement Company. He died—he continued in that position, and he died on November 17, 1934. Now, you have here the name of Henry S. Griffing. He has been general counsel for the Griffith Amusement Company since September 1, 1939.

Q. Before that, he was with Keaton, Wells & Johnston, was he not?

A. Before that he was working for Keaton, Wells, Johnston & Barnes, I believe was the name of the other partner.

Q. And during what period of time did Keaton, Wells & Johnston handle the legal work for Griffith Amusement Company and Consolidated Theaters?

A. Keaton, Wells & Johnston became attorneys for the Griffith Amusement Company in 1926, and continued as our attorneys until September 1, 1939.

Q. And the Mr. Johnston of that firm is Mr. D. I. Johnston is that right?

A. Yes, sir. You have another name here, Foster McSwain; I don't know what you want to know about him because he was never an employee of ours.

Q. Mr. McSwain wasn't on the pay roll?

A. No, sir.

Q. Of either Griffith Amusement Company or Con-
1836 solidated Theaters.

A. No, sir; he never was.

By the COURT:

Q. Was he a partner in some of the theaters?

A. Yes, sir, your Honor, he was a partner in the theaters in Wewoka and Holdenville, and is today.

Mr. WRIGHT. I think that's all at this time, that we have for this witness.

(Witness excused.)

(Hereupon the trial of the above and foregoing cause was continued until 10:00 o'clock a. m. September 10, 1945, at Oklahoma City, Oklahoma.)

1837 In the District Court of the United States
for the Western District of Oklahoma
No. 172—Civil

THE UNITED STATES OF AMERICA, PLAINTIFF
vs.
GRIFFITH AMUSEMENT COMPANY, ET AL., DEFENDANTS

Now on this 10th day of September, 1945, the trial of the above cause was resumed before Hon. Edgar S. Vaught, Judge, at Oklahoma City, Oklahoma.

APPEARANCES

Mr. Robert L. Wright, Special Assistant to the Attorney General; Milton A. Kallis, Special Assistant to the Attorney General; Mr. Posey T. Kime, Special Assistant to the Attorney General; Mr. John Brett, Assistant U. S. District Attorney, for the Government.

Mr. Charles B. Cochran, Mr. J. B. Dudley and Mr. Henry S. Griffing, all of Oklahoma City, Oklahoma, and Mr. L. M. Rice of Dallas, Texas, for the defendants.

1838 PROCEEDINGS

10 o'clock A. M.

The COURT. Are you gentlemen ready?
Mr. KIMB. We are ready.
The COURT. All right, you may proceed.
Mr. KIMB. Shall we call our first witness?
The COURT. Yes.

CHARLES H. MAHONE, was thereupon called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct examination by Mr. KALLIS:

Q. Will you please state your name?
A. Charles H. Mahone.
Q. Where do you live?
A. Hobart, Oklahoma.
Q. What is your business or occupation?
A. Theater operator.
Q. And where are you operating a theater?
A. In Hobart.
Q. And when did you first enter the theater business?
A. In Hobart?
Q. No, anywhere.
A. In 1909.
Q. In what community?
A. At Custer City, Oklahoma.

1839 Q. How long did you operate there?
A. Four years.

Q. From there did you go anywhere else to operate a theater before you went to Hobart?
A. Yes, sir.
Q. What place was that?
A. Cordell.
Q. In Oklahoma?.
A. Yes, sir.
Q. How long did you operate there?
A. Five years.
Q. Then you went to Hobart in 1918. Is that right?
A. That is right.
Q. Now, calling your attention to the period beginning in 1918 until 1938, how many theaters were being operated in Hobart?
A. In 1918——

Q. During that period generally.
A. Two.
Q. Who operated them?
A. I did.
Q. And you had no competition of any kind during that ten year period?
A. No, sir.
Q. Calling your attention to 1928, did someone else
1840 enter the theater business in Hobart?
A. Yes, sir.
Q. Who was that?
A. The Tolberts.
1841 Q. How do you spell that?
A. (Spelling) T-o-l-b-e-r-t.
Q. At the time they entered the theater business in Hobart in 1928, what were the names of your two theaters?
A. The Palace and the Co[illegible]
Q. What was the name of the Tolbert Theater?
A. The Rialto.
Q. Now did the Tolberts operate the Rialto at all in Hobart?
Mr. COCHRAN. That Tolbert, is that Judge Tolbert's brother?
A. Yes, sir, old Judge Tolbert, yes, sir, you all know him.
Mr. KALLIS. What was the last question?
(The last question read by the reporter.)
A. Yes, sir.
Q. And for what period of time approximately?
A. Well, they didn't stay in there too long.
Q. A few months or a few years?
A. Just a few months, I think.
Q. When did you say they opened the theater in Hobart?
A. In May, 1928.
Q. During the year of 1928 and prior to the time that Tolberts entered the theater business, had you taken any steps with reference to the construction of the new theater in Hobart?
1842 A. Yes, sir.
Q. Please state briefly what you did?
A. Well, I just let the contract to build a new theater there.
Q. Was that new theater finished, eventually constructed?
A. When they started in business?
Q. No, at any time.
A. It was finished in September, 1928.
Q. What was the name of that theater?
A. The Oklahoman.
Q. Has it been known by that name ever since it was opened?

A. Yes, sir.

Q. So that when you opened the Oklahoman, in November, 1928, the only theaters then were the Palace and the Cozy and your Oklahoman and the Rialto?

A. That's right.

Q. Now, at the time—who was operating the Rialto at the time you opened the Oklahoman?

A. Mrs. Ann Tolbert was running it.

Q. Was there a change in ownership or operation in the Rialto in 1928?

A. In 1928?

Q. Yes.

A. I don't think so.

1843 Q. Did the Griffiths begin operating in Hobart about that time?

A. I will just have to look. I made a few notes here. I can't remember those dates. The Tolberts were still operating a theater in 1928.

1844 Q. Was there any change of ownership or operation of the Rialto shortly after that?

A. 1929, yes, sir.

Q. What was that change of operation?

A. Well, the building was remodeled and the Griffiths started operation of it.

Q. At the time that the Griffiths came into Hobart and you were operating the Cozy and Oklahoman, is that right?

Mr. COCHRAN. He stated "The Griffiths came in there." We move to strike that for the reason it is entirely too indefinite. As a matter of fact, it was a corporation which came in and operated. Some of the Griffiths were interested in the corporation, but it is rather inaccurate, when we have several Griffiths to say the Griffiths came in there.

By Mr. KALLIS:

Q. Do you know who operated the theater of your own knowledge? Do you know of your own knowledge who operated the Rialto in 1929?

A. The Tolberts operated it part of the time and the Griffiths operated it part of the time.

Q. What do you mean by "The Griffiths"?

A. Well, the Consolidated Amusement Company.

Mr. COCHRAN. That is not a party to this suit, is the reason I wanted to make that clear. That is a separate corporation. That is satisfactory when you say "Consoli-

1845 dated Amusement Company."

By Mr. KALLIS:

Q. Are you acquainted now with L. C. Griffith and H. J. Griffith, defendants in this case?

A. Yes.

Q. Were you acquainted with R. E. Griffith during his lifetime?

A. Yes, sir.

Q. Were those three Griffiths connected with the Consolidated Amusement Company in 1929?

A. Well, I presume they were.

Mr. COCHRAN. We move to strike that.

By the COURT:

Q. Do you know of your own knowledge that they were?

A. Yes, sir, they were connected with it.

Mr. COCHRAN. We move to strike that as not the best evidence, if the Court pleases.

Mr. KALLIS. This is entirely preliminary and by way of inducement, and I can prove it, that there is no question about it.

The COURT. Well, go right ahead. The Court will merely give weight to competent evidence.

By Mr. KALLIS:

Q. Now, Mr. Mahone, at the time that you started operating the Oklahoman in 1929, did you have any connection at all with the Palace Theater?

1846 A. I started operating the Oklahoman in 1928.

Q. When you started operating the Oklahoman in 1928, did you have any connection with the Palace Theater?

A. Yes, sir.

Q. Are you acquainted with a man by the name of Jess Hale?

A. Yes, sir.

Q. Did he have anything to do with the operation of the Palace Theater in Hobart?

A. Yes, sir.

Q. When did he begin operating the Palace?

A. In the early part of 1929.

Q. What, if anything, did you do with the possession of the Palace which you say you had from 1918 to 1928?

A. My lease expired.

Q. And you vacated the premises. Is that right?

A. Yes, sir.

Q. Mr. Hale took over then in 1929?

A. In 1929; the early part of 1929.

Q. So that from the time that you began operating the Oklahoman, what theaters were being operated in addition to yours in Hobart and by whom?

A. Well, when we opened the Oklahoman—is that when you mean?

Q. That is right.

1847 A. When we opened the Oklahoman, the Rialto, Palace and Cozy were in operation.

Q. That is, the four theaters?

A. Yes, sir.

Q. Which were you operating?

A. I was operating the Palace, Cozy and Oklahoman.

Q. And who was operating the Rialto?

A. The Tolberts.

Q. Now, when did Griffiths begin, as early as you can recall, operating the Rialto?

A. You mean when they leased it from the Tolberts?

1848 Q. Yes, sir.

A. I remodeled it, yes, sir.

Q. Yes, sir.

A. They opened it on December 6th, 1929.

Q. Under what name?

A. The Kiowa.

Q. And up until June of 1930, what theaters were being operated in Hobart?

A. In June, 1930?

Q. Yes, sir, from the time you began operating the Oklahoman?

A. Well, in June, 1930, the Palace, Cozy, Rialto, and the Oklahoman were in operation.

Q. And the Rialto, you say, was known as the Kiowa?

A. Yes, sir.

Q. After the Griffith—you say the Consolidated Amusement Company began operating?

A. Yes, sir.

Mr. COCHRAN. Read that previous answer, please.

(The answer read by the reporter as follows: "Well, in June, 1930, the Palace, Cozy, Rialto, and the Oklahoman were in operation.")

A. I meant the Kiowa; I said the Rialto, but I meant the Kiowa.

Q. Now, Mr. Mahone, did you leave the theater

1849 business in Hobart in 1930?

A. I didn't understand the question.

Mr. KALLIS. Read the question.

(The question read by the reporter.)

The COURT. When did you leave the theater business in Hobart?

A. In June, when I left the theater business was in June, 1930.

By Mr. KALLIS:

Q. At the time you left, you were operating the Cozy and the Oklahoman, is that right?

A. And the Palace.

Q. You didn't have the Palace, Mr. Mahone, in June of 1930, when you left the theater business; didn't Mr. Hale have that?

A. Yes, sir, Mr. Hale was operating the Palace at that time.

Q. Did you have any business dealings with the Consolidated Amusement Company with reference to the Cozy and the Oklahoman Theaters?

A. Yes, sir.

(Government's Exhibits 354 and 355 were marked by the reporter for identification pursuant to request of counsel.)

Q. I show you Plaintiff's Exhibit No. 354 for identification and ask you if you have seen that document before?

1850 A. Yes, sir.

Q. And what is that?

A. It is a memorandum agreement.

Q. Pertaining to the sale of the equipment and fixtures of the Cozy and the Oklahoman Theaters?

A. Yes, sir.

Q. To the Consolidated Amusement Company?

A. Yes, sir.

Q. And it was executed on or about the date it bears? The 14th day of May, 1930?

A. Well, I don't think they took possession until June, but we entered into the agreement along about that time.

Q. I show you Plaintiff's Exhibit No. 355 for identification, and ask you whether that is the lease of yourself to Consolidated Amusement Company of the Oklahoman Theater?

A. Yes, sir.

Q. Were you the owner of the building occupied by the Oklahoman Theater in Hobart at that time?

A. Mrs. James and I owned it.

The COURT. That covered the Oklahoman and the Cozy?

Mr. KALLIS. It covered both theaters, your Honor.

The COURT. This lease, is that the lease of the Oklahoman property to the Consolidated?

Mr. KALLIS. Yes, sir, your Honor, maybe you would

1851 rather have Mr. Mahone testify. I have not been sworn, and to my knowledge it is only hearsay.

The COURT. Lawyers don't have to be sworn to say a lot of things. We will assume what it is. What is the question?

Mr. KALLIS. I am just showing the exhibits to Judge Cochran before I make an offer.

The COURT. I beg pardon.

Mr. COCHRAN. Here you are, Mr. Kallis (handing).

Mr. KALLIS. Your Honor, I offer these Exhibits 354 and 355 in evidence.

Mr. COCHRAN. We object to each of the exhibits for the reason that those contracts are between the witness and the corporation, which is not a party to this suit, which was not in existence at the time and during the period involved in this suit, and the transactions involved are matters which transpired prior to April of 1934.

The COURT. Overruled and exception allowed. Let them be admitted. The Court will take those things into consideration.

Mr. KALLIS. Shall I continue, your Honor?

The COURT. Yes.

By Mr. KALLIS:

Q. Mr. Mahone, after you made this arrangement with Consolidated Amusement Company whereby you sold the fixtures and equipment of the Cozy and the Oklahoman Theaters to the corporation and made a lease of the Oklahoman for 15 years, what, if anything, did the Consolidated Amusement Company do with the Cozy Theater with reference to a continuance of operations?

1852

A. Well, the lease was up and they wrecked it, just tore everything out of it and turned it back to the owner.

Q. And what did the Consolidated Amusement Company do with the equipment and fixtures?

A. I have been trying to find out for a long time. I don't know.

Q. At least, you say, they were removed from the building? What happened to the Cozy Theater then?

A. It was reconverted back into a store building.

Q. And has been a store ever since?

A. Yes, sir.

Q. Now, can you state whether the Consolidated Amusement Company operated, continued operating the Kiowa and the Oklahoman Theaters, both, from the time that you made this transaction with them as evidenced by Exhibits 354 and 355?

A. They did for awhile.

Q. And was the operation of the Kiowa continued indefinitely?

A. No, they closed up the Kiowa, after awhile.

Q. As nearly as you can recall, when would you say that occurred?

1853 A. Well, I would say it was six or seven months after the deal went through.

Q. In other words, you place it in the early part of 1931?

A. Yes, sir.

Q. Is that right?

A. Yes, sir, somewhere along there; I am not positive about that.

Q. Now during the time that both the Kiowa and the Oklahoman were being operated by the Consolidated Amusement Company, what was the playing policy with reference to the two theaters, with reference to the class of pictures which were exhibited?

A. Well, they kind of ran the A pictures up in the Oklahoman, and played the B pictures down in the Kiowa.

Q. Now, you were out of the theater business then for approximately how long?

A. Two years.

Q. When did you return to the theater business in Hobart?

A. On July 29th, 1932.

Q. Will you please state the circumstances under which you returned to the theater business in Hobart?

A. Well, there was certain notes that were due and certain rents that were due and the Consolidated Amusement Company defaulted on them and I had to go before
1854 the Court to get a receivership.

Q. Was a receiver appointed of the Oklahoman Theater building?

A. Yes, sir, for the Oklahoman.

Q. What was the name of the receiver?

A. J. J. Hunter. He is our Mayor there now.

Q. I won't ask you what his politics were. When did he become receiver, as nearly as you can recall?

A. July 29th, 1932.

Q. What did he do with the possession of the building?

A. He continued to operate it as a theater.

Q. Mr. Hunter?

A. Yes, sir.

Q. Did he operate the theater, or did you operate the theater?

A. I operated the theater under his receivership. He was the receiver.

Q. When did the receivership end?

A. On August 26th, 1935.

Q. And after the receivership ended, did you continue operation of the Oklahoman?

A. Yes, sir.

Q. All right. Now, during the three year period of the receivership, you operated the Oklahoman on your own account, didn't you?

1855 A. Well——

The COURT. State that question again.

Mr. KALLIS. Repeat the question.

(The last question read by the reporter.)

Mr. COCHRAN. We object to that as leading. It is better to let him state the facts.

1856 Mr. COCHRAN. Objected to as leading.

The COURT. Yes, I think it contradicts his previous question. He says he operated it under the receivership. The receiver was in control of the theater and you merely worked for the receiver. Is that it?

A. Yes, sir. We had to make reports to the court and things like that.

By the COURT:

Q. And you were working for the receiver?

A. That is right, yes, sir.

By Mr. KALLIS:

Q. During that period of the receivership, what, if any, other theaters were being operated in Hobart besides the Oklahoman?

A. Well, during the period of receivership the Palace was operating.

Q. Who was operating the Palace?

A. Mr. Hale.

Q. During the three year period, what other product did you play at the Oklahoman?

A. During the receivership?

Q. Yes, sir.

A. Well, we played Metro, Fox, Universal, and RKO.

Q. What runs?

A. First runs.

Q. I show you what has been marked as Government's Exhibit 356 for identification and ask you if you

1857 recognize that as a first run RKO contract you had for the 1933-34 season for your Oklahoman Theater in Hobart.

A. For the '33-34 season?

Q. Yes.

A. Yes, sir.

Q. I show you what has been marked Government's Exhibit No. 357, and ask you whether or not you recognise that as an RKO contract, first run, for the 1934-35 season for the Oklahoman Theater?

A. Yes, sir.

Q. I show you what has been marked as Government's Exhibit No. 358 for identification and ask you if you recognize that as a first run RKO contract for the 1935-36 season for the Oklahoman Theater?

A. Yes, sir.

Mr. KALLIS: If the Court pleases, I offer Government's Exhibits 356, 357 and 358 in evidence. Government's Exhibit 356 has an application date of September 1, 1933, and the approval date is September 25, 1933.

Government's Exhibit No. 357, the application date is February 26, 1934, and the approval date March 10, 1934.

Government's Exhibit 358, the application date is February 28, 1934, and the approval date April 10, 1934.

1858 The COURT. They will be admitted.

By Mr. KALLIS:

Q. Did you play the RKO product, first run, at your Oklahoman Theater in Hobart for the seasons of 1933-34, 1934-35 and 1935-36?

A. Yes, sir.

Q. Did the Griffiths reassume operation of the theater business in Hobart——

Mr. COCHRAN. We again object to the use of the word "Griffiths". It is entirely misleading.

The COURT. I think you should use the name of the corporation.

By the COURT:

Q. What occurred after the receivership closed with reference to this corporation?

A. With reference to the corporation?

Q. With reference to the Oklahoman Theater.

A. Well, we continued to operate it.

Q. Under whose control and direction?

A. After the receiver was dismissed Mrs. James and I were co-partners in it.

Q. Did the court turn the property to you and Mrs. James?

A. They held a sale and we bought it in.

Q. It was sold then by order of the court?

A. Yes, sir.

Q. And you and Mrs. James bought it?

1859 A. Yes, sir.

Q. That was in 1936?

A. That was in 1935, when the receiver was dismissed and we bought it in 1935.

By Mr. KALLIS:

Q. During the three year period of the receivership, do you know and recall what product Mr. Hale played at the Palace Theater?

A. I couldn't say for sure. I know about what he played but I just couldn't say positively he played it.

Q. Was it Metro product or Independent? Do you recall that?

A. Well, he had some of both.

Q. You don't recall exactly what he did play?

A. No, sir.

Q. Now, after the receivership and you began operating the Oklahoman, what happened with reference to the operation of the Kiowa?

A. Well, I think in the meantime that the Consolidated Amusement Company had vanished. There wasn't any Consolidated any more and the Griffith Amusement Company eventually took over the Kiowa.

Q. When did they begin operating it with reference to the time of the receivership now, the close of the receivership?

A. Well, the first time it was opened was in 1933
1860 and a fellow by the name of Gillam operated it.

Q. For how long?

A. He didn't last very long. He closed about the first of April, 1934.

Q. When was this reopened again?

A. Well, it was reopened by the Griffith Amusement Company November 19, 1934.

Q. Now, what happened to the product which Mr. Hale was playing at the Palace after the Griffiths opened the Kiowa in November of 1934?

Mr. COCHRAN. We object to that. In the first place it is incompetent, irrelevant and immaterial, and second, it is not the best evidence, and third, this witness has stated he only knows in a very indefinite way anything about the product Mr. Hale had.

The COURT. Well, if you know of your own knowledge you can state, but if it is hearsay do not state it.

A. I only know what Mr. Hale told me.

Mr. KALLIS. Well, that would not be competent. I agree he should not be allowed to answer the question then.

By Mr. KALLIS:

Q. Calling your attention, Mr. Mahone, to the RKO product for the 1936-37 season, did you play that product at your Oklahoman?

1861 A. No, sir.

Q. Where was it played?

A. It was played at the Kiowa.
Q. What run?
A. First run.
Q. Did you make any effort to buy the RKO, first run product for the 1936-37 season?
A. Yes, sir, I made every effort I knew how to make.
Q. Will you please tell the Court exactly what you did in the way of conversations, if anything, and communications, if any?
A. Well, long before the contract expired, I think it was in November——
Mr. Cochran. Wait now, just a moment. I didn't know he was asking for the detailed conversation and so forth. We certainly object to that. That is the same line of questioning.
The Court. Break down the question a little as he goes along and you can make your objections.
Mr. Kallis. Just confine your answers to conversations which you had with anybody connected with RKO.
The Court. State with whom you had the conversations; as to whether or not the conversations were proper will be determined later. With whom did you have conversations about this?
1862 A. With Mr. Williams, branch manager at RKO and Matt Dowling. I think he was office manager at RKO.

By Mr. Kallis:
Q. In what city?
A. Oklahoma City.
Q. What is his first name, Ralph Williams?
A. Yes, sir.
Q. And Matt Dowling?
A. Yes, sir.
Q. You had known those gentlemen before the beginning of the 1936-37 season?
A. Yes, sir. I had known them a long time.
Q. Had you had previous dealings with them?
A. Yes, sir.
Q. Were they, among other things, in connection with your purchase of RKO product for the three years during which you played it?
A. Were they what?
(Question read.)
A. What other things do you refer to?
Q. I will reframe the question. Your dealings with Mr. Dowling and Mr. Williams related to your business deal-

ings with RKO concerning the product you played for the 1933-34, '34-35 and '35-36 seasons. Is that right?

A. Yes, sir.

Q. When did you first see Mr. Ralph Williams,
1863 branch manager of RKO with reference to the 1936-37 RKO product?

A. Well, I can't name any certain date but every time I was in town I would go around and talk with him about it because I wanted to keep that product.

Q. What did you say to him and what did he say to you?

Mr. COCHRAN. We object to that——

The COURT. Sustained.

Mr. KALLIS. Under the previous arrangement I presume the witness may answer the question subject to your Honor's ruling that he made heretofore.

1864 Mr. COCHRAN. I take it, he may state—

Mr. KALLIS. In other words, instead of making a formal offer, we have it in the record in the form of what the conversation was.

The COURT. Very well, the objection will be sustained, and you will be permitted to ask him the question for the purpose of the record.

Mr. KALLIS. That's right.

Q. When was the first time you saw Mr. Williams?

A. Well, I am in Oklahoma City here sometimes two or three times a month, and I always drop in to see him and talk with him.

Q. With reference to the beginning of 1936-37 season, when did you first talk with him?

A. Well, it started way back there, somebody told me, I don't know who it was, but they told me I had better get busy on my RKO contract, that I was going to lose it.

Mr. COCHRAN. If the Court please, we object to that.

The COURT. Sustained.

Mr. KALLIS. I will stipulate that that part of it may go out.

Mr. COCHRAN. It all is incompetent, and this method the Court has permitted before, this question and answer method of offering the testimony, I submit the most
1865 orderly way and the quickest way would be for counsel to state what he expects to prove by the witness, and that is the customary way to do it, and you get away from all this irregular testimony. The customary way is to let counsel state what he expects the witness to answer.

The COURT. Proceed. We are taking a lot of time with this method. I think the question and the answer both are thoroughly incompetent and hearsay. I don't know under what theory it could be competent, but you may state it into the record, what you want to prove by the witness.

Mr. KALLIS. I presume your Honor has in mind that with some of these previous witnesses, your Honor has permitted the offer to be made in the form of conversations between these independent exhibitors and representatives of the film companies, and for the sake of uniformity and for other considerations——

The COURT (interrupting.) If you can limit it, just state what the conversation was.

Mr. KALLIS. Yes, sir. That was my question, your Honor, I didn't know he was going to relate something that somebody told him.

Q. What was the substance of the conversation between yourself and Ralph Williams, the branch manager of RKO, the first time you talked with him, relative to buying the '36-37 RKO product for your theater?

1866 A. Well, he told me he couldn't tell me anything definite.

Q. What did you say to him?

A. I told him I wanted it.

Q. What did he say to you?

A. I can't tell you all he said to me, or what I said to him.

Q. Well, as nearly as you can recall?

A. We just discussed it, and I told him I wanted the contract, and he told me he couldn't do anything about it then, and in November, 1935, I got tired fooling with him and I wrote Mr. Depinet about it.

Mr. DUDLEY. We particularly move that what he wrote somebody about it be stricken, that isn't a conversation, that they offered, in connection with this witness.

The COURT. Well, he just wrote. Proceed.

By Mr. KALLIS:

Q. Did you have any other conversations with Mr. Williams besides the one you have related?

A. Yes, I kept on asking him.

Q. About how many times do you think you talked with him on the subject?

A. I couldn't say.

Q. Would you say five?

The COURT. He said he couldn't say.

Mr. KALLIS. I am trying, if I can, to obtain an approximation, your Honor, about how many.

1867 Mr. COCHRAN. I submit, it would be far more orderly if he would make a statement as to what he expects the witness to testify.

Mr. KIMB. We would have preferred to use that method ourselves, but Mr. Wright prefers to use the method under the rule.

The COURT. Proceed. I will let you answer it if you will stick to the conversation. What did he finally tell you about the contract?

A. He never did tell me anything definitely. He just gave me the run-around and brushed me off.

The COURT. Well, that may be stricken.

Mr. KALLIS. By agreement, your Honor.

By the COURT:

Q. Did he tell you finally that you couldn't have the contract?

A. No, sir.

Q. Did he give you the contract?

A. No, sir.

By Mr. KALLIS:

Q. Mr. Mahone, did you have an opportunity of buying the product?

Mr. COCHRAN. Just a minute, we are getting away from the conversation. We move to strike all of the answers of the witness in regard to the conversations had with Mr. Williams.

The COURT. Sustained and exception allowed.

1868 By Mr. KALLIS:

Q. Did RKO offer you the 1936-37 product?

A. No, sir.

Q. Were you given an opportunity to buy it?

A. No, sir.

Q. Did you receive the product?

A. No, sir.

Q. Did you play the product?

A. No, sir.

Q. I show you what has been marked as RKO Exhibit No. 21-A, an exhibit which is in evidence, and I will ask you if you recognize that as a photostatic copy of a letter which you addressed to Mr. Depinet of the RKO organization on or about the time it bears?

A. Yes, sir.

Q. Did you mail the letter?

A. Yes, sir.

Q. Did you receive a reply from anybody, Mr. Depinet or anyone else connected with the RKO to this communication?

A No, sir.

Mr. KALLIS. I understand that this exhibit is in evidence, but just to make sure——

Mr. COCHRAN. No, it is not in evidence.

Mr. KALLIS. All right then, I will offer it.

Mr. COCHRAN. W eobject to it on the same grounds
1869 that we have to the other communications between this man or any exhibitor and one of the distributors on the same type of evidence.

The COURT. The objection will be sustained and exception allowed.

Mr. KALLIS. If the Court please, with reference to that, if your Honor will withhold your ruling, the depositions of Mr. Depinet were taken in New York City in the middle of July of this year, by Judge Cochran and Mr. Griffing, and that exhibit was submitted in that examination and without objection on the part of Mr., of Judge Cochran or Mr. Griffing, Mr. Depinet testified that he actually received this letter and didn't reply to it, and I submit the letter is in evidence now.

Mr. COCHRAN. If counsel is correct, why, it may be true, but if it is in evidence, it is in evidence. Do you have that deposition here?

Mr. KALLIS. I don't say that Mr. Wright in conducting the cross examination of Mr. Depinet formally offered it, but the testimony of Mr. Depinet is that he did receive the letter and didn't reply to it.

Mr. COCHRAN. The point is this, if they had wanted to offer that letter at that time, when they had the man on the stand who wrote it, inquiry could have been made. Now, he is asking this man——

1870 The COURT (interrupting.) Well, you have offered it now and it is in the record and the objection is sustained as incompetent. It is not binding on these defendants.

Mr. KALLIS. All right, your Honor.

The COURT. But it is in the record, and you have the benefit of it.

By Mr. KALLIS:

Q. In your conversation with Mr. Williams, did you say anything with reference to the prices that you were willing to pay for the '36-'37 RKO releases as compared with any price that Griffith was willing to pay?

Mr. COCHRAN. The same objection to that testimony as to the other offers of testimony or conversations with Mr. Williams.

The COURT. Sustained.

Mr. KALLIS. May he answer the question, your Honor, or shall I make a formal offer?

The COURT. I will permit him to answer it for the benefit of the record. You may answer the question.

A. Well, I told him if he would show me the agreement, on what the pictures had been bringing in Hobart from Griffith, that I would pay more to him, yes, sir, I said that.

Mr. COCHRAN. We object to that and move that it be stricken as incompetent and immaterial.

The COURT. Sustained and exception allowed.

1871 (Plaintiff's Exhibits 359, 360 and 361 were thereupon marked for identification, pursuant to the request of counsel.)

By Mr. KALLIS:

Q. Mr. Mahone, after the Kiowa was reopened in November, 1934, by the Griffith Amusement Company, did Mr. Hale continue in business and operating the Palace?

A. Yes, sir.

Q. For how long?

A. Well, until March, 1936.

Q. And thereafter, did you have anything to do with the operation of the Palace?

A. Yes, sir.

Q. And when did you take over the Palace?

Q. On March 22nd, 1936.

Q. How long did you operate the Palace?

A. It was closed on April 3rd, 1943.

Q. I show you what has been marked as Plaintiff's Exhibit for identification No. 359, and ask you whether you —strike that.—whether that is a correct carbon copy of the letter which you addressed to RKO on or about the date it bears?

A. Yes, sir.

Q. And the same question with respect to Plaintiff's Exhibit 360 for identification?

A. Yes, sir.

Q. And the same question with respect to Plaintiff's Exhibit 361 for identification?

1872 A. Yes, sir.

Q. Now, Mr. Mahone, calling your attention to the three years when you played the RKO product, 1933-34, 1934-35, and 1935-36, what did you find with respect to the box office attractions of this RKO product, whether they were comparatively good or bad box office attractions?

A. Well, that's a pretty hard question to answer. Some pictures are outstanding and draw, some are poor and don't draw, and it is hard to strike a balance between the good and bad. I would say RKO product was fair.

1873 Q. Will you please give us a description of the Kiowa and Oklahoman Theaters with respect to size, location, heating, and cooling systems, accoustics, up-

holstering and so on as of the time the Kiowa was reopened in the fall of 1934?

A. Well, the Kiowa Theater was down on South Main Street and is located right in the middle of the block, and it is a longer and larger theater than mine, and our theater is up in the next block and the courthouse is right across from it and the post office, and we have less farmer trade and stuff down there, and we have better parking space and the Kiowa Theater, I have been told, is hard to heat and cool and they haven't any upholstered seats all the way through it, and I would say our Oklahoman Theater is a better theater than the Kiowa Theater.

Q. Do you have upholstered seats throughout your Oklahoman Theater?

A. Yes, sir.

Q. What about the accoustics and sound system?

A. When we built that theater we had a sound engineer to outline that and they are mighty good in there.

Q. And since the Kiowa reopened in the fall of 1934, what has been the playing policy of your Oklahoman and Kiowa with reference to the number of changes a week, double features and admission prices?

1874 A. At what time?

Q. When the Kiowa reopened in November, 1934. Let's confine the question first to the admission prices. What were you charging at the Oklahoman at the time that the Kiowa reopened?

A. In 1934?

Q. Yes, sir.

A. I was charging 10 and 25 cents.

Q. By 25 cents, you mean 25 cents for adults in the evening on the main floor, is that right?

A. Yes, sir.

Q. What was the Kiowa charging?

A. They were charging 10 and 15 cents.

Q. Fifteen cents for adults on the main floor for the evening performance?

A. All performances.

Q. How long did that policy with reference to admission prices continue in both theaters?

A. Well, it went on, I would say, around eight or nine months.

Q. What change, if any, took place then?

A. Well, the Kiowa finally come up to 25 cents admission on all dates except Saturday, when they kept it at 20 cents.

Q. Did you make any change in your admission
1875 price at all down to the present time?

A. Since then?

Q. Yes. I mean with reference to making it lower than 25 cents.

A. Well, to meet that 15 cents they were charging I opened up my balcony,—I had not had it opened—and charged 15 cents upstairs and 25 cents downstairs.

Q. You made no change in the admission prices on your main floor?

A. No, sir.

Q. And the Griffiths, after about eight or nine months, did raise the price of their main floor for adults?

A. Yes, sir.

Q. Directing your attention to the year 1937, did you make any effort at all to buy any Warner product for your theater?

A. In 1937 after I lost the RKO deal, yes, sir, I tried to buy Warner.

Q. Whom did you see in connection with that company?

A. Otto Rhode.

Q. What was his connection with the Warner Company?

A. He was the branch manager.

Q. In Oklahoma City?

A. In Oklahoma City.

Q. When was that, in 1937, as nearly as you can recall?

1876 A. I couldn't say.

Q. Did you see him at his office here at the film exchange?

A. Yes, sir.

Q. What did you say to him and what did he say to you?

A. Well, there was a general conversation——

Mr. COCHRAN. We object to that conversation.

The COURT. Sustained.

Mr. KALLIS. May he answer under the previous arrangement?

The COURT. Ask the question and make your record.

Mr. KALLIS. You may answer.

A. Well, I was just merely trying to buy the product. I needed some pictures.

Q. What did he say?

A. He said he was sorry but his hands were tied and he could not do anything about it.

Mr. COCHRAN. We move to strike that.

The COURT. Sustained.

By Mr. KALLIS:

Q. About the month of July, 1939, did you make any effort to buy any Columbia product?

A. Well, now, I can't remember all those things. I was always short of pictures and always trying to buy some.

Q. And sometime after the Kiowa was reopened in November, 1934, up to the beginning, say of 1940, did
1877 you make efforts to buy Columbia?

A. Well, yes, sir.

Q. Have you had any Columbia first run product for your theater?

A. Nothing but cutbacks.

Q. What about Paramount? Have you had any first run product for your theater, of the regular season's deal?

A. No, sir.

Q. What about RKO? Have you had a regular season's deal from RKO?

A. Not since 1935 and '36.

Q. What about United Artists?

A. I never have even seen them. They never came around.

Q. What about Warners?

A. No.

Mr. KALLIS. If the Court pleases, I offer in evidence at this time Government's Exhibit 359, 360, and 361 for identification.

Mr. COCHRAN. They have already been identified.

Mr. KALLIS. I am now offering them in evidence.

Mr. COCHRAN. We object to each of these exhibits, Nos. 359, 360 and 361, because they are letters from this witness to RKO; correspondence from this witness to RKO.

The COURT. The objection will be sustained and
1878 exception allowed.

Mr. KALLIS. I believe that is all, your Honor.

By the COURT:

Q. At the time you entered into this lease contract and memorandum agreement in May, 1930, you regarded those contracts as advantageous contracts, did you?

A. I beg your pardon?

Q. You regarded those contracts as advantageous contracts to you?

A. Yes, sir.

Q. And entered into them regularly?

A. Oh, yes.

Mr. KALLIS. On that score, that suggests a question I think your Honor has in mind. I don't suppose Judge Cochran will object to this question.

By Mr. KALLIS:

Q. Will you please tell the Court, Mr. Mahone, why you sold your business in 1930—strike that—what was the state of your health in 1930?

A. I had been pretty sick.

Q. Did your illness have anything to do with the sale of your theaters in 1930?

A. I wanted to get out for that reason and others.

By the COURT:

Q. At the time you entered into these contracts in 1930, did your theater have contracts with RKO, Columbia, Warner and all the leading producers?

1879 A. Yes, sir. I guess so. I always got plenty of product along about that time.

The COURT. Is there any cross examination?

Cross-examination by Mr. COCHRAN:

Q. When you state you always got plenty of product, you do not mean you had a contract with all of the distributors during the years the Court was asking about, do you?

A. I can't hear you. I am a little hard of hearing.

Q. The Court asked you if at the time that you sold out those theaters and prior to that time that you had contracts with all of the major distributors for your theaters?

A. No, sir, not all of them.

Q. The theaters which you were operating at that time were much superior to the theater that Mr. Hale was operating, wasn't it, and the Palace Theater?

A. Inferior or did you say superior?

Q. Superior.

A. The Oklahoman was, but the Cozy was kind of a shot gun house.

Q. Now the Oklahoman Theater was far superior to the Palace?

A. Yes, sir.

Q. And so was the Kiowa?

1880 A. Yes, sir.

Q. Relative to this Kiowa Theater, had you discontinued the operation of the Kiowa at the time you made the contract with the Consolidated Amusement Company?

A. Had I what?

The COURT. Abandoned the Kiowa.

A. No, sir. I had not quit operating the Kiowa.

Mr. COCHRAN. You didn't seem to have any difficulty in hearing counsel for the Government——

A. He was standing right over here.

Mr. KALLIS. If the Court please——

The COURT. I don't care to hear any argument on that at all.

Mr. KALLIS. I think counsel's remark should be stricken from the record.

The COURT. The court will not consider it.

By Mr. COCHRAN:

Q. Where do you prefer I shall stand in inquiring of you in order that you may hear me?

A. If you would stand right over there it would certainly be an accommodation to me.

Q. Can you hear me back here?

A. No, sir, I can't; not distinct.

Q. The only difficulty about it is I have my papers and records over here on the table.

A. If you will permit me to come over there I will
1881 be glad to do so.

Q. I am just trying to adjust myself so we both can find out where we stand. Can you hear me from here?

A. Yes, sir.

Q. After you opened the Oklahoman Theater and Mr. Tolbert had opened the Kiowa Theater, did you continue to operate the Cozy Theater?

A. Yes, sir.

Q. Were you operating it right up to the time you made the deal with the Consolidated Amusement Company?

A. Yes, sir.

Q. Operating it full time?

A. Yes, sir.

Q. You say your lease was expiring on the Cozy when you made that deal?

A. Yes, sir.

Q. When did that lease expire relative to the time you made the deal with the Consolidated Amusement Company?

A. It was the same time, if I recall correctly.

Mr. KALLIS. Just a moment. You said the Cozy. You meant the Palace, didn't you?

Mr. COCHRAN. No. I am talking about the Cozy.

By Mr. COCHRAN:

Q. Am I correct in saying the lease either had expired or was immediately expiring on the Cozy?

A. Yes. That is one of the things we discussed in
1882 making the deal. They said they were going to operate it and as quick as the deal was made they wrecked it that same night; took it out.

Q. If you had continued to operate it you expected to let it go——

Mr. KALLIS. That is purely hypothetical and I object to it as not proper cross examination.

The COURT. Overruled.

By the COURT:

Q. Did you intend to operate it if you had not made this deal?

A. I don't know whether I would have or not.

By Mr. COCHRAN:

Q. At any rate the lease was not renewed and the theater was converted into a business building?

A. Yes, sir.

Q. And after it was so converted there were three theaters operating in that town?

A. Yes, sir.

Q. One by Mr. Hale and two being operated for a time by the Consolidated Amusement Company?

A. Let us clear this up just a little bit. Mr. Hale didn't come in there for quite a while. My lease expired on the Palace and they refused to extend it, and they remodeled the Palace and spent a lot of money on it, and I don't think opened up the Palace until later on after I got out of it.

1883 Q. Are you sure about that?

A. Wait just a minute and I will tell you.

(Witness refers to notes.)

A. (Continued.) I kept the Palace for awhile. My lease had already expired and I kept it for awhile. Mr. Baker, I remember that very distinctly, owned the building, and he charged me double rent all the time I was in there. He couldn't throw me out but he charged me double rent and as soon as I got out he reopened, turned it over to Jess Hale, he was mad at me and would not let me have it.

Q. What year was that?

A. That was in 1928.

Q. And Mr. Hale continued to operate that Palace Theater in Hobart until you re-acquired it in 1936?

A. After he started it, yes, sir. I don't think there was any other person in there.

Q. I say he continued to operate it until you re-acquired it in 1936?

A. Yes, sir.

Q. During the time that the Oklahoman was in receivership the Kiowa was closed for a considerable portion of the time; is that correct?

A. Yes, sir, it was closed. I don't know exactly how long.

1884 Q. And the Palace was still operating?

A. Yes, sir.

Q. While you were operating the Oklahoman Theater under the receivership you were only licensing the pictures of Metro, Fox, Universal and RKO, is that correct?

A. There might have been others. I disremember.

Q. Well, you were not licensing the pictures of Warner Brothers?

A. No, sir. I haven't run any Warners in a long time.

Q. And you had not licensed any pictures of Warner Brothers or ran any of their pictures for a long time before that. Is that true?

A. Well, the last Warner Brothers Pictures contract I had was when sound began to come in.

Q. That was back in 1928, wasn't it?

A. Yes, sir.

Q. You had some difficulty with Warner at that time?

Mr. KALLIS. Just a moment. If the Court please, on direct examination I said nothing about the product he played except beginning with the three years when he played RKO. I submit the question is incompetent, irrelevant and immaterial and does not bear upon any of the issues in this case or any of the direct examination, as to whether he had any difficulty with Warner Brothers in 1928.

The COURT. You asked this witness if he did not
1885 make a request of Warner Brothers for pictures and he said he did but they didn't give them to him.

Mr. KALLIS. That is right.

The COURT. That would make this question competent as to any reason why Warner Brothers had for not giving them to him. I don't care anything about the details.

Mr. KALLIS. It seems to be opening the door for him to testify as to the various discussions he had with Warners concerning the buying of the product.

The COURT. No. He can just ask him if he had any difficulty.

Mr. KALLIS. I object to the word "difficulty." It is too indefinite in meaning.

The COURT. Well, misunderstanding with Warner Brothers.

By the WITNESS:

A. Did I have any misunderstanding with them?

The COURT. Yes, with Warner Brothers.

A. Yes, we had a lot of them along about that time.

The COURT. I think you had better go to something else.

By Mr. COCHRAN:

Q. Sound came in, as you stated, in 1928?

A. Was it 1928 or '29? It just began to come in in
1886 1928 but I don't think it was a reality much until 1929.

Q. Do you recall when you installed sound equipment in your Oklahoman Theater?

A. Yes, sir, very distinctly.

Q. What year?

A. Well, it was in 1929, I think. We had a lot of trouble.

Q. During the period that you were licensing pictures under the receivership, did you license any Columbia pictures under season's contracts?

A. I don't believe I did. I think Mr. Hale was running Columbia.

Q. At any rate you know you were not licensing Columbia pictures?

A. No, sir, I don't think so.

Q. Did you license any Paramount pictures during that period?

A. While it was under receivership?

Q. Yes, season's contract is what we are talking about.

A. I don't think so. I am not positive about it though.

Q. Or United Artists?

A. No United Artists.

Q. As far as United Artists was concerned, you never have done any business with United Artists?

1887 A. Yes, sir.

Q. Did you during the receivership period?

A. No, sir, I don't think so. There was one picture in there somewhere from United Artists. I didn't have any season's contract.

Q. I am talking about substantially all of a season's product.

A. No, sir.

Q. You never have done business on that basis with United Artists, have you?

A. Away back yonder I expect I did once.

Q. I am talking about during the receivership period and subsequent to that time.

A. No, sir.

Q. You just didn't care to use United Artists product?

A. No, sir, not that. We never could get together on a price or anything.

Q. Couldn't make a deal with them?

A. No, sir.

Q. Because of failure to be able to agree on a price?

A. Yes, sir.

Q. You know, as a matter of fact, there were several years after the Griffith Amusement Company started operating in Hobart in 1934, that United Artists product was not played in that town at all, do you not, except just a

1888 few pictures?

A. If I remember right, United Artists was not played in many towns along about that time because it wasn't any good.

Q. But I am asking you specifically about Hobart, if you don't know that in 1934-35, '35-36, '36-37 and '37-38, that there were only one or two United Artists pictures played in that town at all?

A. I don't know what was played. I know I didn't play any.

Q. From the time the Griffith Amusement Company opened the Kiowa in 1934, in December, until sometime in 1935, about August 26, 1935, you were operating the Oklahoman under the receivership?

A. Yes, sir.

Q. And about August 26, 1935, the property of the Oklahoman Theater which had been in the custody of the receiver was sold under the receivership sale and you acquired the title to it?

A. Yes, sir.

Q. And since that time you have been operating that theater?

A. Yes, sir.

Q. You are still operating it?

A. Yes, sir.

1889 Q. And since that time the Griffith Amusement Company has been operating the Kiowa Theater, is that true?

A. Since 1934?

Q. Since they went in in December of 1934?

A. Yes, sir.

Q. And since you acquired title to the Oklahoman in 1935?

A. Yes, sir.

Q. At the present time, and ever since you acquired the title to the Oklahoman Theater at that receivership sale, you have obtained and played the product of Metro or Loew's, first run, haven't you?

A. Yes, sir.

Q. And you played the product of Fox first run?

A. Yes, sir.

Q. And you played the product of Universal first run?

A. Yes, sir.

Q. And in addition to that you have played certain pictures from other distributors which were either not licensed or were eliminated by Griffith Amusement Company, if you desired to get those pictures?

A. Yes, sir.

Q. You have also played certain action and western pictures produced by companies commonly referred to as Independents, haven't you?

1890 A. Yes, sir.

Q. Now, in Hobart there were certain periods or days when those action pictures were considered by you to be better box office attractions than some of the so-called "A" pictures of the major companies, weren't they?

A. No, sir.

Q. That is not true?

A. No, sir.

Q. Don't you play your actions and westerns on Saturday?

A. But they are not better pictures.

Q. I didn't ask you about better pictures. I asked you about better box office attractions.

A. They may be in some situations.

Q. Are they with you?

A. No, sir.

Q. From a net standpoint?

A. No, sir. In my Oklahoman Theater I won't run a western picture only as a second picture on my program.

Q. That brings to my mind this thought. In your Oklahoman Theater you play double bills on certain days of the week, don't you?

A. On Thursday, Friday and Saturday, yes, sir.

1891 Q. That's one change?

A. Yes, sir.

Q. How many changes did you make?

A. Two; Sunday, Monday, Tuesday and Wednesday, and Thursday, Friday and Saturday.

Q. And the last change in the week, you played two feature pictures on the same bill?

A. Yes, sir.

Q. I believe you said that before Griffith Amusement Company opened a theater in Hobart, there was a man by the name of Gillam that opened the Kiowa Theater and operated it for a short time?

A. Yes, sir.

Q. And then he closed it and the theater remained closed until it was remodeled and Griffith Amusement Company opened it?

A. Yes, sir.

Q. At the time that Mr. Gillam was operating the theater, what other theaters were being operated in the town?

A. The Palace and the Oklahoman.

Q. The Oklahoman by you, under the receivership, and the Palace by Mr. Hale?

A. Yes, sir.

Q. Do you know what product Mr. Gillam played in the Kiowa Theater while he had it?

1892 A. No, sir.

Q. You don't know?

A. No, sir.

Q. Do you know whether he played any Metro product?

A. He played some United Artists.

Q. Did he play any Fox that you know of?

A. No, sir, I don't think so.

Q. Or Metro?

A. No, sir, I don't think so.

Q. Or Universal?

A. I don't think so, unless it was a second run or something.

Q. Or RKO?

A. I don't know about it.

Q. You don't know of any major product that he played?

A. United Artists.

Q. Unless it was United Artists?

A. Yes, sir; he played some United Artists.

Q. And you didn't want United Artists, did you?

A. I couldn't agree with them on the price.

Q. How long did you say that the Rialto Theater was operated by Mr. Tolbert?

A. I couldn't say just exactly; they opened it in May, 1928, and Consolidated Amusement Company didn't open it until December 6th, 1929. It took a long time to

1893 remodel that building. You see, they converted from a 25 foot into a 50 foot front; they had to excavate the floor, and it took a long time. I would say off-hand that the Rialto only operated from May, 1928 to maybe the first of 1929; I don't know positively.

Q. Relative to the comparative merits of the Oklahoman Theater and the present Kiowa Theater——

A. Yes, sir.

Q. You think that your Oklahoman Theater is some better theater?

A. Yes, sir.

Q. You will admit that there is room for some controversy among individuals, and a difference of judgment in regard to that matter, won't you?

A. Well, it is kind of like a fellow about his shotgun or his bird-dog, his is always the best.

Q. But you will admit that as between those two theaters, however, there is room for difference of opinion between individuals?

A. Well, sir, Griffith didn't think so: he closed the Kiowa and operated the Oklahoman.

Q. The Kiowa, the old Kiowa, after Griffith Amusement Company acquired that theater, has been again remodeled, has it not?

A. When they left there, they took everything out
1894 of there, everything.

Q. Now, Mr. Mahone, the Kiowa originally was operated by Griffith, by Consolidated Amusement Company, wasn't it?

A. Yes, sir.

Q. But you have told the Court they went out of business?

A. Yes, sir.

Q. The Griffith Amusement Company is a concern that had been in existence before that time, and is still in existence, isn't that true?

A. Consolidated Amusement Company was an older company than Griffith Amusement Company.

Q. I am asking you if Griffith Amusement Company hadn't been in business before that time, and are still in business?

A. Yes, sir.

Q. And Griffith Amusement Company acquired, or rather opened the Kiowa Theater in December, 1934, that's right, isn't it?

A. December, 1934?

The COURT. November.

By Mr. COCHRAN:

Q. All right, along in the late 1934?

A. Yes, sir.

Q. And at that time, or just before they opened it again, wasn't the Kiowa again remodeled?

A. Well, they did some repair work around there.

Q. Wasn't it remodeled?

1895 A. I wouldn't say it was remodeled. They haven't done much to it.

Q. Again coming back to my question, and please answer, isn't it a fact that as to which is the better of the two theaters, the Oklahoman or the Kiowa, at this time, and since 1934, it is a matter that there can be a difference of opinion among individuals on, is that right?

A. Well, I just know what people come and tell me voluntarily.

Q. Will you answer my question; will you say "Yes" or "No"?

A. Yes, sir, there can be a difference of opinion.

Mr. KALLIS. I didn't get that previous answer. Will you please read it.

(The next to the last answer read by the reporter.)

By Mr. COCHRAN:

Q. How many seats does the Kiowa have?

A. I never counted them, but I think there is around 1000.

Q. How many does your theater have?

A. Around 600.

Q. So far as the outward appearance of the theater is concerned, what would you say about their physical appearance?

A. The outside appearance?

Q. Yes, sir.

A. Well, since things have been bad like this and I
1896 couldn't get any material and things, they have the best looking front now.

The COURT. I don't see, gentlemen, how any of this is material to the issues in this case.

Mr. COCHRAN. All right, your Honor.

Q. Mr. Mahone, so far as the RKO product for the seasons 1934–35, and 1935–36 are concerned, you made the deal for those two years at the same time, didn't you?

A. Yes, sir.

Q. In other words, you made a two year deal with RKO in 1934, that's right, isn't it?

A. Yes, sir.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KALLIS:

Q. You made two separate and distinct contracts for those two years, didn't you?

A. No, sir, it was all drawn up on one contract, but it is the policy of the company each year to make a new contract.

Q. You received two separate and distinct contracts for the 1934–35 and the 35–36 seasons, which have been received in evidence?

A. Yes, sir.

Q. Now, I understood you to say that you have two changes a week at the Oklahoman?

1897 A. Yes, sir.

Q. How many changes does Griffith's Kiowa have?

A. Three.

Q. Three changes a week?

A. Yes, sir.

Q. Are any of those double feature programs?

A. Yes, sir.

Q. How many?

A. Well, on Thursday, Friday and Saturday they—no, on Wednesday, Thursday and Friday, they run a double feature down there.

Q. That is six, two pictures, and one change, and what else?

A. And on Saturday they always run a Western picture with serials and stuff like that.

Q. That is another change?

A. On Sunday, of course, they run A pictures, Sunday, Monday and Tuesday.

Q. How many times do they double bill a week?

A. What?

Q. How many times a week do they double feature?

A. Just once a week.

Q. With three changes?

A. Yes, sir.

Q. How many times a week do you double feature?

1898 A. Once a week.

Q. These pictures which you have stated on cross examination——

The COURT (interrupting.) Just a moment. Under the rule of the Court, gentlemen, attorneys are expected to stand when cross examining or examining the witness. However, on account of the peculiar conditions of this case and the amount of documents which you have, if counsel prefers to sit, the Court has no objection, and I will make an exception in this case. The principal reason, I think, for having them stand is they get through quicker.

Mr. KALLIS. I would say your Honor's point is very well taken.

The COURT. If you desire to sit, the Court will permit it.

Mr. KALLIS. Read the question.

(The last incompleted question read by the reporter.)

By Mr. KALLIS:

Q. These pictures which you have stated on cross examination you could have bought but didn't buy, were what kind of pictures, with reference to box office attractions?

A. Well, sir, there wasn't no box office value in them; we just used them to kind of fill in, when you couldn't get anything else.

Q. Judge Cochran asked you whether you played

1899 any pictures which were eliminated by Griffith from their contract, and I understood you to say "Yes," is that right?

A. Yes, sir.

Q. Will you please tell us what kind of pictures they were, with reference to good or bad box office attractions?

A. Well, I would say they was bad box office attractions.

(Plaintiff's Exhibits 362 and 363 were then marked by the reporter for identification pursuant to the request of counsel.)

Q. I show you what has been marked for identification as Plaintiff's Exhibit 362, and also Plaintiff's Exhibit 363 for

identification, and ask you whether you received these letters on or about the dates they bear?

A. Yes, sir.

The COURT. What are the numbers?

Mr. KALLIS. 362 and 363, your Honor.

A. Yes, sir.

Q. And you received them in the mails?

A. Yes, sir.

Mr. KALLIS. That's all, your Honor.

1900 Re-cross-examination by Mr. COCHRAN:

Q. Under your contracts with Fox and Metro and Universal, you have for many years had the privilege of eliminating certain, a certain number of pictures, have you not?

A. Of no one except Metro.

Q. Do you have your Fox contract—I am talking about prior to the consent decree?

A. We never did—we never were allowed the privilege of one single cutback picture from anyone except Metro.

Q. Prior to the consent decree?

A. Yes, sir.

Q. Do you have your Fox contracts with you?

A. No, I haven't.

Q. Are they in the department's office, are in the Attorney's office?

A. I have a brief case up there; there might be some Fox contracts with them.

Q. This afternoon, will you please bring your Fox contracts for the season 1938–39?

A. '38–39?

Q. Yes.

A. Was that the whole season's product at one time?

Q. You were licensing the whole season's product, weren't you?

1901 A. In 1938–39?

Q. Didn't you, each year?

A. I wouldn't be sure. What I mean is, you know they sell in a group sometimes, and at that time they may have been selling the whole season's product at one time.

Q. Mr. Mahone, don't you know that prior to the time the consent decree was entered against these distributors or with the distributors, that for a number of years you had licensed the entire product of Metro, Fox and Universal at one time and under one contract?

A. At one time and under one contract?

Q. For each company, that you made one contract with Metro, licensing all the season's product?

A. Yes, sir, we used to do that.

Q. And one contract with Fox licensing the season's product?

A. We used to do that. I still do it with Universal.

Q. And that was done with Metro and Fox for many years, and up until the time the consent decree was entered, when they commenced to sell by small groups of five?

A. Yes, sir.

Q. And at the present time Metro and Fox sell in groups of five after their pictures have been produced, do they not?

A. They sell in groups of one to five to six or
1902 seven; it doesn't seem to make any difference.

Q. But they are sold after the pictures are produced?

A. Yes, sir.

Q. When you were licensing the entire season's product at one time from Fox and Metro, don't you know that the Fox contracts gave you the privilege of eliminating ten per cent?

A. I think that's right. When we licensed the whole season's product at one time?

Q. Yes, sir.

A. Yes, sir.

Q. You did eliminate some pictures, didn't you?

A. Yes, sir.

Q. From Metro and Fox?

A. Yes, sir.

Q. And those pictures were pictures which you considered to be of little box office value?

A. They were some British or foreign made pictures.

Q. I asked you if they were pictures which you considered to be of little box office value?

A. Yes, sir.

Q. Do you recall where the Griffith Amusement Company played some of your eliminations?

A. No, sir, I don't recall; nobody played them after I eliminated them.

1903 Q. Will you say they didn't do it?

A. Not as I remember.

Q. And this policy of playing by the Kiowa at the present time, you have stated that they play, that they make three changes a week?

A. Yes, sir.

Q. And on one program they play two features?

A. Yes, sir.

Q. Don't you know that on one of those changes it is a week-end change, in which they play a western or action picture only?

A. On Saturday, yes, sir.

Q. You have told us that you don't care to play those pictures on Saturday.

A. I didn't say I didn't care to play them; I said I only played them to fill in with.

Q. But the fourth picture which they use during the week is an action or western picture and played on a single bill?

A. Yes, sir, for a Saturday picture.

Q. For a Saturday picture?

A. Yes, sir.

Q. And the double feature is played Wednesday, Thursday and Friday?

A. Yes, sir.

1904 Mr. COCHRAN. That's all.

Mr. KALLIS. That's all.

The COURT. Stand aside.

(Witness excused.)

The COURT. Gentlemen, we will recess at this time until 2 o'clock.

(Whereupon, court recessed until 2 o'clock p. m. of this same date.)

1905 PROCEEDINGS

2 o'clock P. M.

MYRTLE GUTHRIE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. KALLIS:

Q. Will you please state your name.

A. Myrtle Guthrie.

Q. Where do you live, Mrs. Guthrie?

A. Clinton, Oklahoma.

Q. Mrs. Guthrie, what is your business?

A. Owner of a theater.

Q. Can you speak a little louder?

A. Theater owner.

Q. Where?

A. At Clinton, Oklahoma.

Q. What is the name of your theater?

A. The Ritz.

Q. When did you begin managing the Ritz Theater?

A. In 1938.

Q. When in that year?

A. Well, about December 15—no, January of that year.

Q. And was the Ritz Theater previously operated by any relative of yours?

A. My husband.

1906 Q. When did he begin operating the Ritz?

A. Well, I imagine the Ritz at the location it is now, in about 1930, I believe.

Q. Is Mr. Guthrie living?
A. No, sir.
Q. When did he die?
A. December, 1937.
Q. Now for the year 1938 until the '38-39 season started, in September of 1938, what product did you play at the Ritz?
A. I will look on my memo sheet I brought and then I will be sure. I had Columbia cutbacks, British Gaumont, Universal, Grand National, Monogram, Adams and Republic and some M-G-M cutbacks.
1907 Mr. COCHRAN. Off the record, was that for the '37-'38 season?
The WITNESS. '37-'38.

By Mr. KALLIS:

Q. Mrs. Guthrie, I show you what has been marked as Plaintiff's Exhibit 202 for identification, and ask you whether you recognize that as the contract you received from RKO for the first run for the '38-'39 season?
A. Yes, sir.
The COURT. Did she mention RKO in this list?
Mr. COCHRAN. She was talking before about '37-'38, and he is now asking her about the '38-'39, your Honor.
The COURT. All right.

By Mr. KALLIS:

Q. Now, I show you what has been marked as Plaintiff's Exhibit No. 303 for identification, and ask you whether you recognize that as the RKO first run contract you received for the '39-'40 season?
A. Yes, sir.
Mr. KALLIS. We offer in evidence Plaintiff's Exhibits Nos. 202 and 303, which have been identified.
The COURT. What is 202?
Mr. KALLIS. 202 is the first run RKO contract for the '38-'39 season, and 303 is the first run contract RKO contract, for the '39-'40 season.
The COURT. Very well.
1908 Mr. COCHRAN. No objection.

By Mr. KALLIS:

Q. Did you have an RKO first run contract for the 1940-41 season?
A. No, sir.
Q. And did RKO offer you a contract for the '40-41 season?
A. No, sir.

Q. Were you given an opportunity for negotiating for buying that season's releases?

A. No, sir, I was not.

Q. Did any salesman from RKO solicit you with reference to that season's releases?

A. No, sir.

Q. Mrs. Guthrie, prior to the time you bought the first run of RKO for the '38-39 season, did you have occasion to talk with Mr. Williams with reference to the '38-39 releases?

A. No, sir, I hadn't talked to him before.

Q. Prior to that time, but do you know Ralph Williams who was branch manager of RKO in 1938?

A. Yes, sir, I know him.

Q. And did you know him in 1938?

A. Yes, sir.

Q. And did he talk with you with reference to the '38-39 RKO releases?

1909 A. Not until he called me one day and asked me if I would be interested——

Mr. COCHRAN. We object to the conversation, if the court pleases, between Mr. Williams and Mrs. Guthrie.

The COURT. The objection will be sustained. If you desire to make your record you may do so.

Mr. KALLIS. Yes.

By Mr. KALLIS:

Q. Did he call you prior to the time you signed this contract for the '38-39 releases?

A. He called me that day and came out to my theater.

Q. And you had a discussion with him concerning the '38-39 releases and bought the product?

A. Yes, sir.

1910 Q. And with reference to the '39-'40 R-K-O product, did you discuss the matter with Mr. Williams?

A. I can't remember whether we just renewed that contract, or it was signed and sent out by mail, I can't remember which it was.

Q. Do you recall whether you discussed the matter prior to the time you made this contract for the '39-'40 product, you discussed the matter with any salesmen or representatives of R-K-O, other than Mr. Williams?

A. No, sir, I had not.

Q. You had not, or you don't recall?

A. I had not discussed it.

Q. You had not discussed it?

A. No, sir.

Q. You played this R-K-O product at your theater for the '38-'39 releases and the '39-'40 releases?

A. That's right.

Q. Now, Mrs. Guthrie, will you please state what pictures you played at the Ritz Theater at Clinton for the 1940-'41 season?

A. I had just cut-backs——

Mr. COCHRAN (interrupting.) If the Court please, we are objecting to this testimony in regard to seasons subsequent to April of 1939, it not being within the issues of this case.

1911 The COURT. What is the purpose?

Mr. KALLIS. The purpose, your Honor, is to show the direct, immediate, and approximate result with reference to this woman's theater upon the pictures she played for the season immediately following this R-K-O sell away from her to the Griffith organization, and I might say I am not carrying it any farther than this one season.

The COURT. Well, we haven't any jury in this case, and I will permit you to ask her, with exceptions allows.

By Mr. KALLIS:

Q. All right, Mrs. Guthrie, what is your answer?

A. I had cut-backs and Independent product.

The COURT. I can't hear you.

A. Cut-backs and Independent product.

Q. Did you have any regular season's deal?

A. (No answer.)

Q. Strike that. Is that all that you had?

A. Yes, sir.

Q. Calling your attention to the early part of 1939, did you have occasion to talk with any one of the three Griffith brothers?

A. I talked with one of them, yes, sir.

Q. Can you describe him?

A. Well——

Q. Not in terms of him being handsome, because
1912 they are all good looking men, but with regard to his height and weight?

A. He was tall and slim, and wore glasses.

1913 Q. Where was this conversation?

A. Well, he came through there and we went out to my home. He came through on his way from somewhere, Amarillo or somewhere, and stopped by and visited me and we went out to my home and talked.

Q. What was the subject of discussion?

A. Well, he just asked me if I would like to lease or sell my theater.

Q. What did you say?

A. I told him I didn't; that I would like to try to see if I could run it.

Q. Did you have a discussion with him at all with reference to product?

A. Yes. He just asked me if I thought I would have the same product and I said no, that I couldn't tell about that.

Q. What else, if anything was said?

A. That was all. There was nothing else said about it.

Q. I show you what has been marked as Plaintiff's Exhibit 77 for identification and ask you whether that bears your husband's signature?

A. Yes, sir, it does.

Mr. KALLIS. If the Court pleases, according to the record this was produced by Mr. Caskey, pursuant to subpoena and is a photostatic copy of the original in the
1914 possession of the clerk of the court and I now offer that.

The COURT. What is it?

Mr. KALLIS. Being the 1933–'34 first run, Paramount contract for the Ritz Theater.

Mr. COCHRAN. No objection.

The COURT. What is the purpose of it?

Mr. KALLIS. The purpose is to make the connection between the fact that her husband played this Paramount product first run in 1933–'34 and then the next year it was sold away to Griffith on a three year deal covering all of the Griffith towns.

By Mr. KALLIS:

Q. I show you what has been marked as Plaintiff's Exhibit U–20, and ask you whether you recognize that as being your husband's signature.

A. Yes, sir, that is my husband's signature.

Q. And the same question with respect to Exhibit U–21. Does that bear your husband's signature?

A. Yes, sir.

Mr. KALLIS. I offer at this time Plaintiff's Exhibits U–20 and U–21.

The COURT. What is 20?

Mr. KALLIS. U–20 is the Universal 1935–'36 first run. U–21 is a split deal with 12 of the 36 pictures eliminated according to designation and selection of the Universal Company.

1915 The COURT. That is for what year?

Mr. KALLIS. '36–37. Is there any objection, Mr. Cochran?

Mr. COCHRAN. No objection.

Mr. KALLIS. That is all.

Cross-examination by Mr. COCHRAN:

Q. Mrs. Guthrie, I believe you did not give us the date of that conversation you had with one of the Griffiths.

A. Well, it was in the early part of 1939. It was in the early part of the year.

Q. You are sure it was in '39 instead of being sooner after the death of your husband?

A. No, it must have been '39 for I didn't see him, I don't suppose, for a whole year. I am sure it wasn't.

Q. You were describing this gentleman. You are acquainted with Mr. H. J. Griffith, aren't you?

A I am not too well acquainted with him.

Q. But you are acquainted with him?

A. I am.

Q. And you are acquainted with Mr. L. C. Griffith?

A. I don't know that I ever met Mr. L. C. I had met this one I think before he came to call on me.

Q. Had he called on you before that time?

1916 A. No, sir, not on me.

Q. On your husband.

A. I had seen him when he would come to call on him.

Q. They were friends, weren't they?

A. Yes, sir, they were.

Q. Has he called on you since that time?

A. No, sir.

Q. There were several inquiries made of you after the death of your husband as to whether you were going to continue the operation of your theater?

A. Yes, sir.

Q. This was just one of those inquiries?

A. That is right.

Q. To know whether you were going to continue after your husband's death and you told them you were going to try to go ahead and operate it?

A. That is right. He said, "If you decide to change your mind, if you will give me the first chance", and I did, and that is all the conversation there was.

Q. You have continued to operate the theater since that date?

A. Yes, sir.

Q. And are still operating it?

A. Yes, sir.

Q. Mrs. Guthrie, are you familiar with the his-

1917 tories of the theaters in that town, going back to the time when you and your husband first started operating the Ritz Theater?

A. No, sir, I am not because while he was alive I just didn't pay any attention to that end of the business.

Mr. KALLIS. Just a moment. I think this is entirely unrelated to the direct examination. I purposely limited my questions to two or three points and didn't go into any historical matter at all.

The COURT. I think your questions open up the entire business there in that town. You went back to 1933 and '34.

Mr. KALLIS. I just asked her whether she recognized that for the purpose of having the contract received in evidence. If your Honor thinks it is proper, very well.

The COURT. I think it is. I don't know how many theaters there were out there.

Mr. KALLIS. I realize wide latitude is allowed your Honor in deciding these matters. I was just interested in saving some time.

The COURT. Well, we have had very few limitations on the scope of the questions so far. We might as well get it all in.

By Mr. COCHRAN:

Q. You think that the Ritz Theater was opened by your husband sometime about 1928 or '29?

A. Well, the first location a little earlier, I would
1918 say 1927, I believe.

Q. That theater was not as large a theater as your present Ritz Theater?

A. Not the first one.

Q. That's what I mean?

A. No.

Q. Then, in 1930, you moved the location and opened up your present Ritz Theater?

A. I believe that's right.

Q. And that's a nice theater, but it is a small theater, isn't it?

A. It's small, 340 seats.

Q. 340 seats?

A. Yes, sir.

Q. Do you recall that sometime after your husband had opened up the Ritz, that Mr. A. B. Momand, commenced the operation of theaters in that town?

A. Well, I knew it at the time, but that was all I knew about it.

Mr. KALLIS. If the Court please, I think that is going pretty far afield, and I say frankly that I am not, on the basis of the preparation I have made, particularly qualified to conduct any redirect examination concerning matters that were completely omitted on the direct examination.

The COURT. You have gone into the theater busi-
1919 ness in this town. I think you have gone far enough

to open up that, so that he may ask how many theaters there were and who operated them. There is an inference here that Griffith did operate a theater, but there is no evidence that he did.

Mr. KALLIS. I will conform to the Court's ruling.

By Mr. COCHRAN:

Q. Do you recall that Mr. A. B. Momand opened up two theaters there?

A. Yes, sir, I know that.

Q. One of them he called the Rex and the other the Rialto?

A. Yes, sir.

Q. The Rialto was a theater of about 630 odd seats, wasn't it?

A. I couldn't tell you exactly, for I don't know.

Q. Well, it was approximately twice the size of your present Ritz?

A. Yes, sir, I am sure that it was.

Q. The Rex was about the same size as your Ritz?

A. Well, I couldn't say to that, for I don't know.

Q. Then there was a time when your husband was operating the Ritz and Mr. Momand was operating the Rialto and the Rex; those were the theaters in the town?

A. That's right.

Q. Do you recall that the depression came along 1920 then, do you?

A. Yes, sir.

Q. And those two theaters that Mr. Momand had operated closed about that time?

A. Well, I can't remember just what time.

Q. Do you recall that they did close sometime probably in 1931 or '32, or somewhere along there?

A. I know they closed, but I couldn't tell you the year; I don't remember about that.

Q. Do you remember what pictures your husband was playing at the Ritz during the time that he was operating in opposition to the Momand Theaters?

A. No, I couldn't tell you, because I didn't pay any attention to that end of it.

Q. You were attending to your household affairs?

A. I was attending to my household affairs, and I sold tickets, and that is about all I did.

Q. Then do you recall that just before Mr. Momand's theaters folded up, that a man by the name of Lyle, who had been associated with Mr. Momand in his theaters, opened up a new theater called the Del Rio?

A. Yes, sir, that's right.

Q. That theater was at the time the finest theater in the town, wasn't it?

A. Yes, sir.

1921 Q. About 500 seats?

A. I couldn't say about the seats; I don't remember.

Q. About the size of the Rialto, you would say, wasn't it?

A. I expect it is.

Q. He didn't operate very long, did he?

A. No, not very long, I believe.

Q. Do you recall that both Mr. Lyle's theaters, that Mr. Lyle's theater after it closed, was taken over by a concern that had sold him the fixtures?

A. I don't remember too much about that.

Q. And during that period, when those theaters, the Momand Theaters and the Del Rio Theaters were having their difficulties, you know then what the picture situation was, so far as pictures which your husband had been getting and when he commenced getting certain pictures, and so forth?

A. No, sir, I don't know a thing about that.

Q. Do you recall then that a man by the name of Mr. Roberts commenced operating the Rialto?

A. Yes, sir.

Q. Do you know when he started to operating that?

A. No, I don't.

Q. There was a time then when he operated the Rialto and your husband was operating the Ritz, is that right?

A. Yes, sir.

1922 Q. But you don't know at that time what pictures each one of them had?

A. No, sir, I couldn't tell you.

Q. Then a little later Consolidated Theaters, Inc., one of the Griffith companies, acquired the Del Rio and started to opening that?

A. Yes, sir.

Q. And shortly after that, then, Mr. Roberts and the Consolidated formed a partnership, and the partnership or the organization between Roberts and the Griffiths were operating the Rialto and the Del Rio?

Mr. KIME. Wait a minute. May I have that question read?

The COURT. Read the question.

(The last question read by the reporter.)

Mr. KIME. Now, if the Court please——

Mr. COCHRAN (interrupting.) I will strike it.

Mr. KIME. I should hope so.

Mr. COCHRAN. I will withdraw it.

By Mr. COCHRAN:

Q. At any rate, sometime during that period the Consolidated Theaters, Inc. were operating the Rialto and the Del Rio?

A. Yes, sir.

Q. And your husband was operating the Ritz?

A. Yes, sir.

1923 Q. Both the Rialto and the Del Rio were, as you have stated, larger theaters and more pretentious theaters than the Ritz Theater?

A. Yes, sir.

Q. You are not able to tell us what pictures were being licensed during that time by the several theaters?

A. No, sir.

Q. You know nothing about that?

A. No, sir, I don't.

Q. And your first information in regard to the pictures which were being used in the Ritz Theater was after your husband's death, when you took over the management of the theater?

A. Yes, sir.

Q. And at that time Consolidated Theaters was operating the Del Rio and the Rialto?

A. Yes, sir.

Q. And that's the situation today?

A. Yes, sir.

Q. And with you operating the Ritz?

A. That's right.

Q. You told us that when you took over the operation of the Ritz, you were playing Columbia cut-backs?

A. That's right.

Q. And British Gaumont?

A. First run.

1924 Q. And you said you were playing Universal. Do you know whether that was a first run contract, or whether those were cut-back pictures?

A. I don't know; I don't know what about that.

Q. You have produced here the contract between Universal and your husband for 1935–'36 and 1936–'37. Do you have the contract with Universal for 1937–'38?

A. No, sir, I don't; I don't have any of those contracts.

1925 Q. You also had Grand National first run?

A. I presume they were first run; I don't know.

Q. And Monogram first run; is that right?

A. I presume, because I don't know. When I say I didn't, I didn't do my booking for four months. Mr. Crown came out and did my booking on those old contracts.

Q. And Adams, is that first run?

A. I am sure it is.

Q. Republic. Do you know whether that was first run?

A. Yes, I presume it was.

Q. Was that a season's contract or just certain pictures?

A. I couldn't tell you about that; I don't know.

Q. Then you said you had MGM cutbacks?

A. Yes, sir.

Q. You told us a moment ago that for the season of 1940-41 that you only had cutbacks of Independents and no other product.

A. No, that was right.

Q. You mean to tell me that in 1940–41 you didn't have any first runs of PRC?

A. Well, that would go with the Independents. That is what I had under Independents.

Q. But you gave the impression, I think, although you didn't intend to do it, that you only had cutbacks from those Independents?

1926 A. Cutbacks and Independent product is what I gave.

Mr. COCHRAN. I misunderstood you.

A. That is the way I gave it.

Mr. KALLIS. That is precisely what you said the first time and she said last night it was cutbacks and Independents.

Mr. COCHRAN. I am not trying to do anything but get the thing straight in my own mind.

By Mr. COCHRAN:

Q. So as I understand you, what you intended to say, whether you did or not, and it is a fact, that you did in 1940–41 have first run of various Independent Companies and cutbacks on major products?

A. That is right.

Q. And that is what you had in '37-38, is it?

A. Yes, that is what I gave you in '37-38.

By the COURT:

Q. Was British Gaumont an Independent?

A. Yes, sir.

Q. And Grand National?

A. Yes, sir.

Q. Adams?

A. Yes, sir.

Q. Monogram?

A. Yes, sir.

Q. Republic?

A. Yes, sir.

1927 Q. M-G-M?

A. They are majors.

Q. It is not Independent?

A. That is Loew's, Metro-Goldwyn-Mayer are Loew's.

Q. All of these then you had in 1937 and '38 are Independent except M-G-M and Columbia?

A. Yes, sir, and they were cutback pictures.

Mr. COCHRAN. In other words, her testimony is that the product she had from Columbia, Metro and Universal in '37-38 as in 1940-41 were cutbacks and she had first run on what she terms Independent product.

By Mr. COCHRAN:

Q. Mrs. Guthrie, your theater under your operation has operated down to the present time profitably, hasn't it?

A. Very.

Q. And you have adequate product to operate your theater at the present time?

Mr. KALLIS. I again purposely refrained from those questions——

The COURT. I think that is part of your lawsuit.

Mr. KALLIS. All right, as long as Judge Cochran wants to open it up I can ask some questions on redirect examination.

The COURT. I think it is proper.

(Question read as follows: And you have ade-

1928 quate product to operate your theater at the present time?)

A. Yes, sir, I have product to run.

By Mr. COCHRAN:

Q. I believe you told us that in 1940–41, you were not given an opportunity to buy the RKO product first run. Now, I hand you Defendant's Exhibit No. 73 and ask you to examine that and tell us if you are not mistaken about that statement.

A. Well, I have bought the product twice——

Q. Just examine that and tell us if that isn't the contract for the 1940–41 product, first run.

A. I have in mind only two times I bought product but I didn't have my old contracts. I destroyed my old contracts.

Q. You were giving it the best you could from memory?

A. Yes, sir.

Q. But this is the contract for the '40–41 season's product, is it?

A. Yes, sir.

Q. That is your signature?
A. Yes, sir, that is right.
Mr. COCHRAN. We offer in evidence Defendant's Exhibit No. 73.
A. But I didn't have any old contracts and as near as I remembered I only bought twice after I began to do the buying from RKO.
1929 Mr. KALLIS. No objection.
Mr. COCHRAN. That is all.

Re-direct examination by Mr. KALLIS:

Q. Mrs. Guthrie, in response to Judge Cochran's question you stated that your operation is very profitable. Has the population of Clinton enjoyed any material increase since the beginning of 1942, the theater attending population?
A. Since the navy base came there it has increased.
Q. How many men have been stationed in Clinton or near Clinton?
A. I couldn't give you an estimate because they come and go.
Q. Is there an average figure you can mention with any reasonable degree of certainty?
A. No, I could not.
Q. You don't know whether there would be hundreds or thousands?
A. I couldn't tell you because we have no way of knowing how many come in and go out.
Q. When was that naval base established, as near as you can recall?
A. Well, I think it has been about two years, perhaps.
Q. You are familiar with the Consent Decree that
1930 was entered by the federal court in New York, are you not?
A. Yes, sir.
Q. Were any pictures made available to you after the Consent Decree that were not available to you before?
A. I only bought one group of pictures in that. That was from Metro.
Q. When was that?
A. Well, I can't tell you exactly when it was.
Q. Were you given an opportunity of buying more than one group?
A. I bought eleven pictures, I believe.
Q. And that is all?
A. Yes, sir.
Q. Now since the Consent Decree, what product are you playing, or what run, rather?

A. Second run. I went into second run.

Q. And have you been solicited by all the major companies for second run since the Consent Decree went into effect?

A. Yes, sir.

Q. And were you solicited by any major companies prior to the Consent Decree with reference to second run?

A. I have never run any second run. I hadn't even asked for them.

Q. Did anybody ever solicit you?

A. No, sir.

1931 Q. Do you have any recollection now as you sit in the witness chair as to playing this RKO product, first run, for the 1940–41 releases?

A. Well, on my books, I just taken it off of my books, I have here that I just took it from the year that I had RKO, first run, two years. That was in 1930, what I bought. The last year, '38, I ran that in 1939. Then I have RKO listed again as first run, I bought the latter part of 1939, and I ran that in 1940. That is the way I have it on my books here, and as I said, I went through my contracts and destroyed them.

Q. Do you remember having in your possession this contract?

A. I don't remember only of buying twice from them. I may have done it because I was new in the business. As I say, I just don't remember about that.

Q. Was there any year beginning with 1938 down to the present time when you have had a full season's first run deal with the exception of the two or three years of RKO which you played?

A. No, not of the majors.

Q. Do you have any record there as to what you played for the 1940–42 season?

A. Well, as I say, I just had the cut-backs and Independent product. Well, of course, as you said awhile

1932 ago the Independent was first run because it was Monogram and PRC.

1933 Q. Was your theater operating profitably during the year when you played nothing but major product cut-backs and Independent product?

A. Well, I always managed to get along all right.

Q. Did you make a lot of profit during the year that you had only cut-backs of the major companies and Independent product?

A. We didn't make a lot of profit because our business wasn't there, I don't care what we had.

Q. Your business, you say, wasn't good?
A. No, sir.
Q. When you started operating the Ritz in 1938 what you played until the beginning of the 1938–'39 season were contracts which had been made by your husband, is that right?
A. Yes, sir.
Q. You say you don't know now just exactly what he had actually contracted for with reference to the 1937–'38 releases of the major companies?
A. No, I didn't know.
Mr. KALLIS. That's all.

Re-direct examination by Mr. COCHRAN:

Q. Mrs. Guthrie, you have stated that you are now playing a number of pictures from Metro and Fox and other so-called major companies, second run?
A. I don't have Fox;—I have other companies;—
1934 I am not playing any second runs.
Q. Have you attempted to get Fox?
A. They have offered it to me. I could, if I just had the playing time, but I don't have the playing time.
Q. If you had playing time, you could get the Fox too?
A. Yes, sir, I could.
Q. Are you also playing along with those second run pictures, certain Independent product first run?
A. No, sir.
Q. You have discontinued playing the first run pictures?
A. Yes, sir.
Q. And are playing second run policy exclusively?
A. That's right.
Q. You voluntarily made that change because you considered it to be to your advantage to do it, is that right?
A. Yes, sir, I did.
Q. Are you playing any first run pictures, have you been playing any first run pictures since the Consent Decree, if you recall?
A. No, sir.
(Defendant's Exhibits Nos. 74 and 75 were then marked by the reporter for identification, pursuant to request of counsel.)
Q. I hand you Defendant's Exhibit No. 74 for identification, and ask you if that is not a contract for a Para-
1935 mount picture "Louisiana Purchase" in technicolor, made on March 11th, 1942 for first run at the Ritz?
A. This was bought with a second contract, it was supposed to be second run; this picture was bought with the second run contract, or supposed to be a second run contract.

Q. You notice it says first run?
A. Yes, sir, I see that.
Q. And that is your signature?
A. Yes, sir.
Q. I hand you Defendant's Exhibit 75 and ask you to examine that and state if that is not a contract made on the same date, March 11th, 1942 with Paramount, for four feature pictures first run for the Ritz?
Mr. KIME. What year?
Mr. COCHRAN. Made on March 11th, 1942.
Mr. KIME. Your Honor, may I inquire of Judge Cochran what is the purpose of this cross examination, what the purpose might be?
Mr. COCHRAN. I am simply calling attention of the witness to certain matters. She says she doesn't have the contracts and she has given us what she can from recollection, and I am showing her certain contracts to refresh her memory.
Mr. KIME. Your Honor, I didn't so understand the witness. The witness says at the present time she was
1936 playing second run exclusively. This is back in another period and it has no possible bearing to help your Honor decide this case.
The COURT. I think it is proper on cross examination to show what pictures she has been able to get since 1940, '41 and '42, and so forth. Overruled and exception allowed.

By Mr. COCHRAN:

Q. That is your signature?
A. Yes, sir.
Q. You don't have any record of that, do you?
A. No, sir.
Q. You had forgotten those pictures?
A. Yes, sir.
Mr. COCHRAN. We offer in evidence Defendant's Exhibits 74 and 75.
The COURT. No. 74 is what contract?
Mr. COCHRAN. The contract of Paramount covering the picture "Louisiana Purchase," and the next one is the contract with Paramount covering four other feature pictures of the same date.
Mr. KALLIS. No objection, your Honor, to 74 and 75, of the Defendant's Exhibits.
The COURT. All right, they may be admitted.
(Defendant's Exhibits Nos. 76–A and B, 77–A and B, and 78–A and B were then marked by the reporter
1937 for identification.)

By Mr. COCHRAN:

Q. I hand you Defendant's Exhibit No. 76–A and ask you if that is a photograph of the exterior of the Del Rio Theater at Clinton?

A. Yes, sir.

Q. And I hand you Defendant's Exhibit 76–B for identification, and ask you if that is a photograph of the interior of the Del Rio Theater?

A. Yes, sir.

Q. I hand you Defendant's Exhibit No. 77–A for identification and ask you if that is a photograph of the exterior of the Rialto Theater?

The COURT. What was the last number, B?

Mr. COCHRAN. 77–A, I had 76–A and 76–B, A being the exterior and B being the interior, and 77–A is the exterior of the Rialto, is that right?

A. Yes, sir.

Q. I hand you Defendant's Exhibit No. 77–B and ask you if that is a photograph of the interior of the Rialto?

A. Yes, sir.

Q. I hand you Defendant's Exhibit 77–A for identification and ask you if that is a photograph of the exterior of the Ritz, your theater?

The COURT. You don't mean 77–A?

Mr. COCHRAN. 78–A.

1938 A. Yes, sir, that is before we remodeled it this last time. We have a different marquee at this time.

Q. What difference has been made in the marquee?

A. That was all torn off, the square marquee was all torn off and we had a V shaped marquee put on, and the boards remodeled underneath.

Q. This portion of the marquee which carries the names of the actors in the pictures which were then current is the part that has been torn away?

A. Yes, sir.

Q. And a new and different arrangement has been made?

A. Yes, sir.

Q. And Defendant's Exhibit 78–B, is that a photograph of the interior?

A. Yes, sir.

Mr. COCHRAN. We offer in evidence Defendant's Exhibits 76–A, 76–B, 77–A, 77–B, 78–A and 78–B. May they be admitted?

Mr. KALLIS. The Judge said he was going to ask another question.

Mr. COCHRAN. Before passing on that, counsel for the Government requests information on one subject.

Q. Mrs. Guthrie, are those photographs of the Del Rio and the Rialto photographs as they have existed during the entire period since you have been operating in
1939 opposition to them?

A. I believe they were. They did some remodeling on the Rialto, the marquee, about the time that I did on mine, but I believe that picture covers that.

Q. Examine this Exhibit No. 77–A for identification and tell us whether that is as the theater appears at the present time, or as it was before the marquee was remodeled?

A. I believe this is the later picture on that. I don't know exactly, because, you know, I didn't pay enough attention to tell you exactly, but I knew they did their boards about the time I did mine.

Q. With the possible exception of some remodeling on the marquee, the remainder of the photograph shows the exterior and interior as the same has existed during the entire period of your opposition?

A. Yes, I am sure it does.

Mr. COCHRAN. Now, we offer those exhibits in evidence.

Mr. KALLIS. No objection.

By Mr. COCHRAN:

Q. Mrs. Guthrie, during the entire time that you have been operating in opposition to the Griffith Theaters in Clinton, has your relationship with your opposition theaters been friendly?

A. Very.

Q. And have the theaters cooperated in matters,
1940 civic affairs and things of that kind?

A. Yes, sir.

Q. And your relationship is still friendly?

A. Yes, sir.

Q. With them?

A. Very friendly.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KALLIS:

Q. Mrs. Guthrie, you have found that it was more profitable to run, to play second run of the major companies in your theater than the first run of the Independent, is that right?

A. Yes, sir.

Q. Is that the reason you made the change?

A. Yes, sir.

Mr. KALLIS. That's all.

Mr. COCHRAN. Will the Court permit me to ask one additional question?

The COURT. Very well.

Mr. COCHRAN. I hate to continue to go back and forth.

Re-cross-examination by Mr. COCHRAN:

Q. I would like an expression from you, Mrs. Guthrie, in regard to the development of the exhibition of the
1941 second run pictures. In recent years has the second run exhibition in smaller towns become more desirable than it was in earlier years?

Mr. KALLIS. If the Court please, there has been nothing in the record that lays a foundation for this.

The COURT. I think that is one of the most common sense questions that has been asked.

Mr. KALLIS. Let me finish the objection, your Honor, I was going to say there is nothing in the record so far showing that this witness is competent to answer that question.

The COURT. She is here as a witness.

Mr. KALLIS. I haven't the slightest idea, your Honor, whether she has any knowledge whatever of any theater in the world except in Clinton.

The COURT. He is just talking about Clinton.

Mr. KALLIS. The question, your Honor, was other smaller towns.

The COURT. If she knows, I think the question is competent. I think that is a question, why people would run second run pictures when they could buy them at a cheaper rate, if it satisfies their trade, of course, they make more money out of it, and she ought to know as well as anybody else.

Mr. KALLIS. If your Honor has the question thoroughly in mind, I don't think it ought to be repeated,
1942 but I thought the Judge said, "Other smaller towns."

Mr. COCHRAN. In the smaller towns.

The COURT. If you know. I will overrule the objection and exception allowed. Now read the question.

(The last question read by the reporter.)

Mr. KALLIS. If the Court please, I renew my objection, and respectfully submit that that is one of the ultimate facts to be decided by your Honor, and an expression of opinion on the part of this witness, particularly since there is no showing whatsoever that she knows anything about other towns.

The COURT. She is an operator of a theater and has been now for five or six years. Do you have an opinion on that question?

A. I can speak only for what it has done for me. I can't speak for any other town.

By the COURT:

Q. Well, making this question applicable to Clinton?

A. I have done better on second runs than I have on first runs in my house. It is more profitable in my house.

By Mr. COOHRAN:

Q. The matter I desire to direct your attention to specifically relates to your testimony in which you said that back in the earlier days you didn't attempt to get second runs?

A. No, sir.

1943 Q. You remember stating that?

A. Yes, sir.

Q. At that time it was your opinion that those action pictures that you were acquiring from Republic, PRC, Monogram and so forth, first run, would produce better box office results than second run pictures of other companies, is that right?

A. Well, I had never run anything else; I didn't know anything else.

Q. Don't you know as a matter of fact that there has been a growing development for second run exhibition in the smaller towns since, we will say, since you commenced the operation of a theater in Clinton?

A. It has been in my case.

Q. Don't you know that that has generally been true?

A. I can't speak, only for my own town, because I wouldn't know.

1944 Q. The playing of a picture second run depends a great deal on the quality of the picture, doesn't it?

A. Correct.

Q. In other words, to make that picture a box office success, second run, even now, requires that the picture be one of the better pictures?

A. That is right.

Q. Then in your town it will bear a second run exhibition?

A. Yes, sir.

Q. Don't you know that in the last few years that the major companies, those that you have referred to as the majors, have been producing more expensive pictures and pictures which have been produced with the design of attracting better box office?

A. Yes, sir, they have.

Q. And the number of pictures of box office appeal from those major companies has been increased during the last few years?

A. Yes, sir.

Q. And the so-called program pictures have been less in number?

A. That is right.

Q. Now, back when you first started in the exhibition of main pictures your house at that time was op-

1945 erated as a first run house, wasn't it?

A. Yes, sir.

Q. And as you said, you have not had any experience and you have not attempted to operate a second run house?

A. No, sir.

Q. Then when did you start to run second run pictures, do you recall?

A. In 1942.

Q. In 1942 you started running them?

A. Yes, sir.

Q. And you have found it to be more desirable than to use the first run pictures of the independent companies?

A. Yes, sir.

Q. That is all.

Re-direct examination by Mr. KALLIS:

Q. Mrs. Guthrie, at the time you were playing this Independent product first run, would you have preferred to have played major product, first run, if it had been available to you?

A. Well, at the priees I had to pay for some of it, no.

Q. Well, if it had been offered to you at reasonable prices would you have preferred the first run major to Independent product?

A. At reasonable prices, yes, sir.

1946 Q. What has been your experience as to the comparative box office value of major product compared with Independent product?

A. The major first or second run?

(Question read.)

A. Good major product is always better than Independent product because we have the stars to draw from.

By the COURT:

Q. What is the difference in the price of first and second run pictures?

A. They go according to the population of the town.

Q. Well, how much cheaper is a second run picture, approximately?

A. They are a great deal cheaper. I imagine, I wouldn't know just exactly the percentage on that.

Q. Well, just approximately, as much as 50 per cent cheaper?

A. No, I would say 40 per cent cheaper.

Q. 40 per cent cheaper?

A. Yes, sir.

Re-cross-examination by Mr. COCHRAN:

Q. Mrs. Guthrie, you stated the first run pictures you considered the rentals were too high for you to play in your Ritz Theater, first run. That was your statement?

1947 A. Yes, sir.

Q. You base that on the fact that your theater is a small theater and could not afford to pay the rentals that would be required for a town the size of Clinton, first run?

A. That is right.

Q. Considering the relative size and character of the Griffith Theaters as compared to your theater, you realized that you could not expect to play that major product first run in your theaters, didn't you?

A. Yes, sir.

Q. So, it was a question of playing first run of the Independent or second run of the majors?

A. Yes, sir.

Q. For a while you played first run of the Independent and then you switched to the policy of second run of the majors?

A. Yes, sir.

Q. For comparative purposes on that rental we introduce the first run contract on "Louisiana Purchase" and I now offer the second run contract as Defendant's Exhibit No. 79. That is your signature on Defendant's Exhibit 79, isn't it?

A. Yes, sir.

Q. Now the guarantee, the minimum license fee in the first run contract appeared to be $100 and in the second $50. You stated you thought it was approximately

1948 40 per cent. It is something around 40 or 50 per cent, second run of first run rental; that is correct is it?

A. Yes, sir.

Q. In your opinion?

A. In my opinion it is, yes, sir.

Q. That is all.

Mr. KALLIS. That is all.

(Witness excused.)

AUBREY M. MORGAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. KIME:

Q. State your name.

A. Aubrey M. Morgan.

Q. Where do you live?
A. Grand Prairie, Texas.
Q. Were you formerly a resident of Brady, Texas?
A. Yes, sir.
Q. When was that?
A. 1935 and '36.
Q. When did you first have any connection with the motion picture business?
A. In 1916.
Q. Where was that?
1949 A. Rule, Texas.
Q. What capacity.
A. Owner.
Q. You owned a theater there?
A. I did.
Q. How long did you operate that?
A. Until 1918.
Q. What happened then?
A. I went to the Army.
Q. When you came out of the Army did you return to the theater business?
A. I did.
Q. Where?
A. At Rule.
Q. When was that?
A. That was 1920.
Q. Did you continue there for sometime, and if so, how long?
A. I did, until 1924.
Q. What happened then?
A. I sold to H. S. Leon.
Q. Did you re-enter the theater business shortly after that?
A No, sir. It was in 1933.
Q. Where did you then in 1933 go into the theater
1950 business?
A. Eldorado, Texas.
Q. Did you continue that operation for sometime?
A. I did, until the fall of 1934.
Q. And what happened then?
A. I went to Odessa, Texas.
Q. In the theater business again?
A. That is right.
Q. How long were you there?
A. Until the spring—I went there in December, 1934, and stayed until the spring of 1935.
Q. And did you sell out there again?
A. I did.

Q. How did you happen to sell out there?
A. Well, business was bad and no product.
Q. What do you mean by "no product"?
A. Well, I couldn't buy any pictures.
Q. Why couldn't you buy pictures then?
A. Well, I was against the H & H circuit there.
Q. What is the H & H circuit?

Mr. COCHRAN. We move to strike that as being incompetent, irrelevant and immaterial, and certainly it is not involved in this case. We are not prepared to defend against some other circuit.

The COURT. That would be stating a conclusion
1951 anyway. You can just state the facts and circumstances.

By Mr. KIME:

Q. What product did the H & H circuit have?

Mr. COCHRAN. We object to going into some town that is in another circuit. Griffith is not concerned with that.

By Mr. KIME:

Q. What did you have?
A. I had Columbia——

Mr. COCHRAN. That is the same proposition.

The COURT. We will see. Is this a Griffith town you are speaking about?

Mr. KIME. It was in Odessa, Texas. They are in Odessa, Texas, now and were during a portion of this suit——

Mr. RICE. They were not there even during that period.

Mr. COCHRAN. The H & H circuit has no connection and never has had with any Griffith organization.

The COURT. How would that be competent as against these defendants?

Mr. KIME. Well, it is competent in showing the inherent nature of all these circuits. They all operate in the same manner.

The COURT. Objection sustained. It is immaterial.

By Mr. KIME:

Q. How long were you in Odessa?
A. From the fall of 1934 until the spring of 1935.
Q. When you sold out there where did you go?
1952 A. Strawn, Texas.
Q. Did you operate a theater there?
A. I did.
Q. What happened to that theater?
A. I sold it.
Q. Where did you go then?
A. Miles, Texas.

Q. Did you operate a theater there?
A. I did.
Q. And you sold that?
A. That is right.
Q. And that was immediately before you went to Brady, Texas?
A. That is right.
Q. And you went to Brady what time?
A. The fall of 1935.
Q. With what theater?
A. With the Ritz Theater.
Q. And you bought that from some person who was then operating it?
A. H. Ford Taylor.
Q. That was in December of 1935 you say?
A. That is right.
Q. That was in the middle of the 1935–36 playing season or after it had started?
1953 A. After it had started.
Q. Did you assume some contracts that Taylor had had?
A. I did.
Q. And did you play them out?
A. I did.
Q. What major product did you play in the Ritz at that time?
A. Universal and United Artists.
Q. Had Taylor had a Columbia contract?
A. He did.
Mr. RICE. What was that question?
Mr. KIME. I asked him if Taylor had a Columbia contract.

By the COURT:

Q. What contracts did you play out?
A. I played out Universal, United Artists and just a few of the Columbia pictures.

By Mr. KIME:

Q. Did you continue operation of the Ritz and Brady into the 1936 and '37 season?
A. I operated until November of 1936.
Q. Did you secure a contract from Universal, United Artists or Columbia for the 1936–37 season?
A. I did not.
Q. Were you solicited to purchase any one of the three?
A. I was, United Artists.
Q. But not the Universal or Columbia?

1954 A. That is right.

Q. Now, did you approach the salesman or the branch manager of any of these three in an effort to purchase their product?

A. I did not.

Q. For '36 and '37.

By the COURT:

Q. You say you did not?

A. I did not.

By Mr. KIME:

Q. You were going into this '36 and '37 and didn't attempt to buy——

Mr. RICE. I don't think he ought to argue with the witness.

The COURT. He is asking him to clarify his statement.

By Mr. KIME:

Q. You didn't attempt to buy any of those three?

A. I did not.

Q. Was there any reason why you didn't attempt to buy it?

A. Yes.

Q. What was that?

Mr. RICE. I object to the reason why he didn't buy it. He said he didn't try to buy it and that is all we ought to know about it.

Mr. KIME. If there was some outstanding reason——

1955 Mr. RICE. A man's reason for what he did or didn't do are rarely competent.

By the COURT:

Q. He didn't make any application to either of these companies?

A. I did not.

Q. You didn't want the pictures?

A. Yes, I wanted the pictures.

Q. Why didn't you apply for them?

A. Well, Mr. Oldsmith, the branch manager of Universal, came out to the opening of the new Brady Theater, and he came down to visit with me and he said he would——

Mr. RICE. We object to the conversation with the branch manager. It is the same line of hearsay.

The COURT. It will be sustained but you can make your record.

By Mr. KIME:

Q. Go ahead and tell the court what happened.

A. He said he was visiting, that he was a friend of the Griffith circuit and I was his account and he thought he would just come around and visit with me a little. I said, "Well, how about product, Mr. Oldsmith"? He said, "I will send Mr. Lucier, my salesman, down and sell you the product or call on you in regard to product," so I said, "In all probability I will get the product?" And he said "Yes," because he didn't owe Griffith anything,
1956 because his company had loaned them $400,000 back there and he would send Lucier around and call on me to get the contract.

By Mr. KIME:

Q. Is that all of that conversation?

A. I believe it was.

Mr. RICE. Is that the close of that offer?

Mr. KIME: That is the close of the offer.

Mr. RICE. We move to strike the offer.

The COURT. It will be sustained as hearsay and exception allowed.

By Mr. KIME:

Q. What happened then later on in 1936 with relation to some of the agents or some of the principal defendants calling on you?

A. You mean the Griffith defendants?

Q. Yes.

A. Well, there was nothing only that Mr. Stocker was out there in the early part of October or November; early part of the fall of 1936.

Q. Who is Mr. Stocker?

A. Well, Mr. Lynn Stocker.

Q. Did you know him?

A. Yes.

Q. Had known him for sometime?

A. Yes.

Q. What business was he in?

1957 A. Well, he was with the Griffith circuit, I don't know what his title was at that time.

Mr. COCHRAN. He says "Griffith circuit." We would like for him to specify whether it was Wes-Tex or R. E. Griffith or what.

A. Wes-Tex.

By Mr. COCHRAN:

Q. Wes-Tex Theaters?

A. Yes, sir.

By Mr. KIME:

Q. Did he tell you that?

A. Yes.

Q. But you had known him for sometime before that, hadn't you?

A. That is right.

Q. What business had he been in?

A. Well, he had been salesman for Liberty Special and Columbia.

Q. Had he been branch manager for Columbia also?

A. Yes, here in Oklahoma City.

Q. What was that conversation? Just relate that to the court.

A. Well, he just asked me how I was getting along and I told him all right and he said, "How about the product situation?" And I told him, well, I didn't have much product; Universal and Independent. And he said, "Well, Universal has sold us next season. Did you know
1958 that?" I told him "No."

Q. Now, just about when was that conversation?

A. That was the early fall of 1936.

Q. You were playing then Universal and United Artists in the fall of '36, in the playing season of '36-37, is that right?

A. That is right.

Q. What sort of policy did you have?

A. Three programs a week.

Q. Any double bills?

A. No double bills.

Q. Were you playing Independents?

A. Yes.

Q. At that time did you have a call from some other person connected with the motion picture business?

A. In what respect?

Q. In the fall of '36, did you sell your theater?

A. Yes, I did.

Q. Tell the court the circumstances leading up to the sale of that theater.

A. Well, I was first approached by Mr.—I was approached by Mr. Jack Pickens and he asked me if I wanted to sell my theater and I told him no, I didn't have anything to sell and he told me he wanted to get a few little theaters like that against Griff. It seemed to be he was
1959 disturbed. He left it up to me, the impression with me that he was——

Mr. COCHRAN. We object to this testimony.

The COURT. Wait until he gets through.

Mr. COCHRAN. He is asking for a conversation with Jack Pickens, and there has been no evidence whether they were Wes-Tex or whether they were Griffith Theaters.

Mr. KIME. There is already evidence in the record, Plaintiff's Exhibit No. 133, which shows that Jack Pickens bought this theater and at the time he was the agent for the Brady Amusement Company, Wes-Tex Theaters and R. E. Griffith Theaters.

Mr. COCHRAN. What is the date of that instrument you refer to?

Mr. KIME. November 12, 1936.

Mr. RICE. There is no evidence here that Jack Pickens at that time was agent for any of these defendants.

The COURT. Overruled. Proceed. What was the conversation?

1960 A. He said that he wanted to buy some little theaters like that against the "Griff" circuit.

By Mr. KIME:

Q. What Griffith circuit was operating in that community at that time?

A. Wes-Tex.

Q. Wes-Tex?

A. Yes, sir.

The COURT. Let's have the conversation.

A. I told him I didn't want to sell, and he told me if I changed my mind to let him know.

Mr. KIME. Are you through, your Honor?

The COURT. Yes, sir.

By Mr. KIME:

Q. Then what happened?

A. Well, he went around the square and went into Mr. Baker's office, the manager of the Brady Amusement Company.

Q. Did he come back again to see you?

A. Yes, sir.

Q. Shortly after that?

A. Yes, sir.

Q. What happened then?

A. Well, when I came down town he was there at my theater and he asked me if I had changed my mind. I told him, "No." I didn't suppose I had. He said he would like to have the little theater.

Q. Did he come back again?

1961 A. No, that was the last time.

Q. Didn't you sell to him?

A. I told him that I would sell to him under certain terms and conditions.

Q. Did he meet those terms and conditions?
A. Yes, sir.
Q. Then you made the sale?
A. In San Antonio.
Q. And this signature here to Plaintiff's Exhibit No. 133, is this your signature? (Handing.)
A. It is.

By the COURT:

Q. What were the conditions?
A. $2,500 to move my equipment out of town and he would take the building as it was improved.
Q. In addition to what he would pay you for the building?
A. No, just $2,500.
Q. And he would move you out of town?
A. No, I would have to move myself. He just give me $2,500 and me keep my equipment and he would take the building as it was.
Q. Was any threat of any character made?
A. Any what?
Q. Threat?
A. No.

Q. Did anybody say anything to you about who
1962 would be permitted to get pictures?
A. They did not.

The COURT. Proceed.

By Mr. KIME:

Q. What other theaters were operating in Brady at this time?
A. At that particular time the Palace was the only one, I believe.
Q. What was the Palace playing, if you know from observation?
A. I don't know.
Q. But you had no product of any major company in the fall of '36, is that right, for a season's deal?
A. In the New Brady?
Q. No, did you have a contract with any of the 8 major distributors for the '36–'37 season, that you were then going into?
A. No, I didn't.
Q. Mr. Morgan, you at one time had all these contracts, I assume; you had all these contracts for Brady.
A. Yes, sir.
Q. What happened to them?
A. I had a theater fire and they burned up, I guess.
Q. And you have none of them at the present time?
A. That's right.

Q. You couldn't find any to bring with you here?
1963 A. That's right.
Q. When you were summoned as a witness?
A. No, sir.
Mr. KIMB. That's all, your Honor.

Cross-examination by Mr. RICE:

Q. Can you fix more nearly the date when Mr. Stocker came to see you in Brady?
A. No, I can't; it was the early fall of 1936.
Q. It was just a social visit he was making, was it?
A. That's right.
Q. He didn't attempt to buy your theaters?
A. That's right.
Q. He made no threats of any sort?
A. That's right.
Q. He had recently gone with the Griffith organization?
A. That is the way I understood it.
Q. Having left his former employment?
A. That's the way I understood it.
Q. Do you know Charlie Baker?
A. Yes, sir.
Q. Do you know who owned the Brady Theater and the Palace Theater at the time you went in there?
A. I did; I did know definitely.
Q. Who did own them?
A. Griffith Wes-Tex and the Brady Amusement Company.
1964 Q. And the Brady Amusement Company?
A. Yes, sir.
Q. That was a corporation?
A. Yes, sir.
Q. Mr. Charlie Baker was in there?
A. Yes, sir.
Q. He was the manager of the theaters?
A. Yes, sir.
Q. He ran the town for whoever owned them?
A. Yes.
Q. When Jack Pickens first came to see you, didn't he tell you he wanted some theaters for himself?
A. That's right.
Q. That he was looking for a location?
A. That's right.
Q. And no deal was made?
A. That's right.
Q. At that time where was he living, do you remember?
A. No, I don't. I believe he was, he told me I could contact him at the Gunter Hotel in San Antonio.

Q. Did you contact him?

A. I did after his second visit.

Q. How long between the first and second visits, how long a time was that?

A. I imagine something like two or three weeks.

1965 Q. Then, after the second visit, how long before you contacted him at San Antonio?

A. It wasn't very long.

Q. Well, about how long?

A. It was bound to have been about three or four weeks, not over that.

Q. Did you make a deal on the last time you contacted him?

A. That's right.

Q. And that deal is the one that is the contract here related to?

A. Yes, sir, that's right.

Q. And the date of that is November 12th, so it was approximately, according to your testimony, from six to eight weeks between the first time you contacted him and the second time?

A. That's right.

Q. And the last, rather?

A. That's right.

Q. As I understood, you approached him to sell him the theaters?

A. No, he approached me.

Q. But the last time?

A. Yes, sir, I called him.

Q. Had he in the meantime told you that he was

1966 representing the Griffith organization?

A. He did, he did on the second occasion.

Q. He told you the first time he wanted them personally?

A. That's right.

Q. And the second time, he told you he was representing the Griffith organization?

A. That's right.

Q. And it was for that reason that the Griffith organization was named, the Wes-Tex Theaters and the R. E. Griffith Theaters were named in here with the Brady Amusement Company as the buyers of the property?

A. That's right.

Q. There was no concealment of his representation the last time?

A. That's right.

By the COURT:

Q. How large a town is Brady?

A. About 5,000 population.
Q. Brady is down in the Fredericksburg section?
A. That's right.
Q. In the deer hunting country?
A. That's right.

By Mr. Rice:

Q. When you left Brady, did you go in the theater business elsewhere?
Q. Yes, I did.
Q. Where did you go?
1967 A. Colorado, Texas.
Q. How long did you stay there?
A. Almost a year.
Q. When did you go there?
A. It was December 18th, 1936.
Q. And you stayed there about a year?
A. That's right.
Q. What happened to your theater there?
A. I sold to Robb & Rowley.
Q. Some clients of mine?
A. Yes, sir.
Q. From Colorado City where did you go?
A. To Snyder.
Q. To Snyder, Texas?
A. Yes, sir.
Q. When did you go there?
A. I opened a theater up there in the fall, in the summer, the late summer of '37.
Q. And what happened to that theater?
A. It burned up.
Q. How long after you opened it?
A. About a year.
Q. Where did you go then?
A. I went to Midlothian.

By the Court:

Q. What year was that?
1968 A. In '37–'38 to Snyder.
Q. Where did you go from Colorado City?
A. To Snyder.

By Mr. Rice:

Q. When your theater burned in Snyder, you went then to?
A. Midlothian.
Q. About the middle of 1938?
A. That's right.
Q. How long did you stay there?
A. A year and two months, I believe.

Q. What happened to your theater there?
A. I folded.
Q. Where did you go from Midlothian?
A. To Lockney.
Q. To Lockney, Texas.
A. Yes, sir.
Q. Then in Lockney, Texas, how long did you stay there?
A. I stayed there about six months.
Q. What happened to your theater there?
A. I turned it back to the fellow that owned it.
Q. You couldn't make it go?
A. That's right.
Q. From Lockney where did you go?
A. Grand Prairie.
Q. You got to Grand Prairie in what year?
1969 A. I opened in Leap Year, of '40, I believe it was.
Q. 1940?
A. That's right.
Q. You got in after the North American Aviation Plant started there, did you?
A. No, sir, I was there before it started.
Q. After they opened, did you have one theater there?
A. I had two after they opened.
Q. You had two after they opened?
A. Yes, sir.
Q. Business was very good, was it?
A. Yes, sir.
Q. And you sold out there, did you?
A. Yes, sir.
Q. When did you sell out there?
A. In October, 1944.
Q. In October of last year. What have you been doing since then?
A. Well, I bought a theater from the Leon Circuit at Del Rio.
Q. How long did you own that theater?
A. I owned it, I bought it in May and I—no, wait a minute, I owned it about four months.
Q. Who did you sell it to?
A. Dr. Rictor.
1970 By the COURT:
Q. What place is that?
A. Del Rio.
By Mr. RICE:
Q. That was another Robb & Rowley town?
A. Yes, sir.

Q. In Del Rio, you stayed four months since last fall?
A. Yes, sir, I just owned the theater; I never moved there.
Q. Have you any other theater now?
A. I have a theater building.
Q. Where?
A. In Fort Worth.
Q. You are in the big league now?
A. (Laughing.)
Mr. RICE. That's all.

Cross-examination by Mr. COCHRAN:

Q. You have said that during the time you were operating the Ritz Theater in Brady that you played a few Columbia pictures?
A. That's right.
Q. You had no contract with Columbia at all, did you?
A. I just assumed Mr. Taylor's contract.
Q. Although you went into Brady in the fall of 1935, the pictures which you played were some pictures which the former owner had licensed for 1934–'35, is that right?
A. That's right.
Q. And you made no contract with Columbia for
1971 the season 1935–'36?
A. That's right.
Q. United Artists, you said you played some of those?
A. That's right.
Q. Were those pictures which had been released during the season 1934–'35, or were they pictures which were released in 1935–'36?
A. Well, sir, I couldn't positively tell you. I can tell you the names of the pictures.
Q. Did you make any contracts with United Artists?
A. Yes, sir.
Q. Did you negotiate with United Artists for product of its '36–'37 season?
A. They offered me that.
Q. But you were unable to agree on terms, is that right?
A. I believe that's right.
Q. Prior to the time you sold out?
A. That's right.
Q. Don't you also recall that prior to the time you sold out, certain Universal pictures were offered to you?
A. No, they wasn't.
Q. In these various towns that you had been operating in prior to the time you went to Brady, had you been dealing with any of the so-called major distributors?

A. Yes, sir.

1972 Q. And in each one of those towns you left certain unplayed contracts, didn't you?

A. That's right.

Mr. COCHRAN. That's all.

The COURT. Anything further?

Mr. KIME. That's all, your Honor.

The COURT. Stand aside.

(Witness excused.)

Mr. KIME. Now, your Honor please, we have no other witness for the balance of the afternoon.

Mr. KALLIS. Just a moment. I think I can consume about five minutes in making an offer.

(Plaintiff's Exhibit No. 364 was marked by the reporter for identification, pursuant to the request of counsel.)

Mr. KALLIS. I would like to offer in evidence Plaintiff's Exhibit No. 364 for identification, which is an RKO contract given to Smith & Bearden for the Tech Theater, and the Arcadia Theater, in Lubbock, Texas, providing for third run for the town of Lubbock and first run on College Avenue in Lubbock, with the understanding that Judge Cochran has no objection.

Mr. COCHRAN. No objection.

The COURT. Admitted.

Mr. KIME. That's all we have for today.

1973 The COURT. You may recess Court until 10.00 o'clock tomorrow morning.

(Whereupon, Court was recessed until September 11th, 1945 at 10:00 o'clock a. m.)

Mr. COCHRAN. Let the record show that Defendant's Exhibits 76–A, 76–B, 77–A, 77–B, 78–A, and 78–B are not to be photostated, but the originals have been delivered to the Clerk to be held with the other originals.

1974 PROCEEDINGS

September 11, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. RICE. May it please the Court, there is a typographical error in the answer to the interrogatory No. 17 filed by the Wes-Tex Theaters which somehow escaped us when the answers were put in the record. The interest of the Wes-Tex Theaters in Brady, Texas is 10 per cent. The interrogatories show the interest in the Palace Theater is 10 per cent; in the Brady Theater 25 per cent. The 25 per cent is in error. The interest is wholly 10 per cent in the operation there and by agreement with Mr. Kime it is stipulated

in open court that the answer may be taken as corrected to reflect the facts.

The COURT. Very well, it is so ordered.

Mr. COCHRAN. Just one more correction. On yesterday Mr. Mahone testified that the Cozy Theater was a shot gun theater and the transcript shows it was the Kiowa. We would like to have that change made.

Mr. KALLIS. That is perfectly agreeable, your Honor.

The COURT. Very well.

1975 T. R. BENEDUM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. KALLIS:

Q. State your name.

A. T. R. Benedum.

Q. Where do you live?

A. Norman, Oklahoma.

Q. You are an attorney of this bar?

A. Yes, sir.

Q. You practice in Norman?

A. I do.

Q. You have handled, or have you handled the legal matters for Mrs. Juanita Berry?

A. Yes, sir, I have.

1976 Q. Were you handling legal matters for her when the Oklahoman Theater of which she was the manager was remodeled in 1936?

A. Yes, sir, I was her attorney then.

Q. About that time did one of the Griffith Brothers come to your office?

A. He did.

Q. Which one?

A. I don't know.

Q. What was his appearance?

A. He was a tall, slender man.

Q. Just tell the Court what transpired during that visit with this tall slender man, and what he told you?

Mr. COCHRAN. If the Court please, I don't think this person has been identified sufficiently yet.

Mr. KIME. All right, we will go a little further.

Mr. COCHRAN. The only tall slender Griffith that is connected with Griffith Brothers is H. J. Griffith, who sits right here, and he ought to be able to identify him, if that is the man.

By Mr. KIME:

Q. Did he tell you his name?

A. He told me his name was Griffith. If he told me his initials I don't recall them.

Q. Now, with that identification, tell the Court what transpired at that meeting in your office?

1977 Mr. COCHRAN. We submit, if the Court please, that it is not yet a sufficient identification.

By the COURT:

Q. Do you know the man?

A. No, sir, I do not.

Q. Would you know him if you should see him?

A. That was late in 1936 or early 1937; I am afraid I would not.

Q. Well, there are lots of Griffiths in this country, do you know what business he was in?

A. He told me he was in the theater business, and he was talking about the theater business.

The COURT. Well, you may answer.

By Mr. KIME:

Q. Tell the Court what transpired at this meeting in your office with the man who told you his name was Griffith.

A. He came to the office to discuss the Oklahoman Theater business, that is Mrs. Juanita B. Berry's business; he told me he would like to buy the business or buy an interest in the business; that if he bought an interest in the business he would retain her to operate it. I told him I didn't think she desired to sell the business or any part of it. He later told me that unless he bought her show house or some part of it, that they would put in another theater in Norman.

Q. Did they put in another theater in Norman?

1978 A. About three or four months after that, they did.

Q. And started the operation of that theater?

A. That's right.

Q. And operated it for some time?

A. Yes, sir.

Q. Are you sure that that is all of that conversation that was had between you and this tall slim man who said his name was Griffith?

A. We visited and talked for perhaps thirty minutes or more. In the course of our conversation I told Mr. Griffith that Mrs. Berry was having a difficult time operating because of lack of product. He told me that in the event he did not buy her or buy some interest in the theater and they put in another house in Norman, that that would lessen the product that she would be able to get.

Mr. KIME. That's all. Take the witness.

1979 Cross-examination by Mr. COCHRAN:

Q. Mr. H. J. Griffith, will you please stand up. Will you please look at this gentleman and tell us if he is the man with whom you had that conversation.

A. I wouldn't say he was or was not. I would not know the man I don't think.

Q. This conversation took place in 1936?

A. That is right.

Q. On how many occasions did you discuss the matter?

A. With Mr. Griffith?

Q. With the man to whom you were talking.

A. On one occasion.

Q. What period of time did that cover?

A. Perhaps thirty minutes.

Q. You had never seen him before?

A. I had not.

Q. And have never seen him since?

A. To my knowledge I have not.

Q. What theaters were operating in Norman at that time?

A. The Sooner or University and the Oklahoma theaters. It might be that there was a show house on the campus. I am not sure about that.

Q. Isn't it a fact——

Mr. KALLIS. Just a moment. This is entirely

1980 outside of the scope of the direct.

The COURT. It is entirely competent. You raised the question of competition down there.

Mr. KALLIS. But the questions to this witness were confined to the conversation with the man who gave his name as Griffith and nothing is in the record which shows this witness, who is a lawyer in Norman, knows anything about the theater business in Norman.

The COURT. Overruled. Exception allowed. I don't see anything improper in it. Why keep any of the facts out of this case. The court has opened this up. He has permitted, I will say 75 per cent of the testimony that has been introduced in this case, according to the rules of evidence, is wholly incompetent, but the court has opened the gates so you can develop your theory fully. Certainly it is not prejudicial to the interest of the Government to know how many theaters there are in Norman.

Mr. KALLIS. No, but my point is if this witness knows——

The COURT. He stated that Griffith told him that to put in another theater there would lessen the opportunity of Mrs. Berry to buy pictures. It is true he is limited to the

conversation but I can't see this is improper. Certainly it is not prejudicial. Overruled. Exception
1981 allowed. Answer the question if you know.

By Mr. COCHRAN:

Q. Isn't it a fact the Campus was then operating and had been operating for a long time under the management and ownership of Mrs. Berry?

A. I am not sure about that. She did own the Campus Theater at one time. It was closed sometime before—it was closed in the late thirties. I am not sure when it was.

Q. And you will not state that theater was operating at the time you had the conversation that you have purported to detail here?

A. No, sir, I don't know.

Q. Do you recall the instance of some difficulty that Mrs. Berry had with Mr. Sam Ambrister, who was her landlord in the Campus, don't you?

A. Yes, sir.

Q. That matter went to litigation, didn't it?

A. Yes, sir.

Q. Mr. Ambrister had to sue her for rent?

A. He gave her three or four notices to vacate. I am not sure that he filed a lawsuit.

Q. Gave her notice to vacate because of delinquency in rent?

A. That is right.

Q. Don't you know that that litigation and those notices to vacate transpired in about August of 1938?

A. No, I don't recall the year.

1982 Q. Did the conversation that you had with the man who told you his name was Griffith take place before or after this conversation that Mrs. Berry had with Mr. Ambrister about the Campus Theater?

A. I don't recall what the controversy was about the Campus Theater. This conversation took place shortly after Mrs. Berry remodeled the Oklahoman Theater.

Q. There is no way that you can fix in your mind that time with respect to this difficulty with Mr. Ambrister?

A. No, sir, there is not.

Q. Mrs. Berry testified that the Campus Theater was operated by her up until the time school was out in 1938. Now, assuming that to be true, it is your belief then that this conversation that you have told us about took place before or while she was still operating the Campus Theater, is it?

A. Yes, sir, if it was operating in 1938, then the conversation took place before the Campus Theater was closed.

Q. And at that time she would have been operating the Oklahoman and the Campus?

A. That's right.

Q. And continued for a period of about two years thereafter to operate them?

A. Yes, sir.

Q. You state that the Griffith Amusement Company did build another theater sometime after this conversation which you had?

1983

A. Yes, sir.

Q. What time of the year did you say it was in 1936 that you had the conversation?

A. It was in late 1936 or early 1937.

Q. What theater did they build at that time?

A. Following that they opened what is now the theater on the south side of Main Street. It had been a theater before they reopened it as a theater.

Q. That was the theater which they had previously operated, was it not, the Griffiths?

A. It had been operated; I don't know by whom.

Q. Don't you know that they had previously operated it?

A. No, sir.

Q. And they did not build a theater, but simply acquired some property, that piece of property that had been sold at a foreclosure sale, and reopened it as a theater?

A. Well, it had been a theater before it was reopened in 1937 as a theater.

Q. So, it was not a new theater that was built?

A. It was not.

Q. Do you remember over what period of time this controversy between Mr. Ambrister and Mrs. Berry extended?

A. She was receiving notices to vacate for non-payment of rent a year and a half or two years before the show house was finally closed.

1984

Q. In other words, don't you know that it is a fact that Mr. Ambrister gave her notice to vacate, and then they made some kind of an adjustment or settlement by which she gave her note in payment and the matter run along then for something over a year, and she became delinquent in those payments and he finally gave her notice, final notice to vacate along in the summer of 1938?

A. I believe that's right.

By the COURT:

Q. Were you handling the matters for Mrs. Berry at that time?

A. Yes, sir, I was.

By Mr. COCHRAN:

Q. Do you recall any litigation or threatened litigation that Mrs. Berry also had along in 1937 with United Artists, because of her failure to liquidate a contract she had with United Artists, the claim being in the hands, I believe, of Attorney Grim at Norman for United Artists?

A. No, I do not. If there was a controversy, I didn't discuss it with Mr. Grim or I would recall about that. I might have discussed it with Mr. Crooks, her son, or Mrs. Berry.

Q. Now, isn't it a fact that in this conversation you had with this man, that he stated that his company intended to acquire or open up another theater in Norman, and he
1985 would like to know whether Mrs. Berry wanted to sell her theater before they took any further steps toward opening up one.

A. I don't recall that it came up just that way. He told me that he would like to make a deal with Mrs. Berry and buy her theater or buy an interest in it. I recall that he suggested retaining her to operate it as manager.

Q. Will you say that he didn't tell you that the intention was to open up a theater there, and that he simply wanted to find out whether the existing operator wanted to dispose of one of her theaters?

A. I will not say that he didn't say that.

Q. Mrs. Berry is still operating the Oklahoman, is she?

A. She is.

Mr. COCHRAN. That's all.

Mr. KIME. Your Honor please, may I have the other Mr. Griffith stand up, please.

Re-direct examination by Mr. KIME:

Q. Mr. Benedum, was this the man that came to your office that time?

A. No, sir.

Mr. KIME. May I ask the other Mr. Griffith to stand up? Please remain standing Mr. L. C.

Q. If it was either one of these gentlemen, which one was it?

1986 A. The man who came to our office was a tall slender man. If it was either one of these gentlemen, it was this gentleman here.

Mr. KIME. That's all.

1987 Mr. KALLIS. For the record, I would like to have the record indicate that the witness indicated H. J. Griffith, who is present in court.

The COURT. He said either one of them, if the man who came to his office was either one of the two men standing up it was H. J.

Mr. KALLIS. That is right. Just so we understand it.

(Witness excused.)

WILLIAM GEORGE UNDERWOOD, was thereupon called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. KIME:

Q. Will you state your name?

A. William George Underwood.

Q. Where do you live, Mr. Underwood?

A. Dallas, Texas.

Q. Were you on December 31, 1941, the president and director of the Texas-Oklahoma Enterprises Corporation?

A. Yes.

Q. And on that date that corporation was dissolved?

A. Yes, sir.

Q. And at that time was Mr. C. C. Ezell secretary and treasurer of that corporation?

1988 A. Yes.

Q. And Mr. Ned E. Depinet was stockholder and director?

A. Yes.

Q. And Mr. Sam Dembow, Jr. was a stockholder and director.

A. Well, he was a stockholder. I am not sure whether he was a director or not. I don't think he was a director.

Q. If the records of the secretary of state of the state of Texas listed him as a director on the date of dissolution would that cause you to believe that he was a director?

A. Yes, I believe it would.

Q. I hand you what has been marked as Plaintiff's Exhibit No. 385 for identification, which is a certified copy of the records from the Secretary of State of Texas, which lists directors at the dissolution of the corporation, Mr. Sam Dembow, Jr., whose address is given as the Paramount Building, New York, and is listed as a director.

A. I would say that was right.

The COURT. What is the name of this corporation?

Mr. KIME. The Texas-Oklahoma Enterprises Corporation. If your Honor will recall, the Texas-Oklahoma Enterprises, Incorporated, as appears from the interrogator-

ies, was the half owner of all of the theaters in Enid, Oklahoma, there being five there, the Texas-Oklahoma
1989 owning fifty percent and the Griffith Amusement Company owning the other 50 percent.

The COURT. This was dissolved in 1940?

Mr. KIMB. Dissolved on the last day of December in 1941.

By Mr. KIMB:

Q. This same exhibit, Mr. Underwood, lists as the incorporating directors these three men: E. H. Hulsey, Allen T. Morrison and Lewis L. Dent, all of whose post office addresses are given as Dallas, Texas. Do you know either or all of those men?

A. Yes, I know them all.

Q. What business was Mr. Hulsey engaged in in September, 1920, if you recall?

A. He was the president or managing officer of the Southern Enterprises of either Texas or Delaware, and maybe both; I am not sure.

Q. Were you familiar with the business of the Southern Enterprises?

A. Just as an outsider. I was in the film business at that time and I used to sell them a lot of pictures.

Q. They were theater operators?

A. They were theater operators and I ran a film exchange.

Q. And Mr. Allen T. Morrison?

A. I don't know what his capacity was with the
1990 corporation. I used to see him up there; just had a speaking acquaintance with him.

Q. Lewis L. Dent?

A. He was the operator of the theaters, a chain of theaters.

Q. Was that the same chain that Hulsey was connected with, the Southern Enterprises?

A. Yes. Hulsey was the president and manager of it. Dent was his right-hand man.

Q. Did you acquire an interest in this corporation later?

A. Yes.

Q. When was that, about?

A. I think it was the latter part of December, 1932.

Q. Was Mr. Ezell associated with you at that time?

A. Yes.

Q. Is that when he first came in the Texas-Oklahoma Enterprises?

A. Yes.

Q. Was Mr. Depinet interested in it at that time? In 1932 when you bought your interest?

A. Not at the time we bought it. He came in later.
Q. Do you have an idea about what time?
A. Well, being a little short of money we went to him and asked him if he would like to have an interest in it
1991 and we sold him an interest in it in order to get enough money to consummate the deal.
Q. At that time what business or corporation was he connected with?
A. If I remember right, Mr. Depinet was the sales manager for the First National Pictures.
Q. First National was later combined with Warner Brothers?
A. Yes.
Q. Was Mr. Sam Dembow active in the corporation in 1932?
A. No, sir. He was not even a member of the corporation.
Q. When did he become interested in it?
A. Well, I don't know the exact date but I would say about two years later; maybe not quite that long.
Q. Do you recall how he happened to become associated with your corporation?
A. Well, I will tell you. Mr. Depinet, Mr. Dembow and Mr. Ezell and myself had been friends for a good many years, and he said he would like to become associated with us and would like to buy an interest in the theater and we sold him an interest.
1992 Q. Were there any strings attached to the sale?
A. What do you mean?
Q. Well, were there any requirements that you had to meet in order for him to purchase this interest?
A. Certainly not.
Q. Was Mr. Dembow at that time associated with Paramount?
A. I am not sure whether he was or not. It was right in about the time when he made a change and went to National Screen, and whether it was before or after I would not be in position to say off-hand.
Q. Did the Paramount offices have anything to do with ratifying the purchase of his interest?
A. Hell no.
The COURT. Just a moment.
A. Pardon me, Judge; I am sorry.
The COURT. Very well.

By Mr. KIMBLE:

Q. Did you later sell your interest in Texas-Oklahoma Enterprises?

A. Did I do what?

Q. Did you later sell your interest in Texas-Oklahoma Enterprises?

A. No, sir.

Q. Did Texas-Oklahoma Enterprises enter into a contract for the theaters in Enid, Oklahoma, which were then owned by the Griffith Amusement Company?

1993 A. I didn't understand your question.

(The question was read by the reporter.)

A. Do you mean while we had the——

Q. Yes, sir.

A. Yes, we did.

Q. And did you at that time have a franchise for Paramount Pictures?

A. Yes, sir. Now, wait a minute. When we bought those theaters from Paramount, they stipulated that before they would conclude the deal that we would be obliged to make a five year franchise for their Paramount Pictures in Enid and Chickasha, which were the two towns that were tied together when we made the purchase, and Mr. Ezell and I went to Enid and discussed the matter with Mr. Griffith, and we went from there to Kansas City to enter into, to negotiate a franchise for the Paramount Pictures, and after we had negotiated the franchise for the pictures, why, we came back to Oklahoma City and concluded the deal with Mr. L. C. Griffith.

(Plaintiff's Exhibit 366 was marked by the reporter for identification, pursuant to request of counsel.)

Q. I show you what has been marked for identification as Plaintiff's Exhibit No. 366, which is a photostatic copy from the Corporation Commission of Oklahoma—I will withdraw that question.

1994 (Plaintiff's Exhibits Nos. 367, 368 and 369 were then marked by the reporter for identification, pursuant to request of counsel.)

Q. I show you the yearly reports filed with the Corporation Commission of the State of Oklahoma, of which these are photostatic copies, for the years 1921, 1922, and 1922—there are evidently two for the same year—these all list as officers of Texas-Oklahoma Enterprises, E. H. Hulsey, Louis L. and L. L. Dent, Allen T. Morrison, and the exhibit marked Plaintiff's Exhibit No. 366 for identification also contains the name of George S. Morgan of Dallas, Texas. Do you know Mr. Morgan? He is listed as auditor.

A. I don't know him.

Q. I hand you what has been marked as Plaintiff's Exhibit No. 369 for identification, which is the yearly report filed on July 19th, 1923, Texas-Oklahoma Enterprises, and lists

as officers, President F. L. Metzler, of Atlanta, Georgia. Do you know Mr. Metzler?

A. I just know him, that's all.

Q. Do you know what business he was in?

A. Well, I believe he was one of the officers of Paramount; I think he was Treasurer, I am not sure though.

Q. I see.

A. I had no way of knowing their business, because I was not interested in the theater business at that time.

1995 Q. Did you have any business dealings with Mr. Metzler?

A. I can't recall.

Q. Listed as Secretary is M. C. Talley of Atlanta, Georgia. Do you know Mr. Talley?

A. Yes, sir, I knew him about the same way I knew Mr. Metzler.

Q. Do you know what business he was in?

A. He was connected with the same organization.

Q. Paramount?

A. Yes, sir. And Lynch, S. A. Lynch.

Q. Who was S. A. Lynch?

A. He was head of the Southern Theaters, the Southern Theater Enterprises.

(Plaintiff's Exhibit No. 370 was marked for identification by the reporter, pursuant to request of counsel.)

Q. I hand you Plaintiff's Exhibit No. 370, which is the yearly report filed in July of 1924 of Texas-Oklahoma Enterprises, which lists among the officers and stockholders, in addition to F. L. Metzler, and E. H. Hulsey, Marion Coles of New York City. Do you know Marion Coles?

A. No, sir.

(Plaintiff's Exhibit No. 371 was marked by the reporter for identification, pursuant to request of counsel.)

Q. I hand you what has been marked for identifi-
1996 cation as Plaintiff's Exhibit No. 371, which is the report filed with the Corporation Commission on the 25th day of July, 1925, and listed as officers, in addition to Mr. Metzler and Mr. Coles, there appears the name H. B. Franklin, New York, New York. Do you know Mr. H. B. Franklin?

A. Yes, sir.

Q. What business is he engaged in, if you know?

A. Well, he is dead now, but he was President, I believe, of Paramount Pictures Corporation.

(Plaintiff's Exhibits Nos. 372 and 373 were then marked by the reporter for identification, pursuant to request of counsel.)

1997 Mr. KIMB. The remainder from 373 or 372, which was the report for 1926, down to 376, which is the last report filed in July——

Mr. COCHRAN. What year?

Mr. KIMB. July, 1930.

The COURT. 372 is '26 and 373 is '27?

Mr. KIMB. I will check that. No. 373 is '27; 374 is '28; 375 is '29 and 376 is '30. Now, if your Honor pleases, I think Judge Cochran will stipulate that these are true and correct copies from the office of the Corporation Commission of Oklahoma and the Secretary of State of the state of Texas. That is, Exhibit Numbers 365 to 376, inclusive, and we offer those in evidence at this time.

Mr. COCHRAN. No objection.

The COURT. They will be admitted.

By Mr. KIMB:

Q. This Mr. Ned Depinet about whom you have testified. Is he now the president of RKO?

A. RKO Distributing Corporation.

Q. That is all.

Cross-examination by Mr. COCHRAN:

Q. Mr. Underwood, prior to 1932, what phase of the motion picture industry were you connected with?

A. Distribution. I had several theater interests, 1998 that is, partnership interests, but I was not active in the theater business.

Q. What distributing connections did you have during the years prior to 1932? Just tell the court briefly but comprehensively.

A. Well, in 1918 I organized the Specialty Film Company and operated the Specialty Film Company down through about 1928.

Q. What was the business of that corporation?

A. Film distribution. I had a franchise for various pictures and distributed the pictures, and I also had a company called the Oklahoma Specialty Film Company in which Mr. R. E. Griffith and L. C. Griffith were my associates.

Q. When you say you had a franchise, are you referring to a franchise for the distribution of pictures over certain territory?

A. Yes, sir, Texas, Oklahoma, and Arkansas.

Q. Back during that period there were some of the pictures which were produced which were distributed through companies which maintained branch offices or exchanges in several states. Is that right?

A. Yes, sir.

Q. There were other producers whose pictures were distributed through individuals or corporations having
1999 franchises for specified territory.

A. Yes, sir, called independent distributors.

Q. And sometimes referred to as states rights distributors?

A. Yes, sir.

Q. As distinguished from national distributors?

A. Yes, sir.

Q. And these pictures which you distributed were pictures that were commonly referred to as independent pictures?

A. States rights pictures.

Q. Can you tell us some of the pictures which you had or distributed during that period?

A. Well, I had a franchise for the distribution of Warner Brothers pictures for Texas, Oklahoma and Arkansas for a number of years. I think three years.

Q. That was prior to the time it became a national distributor?

A. Oh, yes, and I can't call offhand those pictures.

Q. Did you have F. B. O.?

A. I never handled F. B. O. product.

Q. Columbia?

A. Later on I had a franchise for the distribution of Columbia pictures.

Q. And that was before Columbia became a national distributor?

2000 A. Yes, sir. We sold out to them when they nationalized.

Q. In either of those corporations through which you were distributing pictures other than the Oklahoma Enterprises that you mentioned, were Griffith Brothers, or either of them, interested with you?

A. No. They were my 50 per cent partners in the Oklahoma Specialty Film Company.

Q. In the distribution of pictures?

A. In the distribution of pictures. I had no interest in any theaters they had any interest in.

Q. You say that your distribution of these pictures through the two companies you have mentioned extended until 1928. Then what happened?

A. Well, I went into the exhibition business. I bought an interest or organized a circuit of theaters and merged them with the Robb and Rowley interests.

Q. What period was that?

A. That was along about 1927. I think somewhere around there, '26 or '27, and in 1928 we sold our business, film business to Columbia.

Q. Was Mr. Ezell interested with you in all of these operations?

A. No, in none of it.

Q. When did he first become associated with you?

2001 A. I think it was in 1931.

Q. With what venture was he then associated?

A. Well, in the meantime we had sold our interest in the R & R circuit to a concern called the Hughes-Franklin and I was out of business. I was retired and was up in Alaska, and I got a wire from Mr. Ezell asking me if I would be interested in a business proposition.

Q. Well, without going into the details, you then became associated with Mr. Ezell?

A. In a theater in San Antonio.

Q. During this period immediately prior to 1930, were there several of the distributors of motion pictures who were acquiring chains of theaters for exhibition of motion pictures throughout the country?

A. I beg your pardon?

(Question read.)

A. Yes.

Q. You mentioned the fact you sold some interest to Columbia, for instance?

A. Yes.

Q. Did Paramount enter the exhibition field?

A. Well, they had been in it for years.

Q. And several of the other companies?

A. Yes.

Q. You mentioned this Southern Enterprises?

2002 A. Yes.

Q. Did you have any interest in Southern Enterprises?

A. No, sir.

Q. It was your understanding that Southern Enterprises was a holding company through which Paramount Pictures Corporation held and operated most of the picture houses over the country?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. That was your understanding?

A. Yes, sir.

Q. And that this Southern Enterprises back in the days covered by these reports we have here was a subsidiary of

Paramount Pictures, affiliated with it anyhow. It was one of their group of exhibitors?

A. Yes, sir.

Q. And these reports that have been filed here indicate some officers of either Southern Enterprises or Paramount were officers and directors of the Texas-Oklahoma Enterprises?

A. Yes, sir.

Q. Did you have any interest in Texas-Oklahoma Enterprises prior to 1932?

A. No, sir.

2003 Q. Now you have told us that you believe you acquired your interest in Texas-Oklahoma Enterprises the latter part of 1932.

A. No, in January, 1932. It was the first part of 1932.

Q. That is the correction I wanted you to make.

A. Yes, sir.

Q. At that time what were the economic conditions generally throughout the country?

A. Very low.

Q. Was that particularly true with the motion picture industry?

A. Yes, sir.

Q. Do you know at that time that Paramount was disposing of some of its holdings in the exhibition field?

A. Yes, sir.

Q. And shortly after that time, isn't it a fact that Paramount Pictures Corporation went into bankruptcy?

A. Yes, sir.

Q. Now just tell us the full story in regard to your acquisition of the stock which you acquired in the Texas-Oklahoma Enterprises, the circumstances under which it was acquired.

A. Mr. Ezell and I were in New York to negotiate a franchise for Monogram Pictures and——

2004 Q. Was that a negotiation and franchise that was for distribution of Monogram, which was another states rights company?

A. Yes, sir.

Q. Go ahead.

A. And we heard that Paramount wanted to dispose of some of their theaters, and we went up to see Mr. Dembow, who was in charge of that department, and asked him if he had anything he wanted to sell in the south. And he said they wanted to sell Chickasha and Enid. I told him we would like to discuss the situation, and he turned us over to Mr. Wall, who was to make the negotiations, and after a couple of days negotiations, we arrived at a deal, which

was for a certain amount of money, to be paid over a period of years, and conditioned upon the fact that we entered into a five year franchise for the distribution of Paramount Pictures.

Q. In other words, Paramount, the Paramount officials required this franchise as a part of the deal?

A. Yes, sir.

Q. Now——

A. And after we had arrived at this arrangement, with Mr. Wall, he called in Mr. Dembow, who told him to take it to the Board of Directors, and have the Board of Directors ratify the deal.

2005 Q. The deal was made?

A. The deal was then made.

Q. And in that deal what did you and Mr. Ezell acquire?

A. We acquired the leaseholds——

Q. I mean whether you acquired physical properties, or stock of a corporation?

A. We acquired stock, we acquired 100 per cent of the stock in the Texas-Oklahoma Enterprises, which comprised the leaseholds on two theaters in Enid, and two theaters in Chickasha, together with the equipment.

Q. And by that deal, then, Paramount Pictures Company, Southern Enterprises, or anything that was connected with Paramount went out of the corporation, is that right?

A. Yes, sir.

Q. And you and Mr. Ezell owned all of the stock of it at that time?

A. Yes, sir.

Q. Since that time has Paramount Pictures or Southern Enterprises had any connection whatever with the Texas-Oklahoma Enterprises up to the time that corporation was dissolved?

A. No, sir.

Q. Now, after acquiring the stock in Texas-Oklahoma Enterprises, you have told us that you later met Mr. L. C. Griffith in Enid?

2006 A. Yes, sir.

Q. And it appears also that you later entered into an agreement for the operation of these two theaters by the Griffith Amusement Company in Enid?

A. Yes, sir.

Q. Just tell us the circumstances under which and the reason why that transaction was made with the Griffith Amusement Company?

A. Well, our business essentially was the film business, and we were to quite a great extent taking a flyer or specu-

lation in these theaters on the presumption that we could work out a deal with the Griffith Amusement Company to operate them for us because we had not the time nor the inclination at that time to go into the theater business, and we considered ourselves very fortunate in being able to make the deal.

Q. I believe you have stated that you had been associated with Griffith Brothers?

A. Yes, sir, and our relations were always very happy, and we had the utmost confidence in their ability to run them profitably and successfully.

Q. As a part of the deal, did you also sell Griffith Amusement Company, or rather the Griffiths, an interest in your theater which you had acquired at Chickasha?

A. Yes, sir, we sold a half interest and entered into
2007 a partnership arrangement with them.

Q. At that time, or prior to that deal, Griffith Amusement Company were not operating in Chickasha, were they?

A. I don't think so.

Q. But they had been operating in Enid, in opposition to Paramount, to the Paramount subsidiary?

A. Yes, sir.

Q. You tell us that sometime shortly after you arranged for the purchase of this stock, that you sold an interest to Mr. Ned Depinet?

A. Yes, sir.

Q. And then, some considerable time after that, Mr. Dembow acquired an interest?

A. Yes, sir.

Q. At the time you made the deal with Griffith Amusement Company, and with L. C. Griffith, did L. C. Griffith have any knowledge or information that Mr. Depinet either had or was acquiring an interest in that corporation?

Mr. KIMB. To which we object, your Honor; he can't know what Mr. Depinet thought.

The COURT. Read the question.

(The last question read by the reporter.)

Mr. KIMB. I will change that objection.

The COURT. Overruled and an exception allowed.

Mr. KIMB. Sir?

2008 The COURT. He can answer so far as he knows.

A. Well, I know that he didn't, because we hadn't made a deal with them at that time.

By Mr. COCHRAN:

Q. You hadn't made a deal?

Mr. KIMB. Now, your Honor please, I move to strike that because it is clearly apparent that one man cannot know what is in the mind of another man.

The COURT. No, but he can certainly know his opportunities for knowing.

Mr. KIMB. I will agree with that, but that wasn't what he testified to.

The COURT. Objection overruled and exception allowed. Proceed. It is immaterial anyway.

By Mr. COCHRAN:

Q. Your first arrangement at Enid was what is sometimes referred to as a polling arrangement?

A. Yes, sir.

Q. With Griffith Amusement Company operating those theaters which you owned?

A. Yes, sir.

Q. Later, that arrangement was changed to an ownership arrangement whereby your corporation owned a certain amount of the physical properties of the theaters which were operated by Griffith Amusement Company, and Griffith Amusement Company owned a certain amount, is that right?

2009 A. I am not sure whether that was, that deal was entered into before we dissolved the corporation or after we dissolved the corporation, but we bought and acquired an equal half interest in Enid and entered into a joint venture contract with them.

Q. Why was the corporated dissolved, the Texas-Oklahoma Enterprises?

A. To save income taxes.

Q. And after the dissolution of that corporation, the persons who owned the stock simply took an interest, took their interest as partners in that transaction?

A. Yes, sir.

Q. How long did your interest continue at Chickasha?

A. Oh, I don't know; maybe a couple of years; and then we sold out our half interest in Chickasha to H. J. Griffith.

Q. And you have no interest in Chickasha at the present time?

A. No, sir.

Q. Do you have any other interest with Griffith Amusement Company, or any of the Griffith organizations, in the operation of theaters in Oklahoma and Texas?

A. No, sir.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KIMR:

Q. Mr. Underwood, do you recall about when you acquired this half interest in Chickasha?

2010 A. Well, we owned the whole thing, and at the time we entered into the pooling arrangement in Enid, we sold a half interest to Griffith.

Q. Do you recall the name of the corporation to which you sold?

A. I do not, no, sir.

Q. Are you certain whether it was a corporation, or individuals?

A. No, I am not.

Q. Now, your first association with L. C. and H. J. Griffith, I didn't understand what corporation that was. What was that, please?

A. It was the Texas-Oklahoma Enterprises, operating a film exchange.

Q. Is that this same Texas-Oklahoma Enterprises——

A. (Interrupting.) No, I say Texas—no, wait a minute. Oklahoma Specialty Film Company was the name.

Q. Oklahoma Specialty Film Company?

A. Oklahoma Specialty Film Company.

Q. When did L. C. and H. J. Griffith first become associated in that corporation with you, about?

A. I would say about 1921 or '22, somewhere along there.

Mr. COCHRAN. Pardon the suggestion, but that

2011 wasn't H. J. Griffith, it was L. C. Griffith and R. E. Griffith.

A. L. C. Griffith and R. E. Griffith were my partners in that, and not H. J.

By Mr. KIMR:

Q. And how long did that association last?

A. It lasted up to the time that we sold our interest to Columbia.

Q. Now, at the time of this Chickasha and Enid transaction, you had a long term franchise from Paramount to play their pictures in Enid and Chickasha, did you not?

A. Five years.

Q. Then you entered into this booking arrangement with Griffith Amusement Company?

A. Well, it wasn't a booking arrangement. They had the complete management of the theaters.

Q. And did they assume the contracts you had with Paramount?

A. Yes, sir.

Q. And if you know, did they play them out?

A. I believe they did.

Mr. KIMR. That is all, your Honor.

The COURT. Stand aside.

WILLIAM FRANKLIN HUNT, JR., called as a witness on behalf of the Plaintiff, being first duly sworn, testi-
2012 fied as follows:

Direct examination by Mr. KALLIS:

Q. What is your name?
A. William Franklin Hunt, Jr.
Q. And where do you live?
A. Elk City, Oklahoma.
Q. What is your business or occupation?
A. Well, I have been attending school.
Q. Where?
A. Colorado A. & M.
Q. Have you recently been discharged from the Army?
A. Yes, sir.
Q. Mr. Hunt, are you the son of Frank Hunt who operated the Rex Theater at Elk City, Oklahoma?
A. Yes, sir.
Q. And were you any relation to the Frank Hunt who operated the theater?
A. A son.
Q. Were you acquainted with your father's signature?
A. I received numerous letters from him.
Q. Then you are acquainted with his signature, are you?
A. Yes, sir.
Q. I show you what has been marked for identification as Plaintiff's Exhibit No. 186 and ask you whether that bears his signature?
2013 A. Yes, sir.
Q. And the same question with respect to Plaintiff's Exhibit No. 204 for identification?
A. Yes, sir.

Mr. KALLIS. We offer in evidence these two exhibits, your Honor. Exhibit No. 186 is a Paramount contract, first run, for the 1933–'34 season, for the Lamar Theater in Elk City, Oklahoma, given to Frank Hunt. I might ask this question:

Q. Did your father operate the Lamar Theater in Elk City prior to the time he operated the Rex?
A. Yes, sir.

Mr. KALLIS. And Plaintiff's Exhibit No. 204 is an RKO contract for first run, for the 1934–'35 season for the Lamar Theater, given to Mr. Hunt.

That's all.

Cross-examination by Mr. COCHRAN:

Q. How old are you, Frank?
A. 24, sir.
Q. Do you recall when your father opened up the theater in Elk City?

A. I was very young at the time. I would say, just to be estimating it, around 1930, somewhere along there.

Q. You think you were probably 10 years old at that time, or somewhere around there, 9 or 10?

2014 A. No, sir, it must have been before that. I was in the second grade, I remember that, so that would make me about 8.

Q. Well, anyhow, the theater which was first opened up by him was the Lamar Theater, was it?

A. Yes, sir.

Q. Do you know what other theaters were operating there at that time?

A. I know the Rex was operating, and I remember another theater down the street, but I couldn't tell you whether it was operating then or not.

2015 Q. Do you know who was operating the Rex and these other theaters?

A. I believe the man's name was Stanfield.

Q. Do you know whether he was operating it as manager under the Griffith Amusement Company?

A. I have heard his name and the Griffith Amusement Company connected several times.

Q. Do you recall along in about 1936 that your father acquired the Rex Theater and closed the Lamar?

A. Yes, sir.

Q. And he continued to operate the Rex until his death?

A. Yes, sir.

Q. Now, about that same time Griffith Amusement Company and Stanfield built a new theater they called the Elk, didn't they?

A. I don't know what connection Stanfield had with it. I know Griffith built the Elk.

Q. It was a new theater built about that time?

A. Yes, sir.

Q. And just before your father took over the Rex?

A. Yes, sir.

Q. And since that time there have been two theaters operating in Elk City?

A. Yes, sir.

2016 Q. Griffiths operating the Elk and your father up until his death operating the Rex?

A. Yes, sir.

Q. After your father's death your mother has been operating the Rex Theater?

A. Yes, sir.

Q. And is operating it today?

A. Yes, sir.

(Witness excused.)

Mr. KIMB. We have a witness on the way here from somewhere up in the mountains of Colorado, the state of Colorado and we are expecting him in momentarily, but so far he evidently has not arrived. He is the husband of Mr. Dierker's secretary, Mrs. Leatherman, and we have some documentary evidence that we would like to offer but apparently we do not have it here. It is now almost 11:30. I suggest it will probably take us half an hour to assemble this material, and if your Honor please I would say that a recess would probably enable us to close this afternoon if we can get Mr. Leatherman. If we can't, we would like the opportunity, in the event the defense goes on, to put him on as soon as he arrives because he is engaged in the oil business and there seems to be a hot deal up there, a new field opening up, and we have had a
2017 great deal of trouble getting hold of him by telephone and we would like to arrange to get him on the stand and off as soon as possible.

The COURT. Would it inconvenience you gentlemen for us to adjourn from now until 1:30?

Mr. COCHRAN. No, sir.

The COURT. If that is agreeable we will not lose any time that way and we will recess until 1:30 o'clock p. m.

2018 PROCEEDINGS

September 11th, 1945, 1:30 o'clock p. m.

Mr. KIMB. Now, if your Honor please, two exhibits which your ruling has been held up on, Plaintiff's Exhibit No. 351, and No. 352, which your Honor may recall was the large, extremely large books prepared by and under the supervision of the witness Murray, who was on the stand and testified that they were made under his direct supervision, and further he says this is a record of the sales and transactions in the situations which were called for in the interrogatories beginning with the year 1934–'35, '35–'36, '36–'37, '37–'38, and '38–'39, listing for each season's product the licensing of Universal product in the situations indicated in the record, as to any and all of the situations located in these locales, indicating the product bought, the play-off of the product, the dating of the product, and the rental of the product, any alterations in the original terms of the contract as to rentals, the actual rentals received, the time the subject was made available, the date on which it was dated, the date of delivery of the print to the exchange, and the date of the National release, indicating by title and also by cast.

The COURT. What was the objection that was made to that?

2019 Mr. COCHRAN. We objected to it, your Honor please, on the ground that it did not show that he made these, that this witness showed that he didn't make these, that he simply had some auditors to make them under him. That they are records which were prepared when the Universal was a party to this suit in answer to the interrogatories and interrogatories that are made by these parties to a suit, are admissible as admissions against them, but not as admissions against somebody else, particularly after the Government has voluntarily dismissed that concern from the case. While Universal was a party to this lawsuit, they propounded certain interrogatories to Universal. Universal answered those interrogatories. We had no interest in being present or couldn't have been present or participate in those answers because they were simply calling for information which they wanted furnished. The Government comes along and voluntarily dismisses the lawsuit as to Universal and now they want to come in and use those interrogatory answers which were prepared without an opportunity for cross examination, without examination being made, and directed to particular and specific things, they want to introduce those documents or those tabulations which were prepared, and we say that it is not admissible. And also that it is not even fair to ask us to admit it for the reason that a tabulation of that kind can so easily be used in the brief
2020 that may be filed or use that may be intended to be made of it for some purpose that is entirely different to that which your Honor's attention was directed at the immediate time. Also, when these things were prepared the attention of the witness was not directed to specific matters and specific points that were involved in each of these cases.

2021 The COURT. Suppose we do this, gentlemen, so as to protect the rights of all parties. The Court will just reserve his ruling on that and it will be disposed of before the end of the trial.

Mr. KIME. That is all right, your Honor. There is only this one reservation I would like to make to that, in the event the ruling is adverse to the Government. We have certain extracts from those that we would then like to offer at the time you make your ruling.

The COURT. Very well.

Mr. COCHRAN. I cannot see any particular objection except the matter is just so clearly inadmissible. Here we took the depositions of the witnesses of Universal. Your Honor said when these things were presented here the

Government could get with us and point out specific things and give us an opportunity to check those and see if we could get together with them. We have gone through the entire summer months and nothing has been done in that matter. We took the depositions of the Universal witnesses and they did not attempt to have them bring in the records from which these tabulations were made. If they will bring in the records that will be an entirely different matter.

Mr. KALLIS. You say you took the depositions of Universal witnesses?

Mr. COCHRAN. Yes, sir.

2022 Mr. KALLIS. Where, in New York last July?

Mr. COCHRAN. Yes, sir.

Mr. KALLIS. Who was the Universal attorney?

Mr. COCHRAN. Mr. McCarthy.

Mr. KALLIS. That is right.

Mr. COCHRAN. But for these other companies that have brought records in here we haven't made it a point when they brought these records in for them to being somebody from the office to identify that record; if the record itself was admissible we have agreed to a photostatic copy of it. We preserved our right to object to the inadmissibility of anything but this is not a record of the company. It is an ex parte statement prepared by a company who was a party to the suit and which would have been admissible as an admission against that party, and then the Government comes along and dismisses it and wants to proceed against us as though that party were still in the suit.

The COURT. The court will reserve his ruling on that.

Mr. KIME. These exhibits are just like any exhibits prepared for introduction at the trial. The person who made the proposed exhibit is here to be cross examined. All the records were brought here, and so far as we know no effort has been made to examine the records. That man

2023 was on the stand and no effort was made to cross examine him as to the accuracy of any particular one.

The COURT. He said he didn't make it himself.

Mr. KIME. But it was made under his supervision and direction.

Mr. COCHRAN. Also, so far as the Universal records were concerned from which this was made, they have not been made available to us and we have not had an opportunity to check them, and we have not checked them, and it is entirely different from these records where they have actually brought their records in here, and then made a tabulation from something that has been introduced in

evidence or made available for introducing in evidence to shorten the record.

Mr. KIMB. Am I correct in assuming that Mr. McKenzie came into court one morning and offered these records?

Mr. COCHRAN. Mr. McKenzie did not produce the records from which these tabulations were made. They have not been produced. We don't have them and we have not seen them.

The COURT. What are the numbers of these exhibits?

Mr. KIMB. 351 and 352. I am under the impression Mr. McKenzie came into court one morning and said these records were in town and open to inspection of the Government or the defendants at any time. I may be in-
2024 correct about that but I think I am not.

The COURT. You may proceed.

Mr. KIMB. With that, your Honor, we have here the 1940 census figures as published by the official publisher whoever it may be. If your Honor would like to have them we would be glad to submit them either direct to your Honor or as exhibits. They contain the census figures of 1930 and '40 of most of these towns in controversy. Some of them in 1930 were not in existence.

The COURT. Do you have any objection?

Mr. COCHRAN. I thought we already had a stipulation.

Mr. KIMB. Well, the Court takes judicial notice of them anyway.

Mr. GRIFFING. We stipulated the 1930 and possibly '40 census would be used.

The COURT. All right, let them be introduced as evidence in the case.

(Hereupon Plaintiff's Exhibits No. 377, 378 and 379, being the documents above referred to, were received in evidence and made a part hereof.)

Mr. KALLIS. If the Court pleases, we have subpoenaed from the film companies certain information with regard to film rentals received by them from the defendants in this case, and also from various independent
2025 exhibitors. That information, by way of subpoena, was requested I would say about the first of last June and I understood that the figures were going to be compiled and submitted to us when we met after adjournment. I believe that Mr. Caskey, who was expected to arrive yesterday, has these figures. Am I right, Mr. Nickerson?

Mr. NICKERSON. He doesn't have them but I believe they will be here when he arrives.

2026 Mr. KALLIS. I wonder, with regard to that matter, if we might defer presentation to your Honor until after the defense has started their case, and then in that connection, we have certain inter-office communications between various employees of the film companies and the home office, or vice versa, and with your Honor's permission and Judge Cochran's consent, we would like to defer that until say for another day.

Mr. COCHRAN. So far as inter-office communications and so forth, we want those matters out of the way before we commence our case. I thought they were out of the way. The Court has ruled that they are not competent, and if there is anything to be done about it, I want to get it out of the way.

Mr. KALLIS. I don't recall, although I may be mistaken, that any inter-office communications were actually offered.

Mr. COCHRAN. They have offered communications between representatives of the company and the home office, and the home office and the representatives, all that hearsay stuff we have been talking about.

Mr. KALLIS. There may have been a few, I don't recall at the moment. There are certain others which I have in mind. I would like to defer that until say Thursday morning, unless Judge Cochran insists that we follow the
2027 regular procedure.

Mr. COCHRAN. As I say, we are not ready to proceed until counsel closes on a material matter of that kind. I don't know what else there is for him to present. We have had it up time and time again, and the Court's ruling has been consistent, and Mr. Wright argued a half dozen times on it, and I don't know what else he wants to wait until Thursday for. If he has anything else to do about it, it can be done now as well as later.

Mr. KALLIS. There is another consideration in that connection. It is going to take considerable time for Judge Cochran to read these before I make the offer.

Mr. COCHRAN. If you will tell me what it is—Are they documents that were photostated?

Mr. KIME. That's right.

Mr. COCHRAN. I am familiar with all of them and you can go ahead with your offer.

Mr. KALLIS. All right, at this time, your Honor, I want to offer the documents which have been identified already as L–24 and L–25.

Mr. COCHRAN. If the Court please, I think as he offers each one of these he should state what it is and the date of it, so we can know what it is, or so the Court may know what it is. I know what it is.

The COURT. He can go ahead with his enumeration
2028 and then you can take up each one.

Mr. KALLIS. I thought what we might do would be to submit it to your Honor, and if you had a desire to read them over outside of Court hours the way Judge Knight did, and there were about 104 in that case as I recall, and then you could make your ruling on each one separately.

The COURT. How many do you have of these?

Mr. KALLIS. I have about 40 or 50, I think.

The COURT. Go ahead and list them.

Mr. KALLIS. L–28, L–31, A, B, and C, and L–53, L–54, L–65, L–68, L–77, L–78, L–79, L–91, L–109, L–110, L–114, L–115, L–123, and I have one exhibit here which was taken out of our Loew file which has apparently not been identified at all. Judge Kime can explain how it happens that it was not heretofore identified.

Mr. KIME. If there is need for an explanation, it came from the files of Loew's, and was just inadvertently not given an identification number at the time we submitted them to Judge Cochran.

The COURT. Well, give it a number.

Mr. KIME. Give it No. 374.

Mr. KALLIS. Judge Kime suggests that it be identified as Exhibit L–374.

Mr. KIME. No, not L–374, just 374.

The COURT. No. 374 is the 1928 report of the
2029 Oklahoma Tax Commission.

(Plaintiff's Exhibit No. 380 was then marked by the reporter for identification.)

Mr. KALLIS. I am giving a copy of the inter-office communication from the files of Loew's, which has been identified as Plaintiff's Exhibit No. 380 to Judge Cochran.

The COURT. Very well.

Mr. KALLIS. And U–43, RKO–10, and 21–A, 21–E, 21–M, RKO 21–N and O, and RKO 21–T; also RKO–20, which is a communication from the Griffith Amusement Company to RKO.

Mr. COCHRAN. So far as RKO Exhibit No. 20 is concerned, a communication from Griffith Amusement Company to RKO, there is no objection. Of course, that is a communication by this defendant.

Mr. KALLIS. Well, if the Court please, I think to simplify the proceedings I will just withdraw that last one and not offer it at all at this time.

The COURT. Very well, then you withdraw No. 20?

Mr. COCHRAN. No. 20.

Mr. KALLIS. No. 20, RKO 20 is withdrawn.

The COURT. Well, if it is admitted——

Mr. KALLIS. Well, I will withdraw it because the subject matter of these letters will be presented to
2030 your Honor in another way.

The COURT. No. 21–T, is there anything later than that?

Mr. KALLIS. That's the last one.

The COURT. Very well; let me have those.

Mr. KALLIS. I have some others, but I haven't brought them up at this time.

The COURT. If you will submit those to the Court, I will be glad to examine them when I get an opportunity.

Mr. KALLIS. Is your Honor deferring your ruling on these inter-office communications?

The COURT. Yes, I don't know what they are; I haven't any idea what they are.

Mr. COCHRAN. If the Court please, it seems to me that—I naturally know the Court wants to examine them, but I am satisfied that counsel will tell your Honor that each and every one of these documents which are now offered are communications between some representative of the distributor at one place, the home office we will say, and another representative of that same distributor in another place, statements that they made, and this one which they finally identified as Plaintiff's Exhibit No. 380 is a document that is not covered, not even covered by the stipulation, but it doesn't appear to be signed by anybody; it is just a statement, a typewritten statement, without a
2031 signature of anybody on it at all. Now, as I have stated, these documents, except as they differ in their content, are identically the same kind of documents that they have repeatedly offered in evidence in this case and on which lengthy arguments have been made.

The COURT. Let me ask counsel, are these exhibits that you have just offered, are any of these exhibits addressed to or signed by any of the defendants now on trial?

2032 Mr. KALLIS. No, your Honor. I don't think any one of them is.

The COURT. The objection is sustained. Exception is allowed. They are in the record now.

Mr. KALLIS. I don't recall, your Honor. I may be wrong about this, that any of those were offered in my presence before we adjourned. If Judge Cochran says they were he may be right on it but I would like to make a showing with reference to the law if your Honor would be so inclined.

The COURT. Yes, I will hear you but I think it is a fundamental rule of evidence that a statement between two disinterested parties would not be binding on a party to an action. Of course, you can do this: It might be simpler to do it this way. You have this in the record now and you can cover it in your brief, and if the court is of the opinion that they are competent evidence they can be considered in the decision of the case. You can cover that in your brief.

Mr. KALLIS. I might say briefly in passing this question was specifically raised in the American Tobacco Company case, which was decided by the Sixth Circuit last December and the Court held those inter-office communications were competent and that the reception of them by the
2033 trial court was perfectly proper. The Hartford-Empire case, with which your Honor is familiar, was tried very largely, if not almost completely on the basis of documentary evidence, much of which was inter-office communications, and that decision was affirmed by the Supreme Court of the United States.

The COURT. The company in that case was a party defendant.

Mr. KALLIS. Yes, that is true, but in this tobacco company case some of the communications, as I understand, were between persons employed by the defendant company but not mentioned as defendants in that case.

The COURT. But they would be the agents of the defendants. Here is the situation. You have this action dismissed as to everybody except the Griffith Amusement Company, Consolidated Theaters, R. E. Griffith Theaters, Incorporated, Wes-Tex Theaters, L. C. Griffith and H. J. Griffith. They are the sole defendants in this case.

Mr. KALLIS. My contention, which Judge Kime is prepared to argue is, that these companies, producing and distributing film companies, were actual conspirators and their declarations and admissions in furtherance of the conspiracy would be perfectly competent.

The COURT. Yes, but they are not parties to this suit.

Mr. KALLIS. Even those persons who have been named as conspirators are not parties to the suit. Judge
2034 Kime is prepared to argue the matter. That very question was specifically raised in this district, the Western District of Oklahoma, before Judge Cotteral, and he held thoroughly consistent with our contention and was affirmed by the Tenth Circuit, or the Eighth Circuit at the time.

Q. What was the case?

A. Isenhouer against the United States, and Judge Kime has gone into that question a little more in detail, and I would be very glad for him to present his authorities.

The COURT. Would you prefer to do that or present it in your brief?

Mr. KIME. We would very much prefer to cover it at this very moment because I believe I have seen that doubt in your Honor's mind as to the absence of a particular party.

Mr. COCHRAN. May I make one statement before he leaves this argument. In answer to the proposition that none of these exhibits has been presented, P–86 was offered in evidence at page 1246 and it is inter-office correspondence with Paramount, and after several different arguments by Mr. Wright, the Court asked him to submit his authorities and then after that to submit a list of authorities. A list of authorities was submitted by both of us, and this question of conspiracy was gone into, and we took the position that the cases Mr. Wright was relying
2035 on and that these gentlemen were relying on, were not in point for two reasons. One was that in some of the cases the parties who made the statements were parties to the suit and other cases where they were admitted in the absence of the party there was evidence upon which the court concluded that the party making the statement was established to be a member of a conspiracy by evidence aliunde, these declarations, and therefore they were competent. It is an entirely different situation. Here there is no evidence to warrant it.

The COURT. Very well, I will hear you.

Mr. KIME. In one of the leading cases, that of Clune versus United States, 159 U. S. at page 590, Clune and Johnson and others were indicted for conspiracy to obstruct the passage of the United States mail, and the Government was attempting to establish a conspiracy by circumstantial evidence. It appears that other parties than those named were conspirators, and evidence was admitted of their actions and declarations. This was objected to on the ground that they were not parties to the record. The court, through Brewer, J. held that was not error and saying that if they were conspirators that the evidence of their acts and declarations in carrying out or attempting to carry into effect this conspiracy, was competent. An-
other outstanding case on this point, Hitchman Coal
2036 & Coke Company versus Mitchell, 245 U. S. 229 decided in 1917, this being on the equity side of the court and the same result was reached as had been reached in the Clune case just cited. The coal company sued cer-

tain citizens of Ohio and other non citizens in the state of West Virginia, including John L. Lewis and William Green of the then small United Mine Workers of America, and named as defendants, still others who were not served with process, for conspiracy to unionize the mines and prayed for an injunction. Hughes, named as a defendant, but not served, was sent into the Hitchman territory to organize these mines. Hughes talked to many of the miners in an effort to get them to break the contract that they had, and individually entered into to work for the coal company. One of those testified that he agreed with Hughes to break his contract with Hitchman Coal Company to further the conspiracy. Others testified as to Hughes' declarations in furtherance of the conspiracy. These declarations were corroborated by what actually happened. The court concluded it was not necessary that all co-conspirators be made parties to a civil action and said at page 249 of that volume, "The facts we have recited are either admitted or else proved by clear and undisputed evidence and undubitable inferences therefrom. The proceedings of the international and sub-district conventions were shown by the introduction of official
2037 verbatim reports, properly authenticated. It is objected that these proceedings, especially in so far as they include the declarations and conduct of others than the answering defendants, are not admissible because the existence of a criminal or unlawful conspiracy is not made to appear by evidence aliunde. The objection is untenable. In order that the declarations and conduct of third parties may be admissible in such a case, it is necessary to show by independent evidence that there was a combination between them and defendants, but it is not necessary to show by independent evidence that the combination was criminal or otherwise unlawful. The element of illegality may be shown by the declarations themselves. The rule of evidence is commonly applied in criminal cases, but is of general operation indeed, it originated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them." And citing a long list of cases.

The COURT. That is true after the establishment of a conspiracy.

2038 Mr. KIMB. That is right, your Honor.

The COURT. But you must establish a conspiracy by competent evidence before it would be binding on the conspirator.

Mr. KIMB. That is right. Now, if your Honor believes that a conspiracy has not been established here, prima facie, why there is not much need to go further, but I think after the citation of these authorities there may be such a doubt in your Honor's mind you will want to at least examine the matter a little bit further. Many of those cases are cited by the Supreme Court by Judge Brewer in the Hitchman case.

The COURT. What was that last case?

Mr. KIMB. Hitchman Coal & Coke Company versus Mitchell and others. Among those cases cited was the case of Connecticutt Mutual Life Insurance Company versus Hillman, 188 United States. This was decided at the conclusion of the court's statement in the Hitchman case at page 249. Reading further the court says:

"Upon a kindred principle, the declarations and conduct of an agent, within the scope and in the course of his agency, are admissible as original evidence against the principal, just as his own declarations or conduct would be admissible." (Citing cases.)

The COURT. I don't think there is any question 2039 on that.

Mr. KIMB. And the court proceeds: "And since the evidence of Hughes' agency is clear and undisputed—that as the representative of a voluntary association of which the answering defendants were active members, and in the execution of a purpose to which they all had given consent and in which some of them were actively cooperating, he was engaged in an effort to organize the coal mines of the Panhandle District—" that is what they call that district there in West Virginia—"it is equally clear that his declarations and conduct while doing so are evidential against the defendants." That is the conclusion of the court's remarks.

The COURT. His principal was one of the defendants, was he not?

Mr. KIMB. Your Honor is anticipating me just a little. I will come to that in a moment if you will permit me.

The COURT. Very well.

Mr. KIMB. Two years after the Hitchman case in 1917, in 1919, your Honor's predecessor, Judge Cotteral on this bench decided a criminal case to the same effect, and the Circuit Court of Appeals affirmed that, citing the Clune

case, the first case I mentioned as authority for his decision.

2040 The COURT. What is that case, the Isenhour case?

Mr. KIMP. Isenhour and others versus United States, 256 Fed. 842. Now we know of no decision which has overruled, modified or disturbed this case. Isenhour and others were convicted of conspiracy to prevent, hinder and delay the execution of the Draft Act of World War I. The Working Class Union, an extensive organization in this district, claimed to have the support of the I. W. W. Your Honor knows what the I. W. W. was. I assume you will take judicial notice of that. The proof showed the defendants to be members of the Working Class Union. Notes were sent to two deputy sheriffs telling them to leave the country or incur bodily harm. These were signed I. W. W. It was argued the admission of these notes was error. Judge Hook, speaking for the court, said at page 843:

"While it was not shown that the accused personally sent the threatening notes or participated in the assault, there was substantial evidence tending to show that the acts were committed by members of the organization to which the accused belonged, and were in aid of and to carry out its unlawful objects. One of the methods of the organization was to impose the will of its members upon the community by threats and physical violence. There was also proof that the acts in question had relation to the common purpose of defeating the observance and enforce-

2041 ment of the provisions of the Draft Act, including the proclamations and regulations in aid thereof. It is an old rule that, when a conspiracy has been shown, the act of one conspirator in furtherance of the common purpose is evident against all; and this is so, though the conspirator committing the act was not a defendant in the case being tried," and citing the case of Clune versus the United States.

2042 A few months later in the same year another draft act case was tried in the Western District of Oklahoma with Judge Neblett presiding, wherein certain persons were convicted of conspiracy. On appeal this was likewise affirmed by Carland, Stone and Elliott with an opinion by the latter, (Reeder v. United States, 262 F. 36), decided in 1919. The court followed and relied upon the Isenhouer and Clune cases discussed above. There one Wright, a co-conspirator and several others who had attended several meetings, testified as to what the indicted conspirators and others said and did. And the court said at page 44:

"The Court refused to strike out and take from the jury testimony which defendants say was practically an assumption that the organization known as W. C. U., which was the working class union, and I. W. W. were and are illegal and outlaw organizations, without proving same by competent evidence. An examination of this record discloses that all of this testimony had relation to the common purpose of violating the provisions of the statute, the proclamations, and regulations as charged, and that these organizations were working with defendants in the carrying out of the intents and purposes of the alleged conspiracy. A conspiracy had been shown, and these other organizations entered into that conspiracy. An act of such organizations in furtherance of the common purpose is evidence against
2043 all co-conspirators; and this is so, though the conspirator committing the act was not a defendant in the case being tried, citing, Clune v. United States, and Isenhouer et al. v. United States."

Continuing, "That the plans and purposes of these defendants were not consummated is due to no fault of theirs. It is clear that the organization of which they were members had for its purpose the violation of the statutes of the United States in question. It is equally clear they were each of them active in the formation of this organization, with a full understanding of its unlawful purpose and cooperated toward effecting its object."

The next case was in 1927, where the Ninth Circuit held to the same effect in Green et al. v. United States, 19 F. 2d 850, in affirming a conviction of conspiracy to violate the National Prohibition Act. The captain of a boat hauling liquor into this country, who was not on trial, made a statement to law enforcement officers to the effect that the boat had gone to American waters, loaded liquors, and then gone to Canadian waters to await darkness to bring her into the United States. This was objected to on the theory it had no purpose or tendency to promote the objects of the conspiracy. The court overruled the objection and told the jury that it was only to be considered against any of
2044 the defendants if a conspiracy had been established to which this Captain was a party. The Captain's statements were but corroborative of other witnesses received without objection.

Then the Court said: "At the close of the trial the defendants moved to withdraw from the consideration of the jury the ninth overt act for want of competent evidence to sustain it. The motion was denied, but the court instructed the jury that statements by any of the defendants, either

to officers of the law or others not involved in the conspiracy, not made in furtherance of the conspiracy, were to be considered as evidence only against the parties making the same, and if such parties were not then on trial the jury should disregard the same. If there was error in that instruction, it was error in favor of the defendants, for evidence had been received tending to connect Rhodes with the conspiracy charged, and, such being the case, his acts or the declarations were admissible. That he was not on trial with the other defendants was immaterial. Citing Clune v. United States, the Isenhouer case, the Reeder case, and two others.

The COURT. In that connection, do you take the position that his testimony would be competent if it were not shown in advance that he was a member of the conspiracy?

Mr. KIME. If a conspiracy had not been established?

2045 The COURT. Yes, sir.

Mr. KIME. That's right. Now, in 1924, the Supreme Court again had this same subject before it, in Delaney v. United States, 263 U. S. 586, Justice McKenna deciding a case of conspiracy to violate the Prohibition Act held that the declarations of a dead conspirator was competent evidence against the other conspirators. Cited as authority for this holding are three very interesting cases from both factual and legal standpoints. The oldest of these, American Fur Company v. United States, 2 Peters 358, is an opinion by Justice Washington, decided in 1829.

The COURT. We might have just a little clearer understanding. This Court has taken the position, and has ruled, he has tried some 50 or 60 of the most important criminal cases that have been tried in this Court in the last 15 years, and the consistent holding of this Court has been, and it has been sustained throughout the Courts, that before a statement establishing an overt act becomes competent, the conspirator must first have been established.

Mr. KIME. That's right, your Honor.

The COURT. Then, any statement of any conspirator, whether by a member or not, would be competent.

Mr. KIME. That's right.

The COURT. But his testimony would not be competent to establish the conspiracy. A conspiracy is not

2046 established by overt acts. First, the agreement must be established, then the overt act to carry this agreement into effect completes the offense.

Mr. KIME. Your Honor please, you are anticipating me again. I can only do this best in one way, and I have that point covered and will get to it in just a moment.

The COURT. All right.

Mr. KIRK. In this case the district attorney testified, the district attorney if the Court please, testified to acts and declarations related to him by an agent, not a party, of one of the defendants. A clear exposition of the law is found at page 365 of that volume, where the Court says:

"For we hold the law to be, that where two or more persons are associated together for the same illegal purpose, any act or declaration of one of the parties, in reference to the common object, and forming a part of the res gestae may be given in evidence against the others."

Also cited by Justice McKenna in the case of Nudd et al. v. Burrows Assignee, 91 U. S. 426, where the court quotes the above language from the American Fur Company case as decisive of a similar question. Here declarations of a conspirator, not a party to the suit, were allowed, objected to and assigned as error. The court said among other
2047 things, including the quote above referred to, "In general, the rules of evidence are the same in civil and criminal cases." Presuming that a proper foundation of concert and conspiracy had been laid at the time the declarations were offered, the court said, "The declarations were competent to prove the whole case against" the declarant.

The third case cited by Justice McKenna is that of Wiborg v. United States, 163 U. S. 632, involving a secret combination to "set on foot and provide and prepare the means for a certain military expedition and enterprise to be carried on from thence against a foreign prince." After quoting the above language of Justice Washington from the Fur Case the court said at page 657:

"The declarations must be made in furtherance of the common object, or must constitute a part of the res gestae of acts done in such furtherance. Assuming a secret combination between the party and the captain or officers of the ship had been proven, they, on the question whether such combination was lawful or not, the motive and intention, declarations of those engaged in it explanatory of acts done in furtherance of its object came within the general rule and were competent."

This was a case where there were many who could have been made parties defendant but were not.

In 1927, the Circuit Court of Appeals of the Ninth Circuit again followed the same rule in Madden v.
2048 United States, 20 F. 2d 289. In a conspiracy to violate the Prohibition and Tariff Acts one of the coconspirators, not a defendant, was permitted to testify to declarations and acts of other conspirators.

In another Circuit Court of Appeals case, that of Barkley et al. v. United States, 66 F. 2d 74, 1933, the fourth Circuit follows the general rule, and cites several of the above cases, although it does not appear that the witness testifying was a co-conspirator or that there were other conspirators not named.

I am just giving the Court that because I want to give the Court every case that we have found which we think has any bearing on this.

The COURT. The Court agrees with you absolutely that testimony of any of these as to an overt act would be competent. Here now you have six defendants; you allege that they entered into a conspiracy with somebody else, these exhibitors.

Mr. KIMB. That's right, your Honor.

The COURT. Now, before you can offer evidence of an overt act, you must first establish the conspiracy.

Mr. KIMB. That's right.

The COURT. And the conspiracy can only be established by the evidence of the conspirators, or those acting with the conspirators.

2049 Mr. KIMB. If your Honor please, I am not quite certain that that is exactly as far as the books seem to go. I will get to that in a moment.

The COURT. All right.

Mr. KIMB. In another case from the fourth Circuit that of White et al. v. United States, 80 F. 2d 1935, the same comment as to the Barkley case.

Then we come to United States v. Crescent Amusement Company, et al., 323 U. S. 173, which was a case involving the same type of situation in motion picture industry as the instant case.

In this case at page 184, the court found it was not necessary to decide whether letters and communication of employees and officers of co-conspirators admitted was error, but did say that assuming it was error no prejudice was shown. Here the same defendants were dismissed by stipulation as were dismissed by stipulation in the instant case, as per order of the Court on November 27, 1940.

In one of the last expressions from a Circuit Court of Appeals, that of American Tobacco Company et al. v. United States, 147 F 2d 93, 1944, is to be found only, I believe, in the advance sheet, the court said at page 118:

"We find no error in the introduction in evidence
2050 of testimony and correspondence between a sales representative of one of the appellants and the company which employed him. It constituted admissions on the part

of such appellant, and any act or declaration of a conspirator is admissible against all of them, whether or not they knew of the commission of the act or the making of the declaration. Nor was the evidence of admissions by one conspirator—including statements not based on personal knowledge—inadmissible as hearsay. Citing as authority for that statement, the Delaney case which I have referred to heretofore. At the time the evidence in question was introduced, there was already a prima facie showing of conspiracy, which is all that is necessary as a foundation for the introduction of evidence of acts and declarations of a conspirator, binding on all. Citing as authority for that statement, among other cases, that of Hitchman Coal Company v. Mitchell, and Wiberg v. United States.

Although not appearing on the face of the opinion there were some co-conspirators who were not made parties who testified at the trial.

Now, just a brief statement as to Parties. In In Re Harris, 15 F. Supp. 404, decided, in 1936 by Judge Coleman of Baltimore, the court said:

"The test as to the indispensability of a party rests upon two considerations: (1) Whether without that party a decree could be entered that would do justice between
2051 the parties who are before the court; and (2) whether if a decree be entered in the absence of such party, the interests of such absent party would be unduly prejudiced. In other words, the qeustion is: Can a final decree between the parties before the court be made without affecting the interests of absent parties or leaving the controversy in such a situation that what is done may be inconsistent with equity and good conscience? Citing cases as authority for his statement.

It is respectfully suggested that in the instant case justice may be fully and completely done between the parties before the court and the interests of the dismissed distributors will not be adversely affected nor can it be said that what should be done is inconsistent with equity and good conscience.

When this action was commenced it was the plan of the Attorney General to bring several regional suits along with what is now known as the big case, known as United States v. Paramount, and the other seven distributors involving the v. Paramount, and the other seven distributors involving the eight major distributors and now pending in the Southern District of New York and set for trial on the 8th of October. After Interstate Circuit Inc., et al. v. United States, 306 U. S. 208, which was decided Februarv 13, 1939, had been affirmed against all of the big eight distributors and

2052 with these several regional suits pending with the big case, the distributors suggested that they would agree to abandon certain practices if they were relieved from the inconvenience of defending these several regional suits. It appearing to the Attorney General that the relief necessary could be ultimately had in the big case, the Paramount case in New York, this was agreed to and by stipulation of all the parties, the big eight were dismissed in most of the cases. Under Rule 41 this is a proper course.

Mr. COCHRAN. Judge Kime, your statement in that particular is slightly in error, in that the five who were parties to the consent decree were dismissed at the time the consent decree was entered, but the so-called little three were not dismissed until a comparatively short time back, the Universal, Columbia, and United Artists, in the preliminary trial conference before Judge Vaught.

Mr. KIME. You are correct in the statement that it was not all done at once, and if my statement inferred that it was, I am in error.

Mr. COCHRAN. Also, you are incorrect in saying that the little three stipulated to anything. They were never a party to the consent decree; the dismissal was not pursuant to stipulation; they were just dismissed.

Mr. KIME. I think, if you will look at the order and stipulation, it was signed by the attorney for
2053 the little three, Mr. McKenzie, and the record so shows.

Mr. COCHRAN. But the action was taken after we came down here for a preliminary trial conference before Judge Vaught, and dismissed in his chambers.

Mr. KIME. All I know, Judge, is what the record shows, and the record shows that it was all on one day, by the signature of Mr. McKenzie.

If the Court has any idea that "the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not." • • • "Whenever it shall appear to the court." as per Title 15 Sec. 5, U. S. C. A.

And this is so even where the same defendants have been dismissed from the case without prejudice as was done here, and my authority for that statement is In Re Griggs, 227 F. 795 at 798, decided in 1915.

Now, your Honor no doubt remembers that he has followed, and I only have one case where I am advised that a co-conspirator was dismissed, and the case proceeded against the remaining person, and that is the case of U. S. v. Hiram Edwards.

The COURT. That was in this Court? It was on a plea of guilty?

Mr. KIMM. I understand that it was after a trial had been had.

2054 The COURT. It was on a plea of guilty if I recall the case.

Mr. KIMM. Now, at some time during the recess the defendants filed a memorandum of authorities which I believe we got last Friday or Saturday, and which we have not had the opportunity of reading. I have read all the cases decided in one section of that, and whether or not it was your fault, Judge, I am not insinuating that it was; I am just saying that we didn't get them until Saturday.

Mr. COCHRAN. The brief was served on Mr. Dierker, of the District Attorney's Office, and they are of record in this case, and when we were advised that Mr. Kallis couldn't locate it, we had our stenographer make up two extra copies and furnish them to you.

Mr. KIMM. For which we thank you from the bottom of our hearts.

The COURT. You have cited a great many cases here, and the Court doesn't want to take the time now to read all these cases. I wouldn't have time to try the case if I did, but I suggest that the ruling of the Court be made——

Mr. KIMM (interrupting.) Will your Honor——

The COURT (interrupting.) I will permit you to raise any of these questions in your brief and argue it at length, and any ruling will be without prejudice to

2055 having the matter considered at the end of the trial.

Mr. KIMM. Will your Honor permit me to refer to one or two other cases?

The COURT. I will be glad to.

Mr. KIMM. As I started to say, in this memorandum of authorities on that section dealing, headed "Relating to Conspiracy," at Page 14 of that section we find this language after the citation of several cases:

"From the foregoing cases it is well settled that declarations, oral or written, of an alleged co-conspirator who is not a defendant, are not admissible in evidence until the existence of a conspiracy has been established, at least prima facie, by independent evidence."

That is the first statement, and with that we are in absolute accord. Then, the second sentence:

"Assuming that such proof has been made, it is further necessary to establish, before such statements can be admitted, that the declarations were made during the existence of the conspiracy and in furtherance of the objects

and purposes of the conspiracy, and were made as a part of the res gestae."

With that we are in agreement. Then the third sentence:

"The statements cannot be considered in determining whether the evidence is sufficient to establish the
2056 existence of a conspiracy. That proof must be made independently of the statements."

Now, with that statement, we are not in absolute accord. This third sentence is not absolutely correct, because statements can and should be considered where evidence has been produced from which the joint assent of the defendants, and one or more persons may reasonably be inferred. After this has been established then any subsequent act or declaration of one of the parties in reference to the common object may be given in evidence against one of the others who has consented to the enterprise. And that comes from the case of Ware v. United States, 154 F. 577, which is another Eighth Circuit Case.

2057 That statement of law is sustained also by another Eighth Circuit case of Brake versus Stewart, 76 Fed. 140, at page 142, which is cited as authority for that statement of law made in the Ware case, both of the cases being decided by Judge Sanborn.

The COURT. Judge Sanborn is an authority so far as this court is concerned on the question of conspiracy. I think the strongest opinions that have been written by any Federal Court on the subject of conspiracy have been written by Judge Sanborn.

Mr. KIMB. I think those two cases will sustain the statement I have just made. Now we find that one of the cases from which this third sentence may have been taken is that of Winchester and Partridge Manufacturing Company versus Cleary and others, 116 U. S. 161 where they quoted, or where defendant's counsel quoted at page 15 of this section on conspiracy a paragraph from that case. Now in this Winchester case it appears that one John A. and Joseph W. Webb were doing business as John A. Webb Implement Dealer with, among others, the Winchester and Partridge Manufacturing Company and the J. E. Hayner Company. They sold in bulk and the Webb and Company being insolvent, and knowledge of such insolvency being had ben Hayner & Company and Winchester and many others, if not all of their creditors. After the
2058 sale Winchester took possession through their agent Spaulding. This suit is against the levying officer.

There is no evidence of conspiracy except such as might be inferred from declaration of John A. Webb and the agent Spaulding after the sale was consummated and after the conspiracy had achieved its purpose. It was contended Webb's declarations after the conspiracy was over were admissible to support the conspiracy charge. The court held not, saying in effect, that such declarations were not admissible unless the conspiracy has first been established by independent evidence, and unless they are so related to the execution of the conspiracy as to be part or a continuation of the conspiracy itself.

Now with the defendants admitting all of the law, with that slight correction, we now move to reoffer all of the testimony of this character, and further, in the event the court should decide it might be undesirable or inadvisable to bring in these defendants who have been dismissed, to call these witnesses back who have appeared and whose testimony was rejected and submit them to cross examination.

The COURT. As to this offer, the objection will be sustained without prejudice to further consideration in the final argument and briefs. In other words, if the court errs on any of these questions during the trial,
2059 these are in evidence, the evidence is here and will be part of the record, and the court reserves that right to give them further consideration. If wrong he wants to correct it, and so far as the motion is concerned to make these parties defendants, the court prefers to try the case just as it is presented to him.

Mr. KIME. We are not making a motion that be done. I am just suggesting that under the statute you may do that at any time you so desire.

The COURT. The motion is overruled. Exception allowed.

Mr. COCHRAN. Do I understand, as the record now stands, the objection which the defendants make to the exhibits which have been offered here is sustained?

The COURT. Yes, sir.

Mr. COCHRAN. And the motion to admit those exhibits, to which an objection has heretofore been sustained, is overruled.

The COURT. It is. However, the court is permitting these matters to go into the record because after examining these exhibits, the court might change his mind. The court has not had an opportunity to read them. There might be something in there that would impress the court that they

are competent for some reason and that is why I am making this reservation.

2060 Mr. KIMR. Now we are ready to rest with the exception of this one witness whom we are now advised is on his way here and rapidly nearing here and will probably be here by tomorrow if his tires hold out.

The COURT. Can you indicate what his evidence will be?

Mr. KIMR. Mr. Kallis is more familiar with what he will testify to than I am and I would rather he answer you.

Mr. KALLIS. I understand, your Honor, that this witness will testify substantially as Mr. Benedum did this morning on direct examination with regard to a discussion he had with Mr. H. J. Griffith concerning the sale of the Oklahoma Theater to the Griffith organization, and the statement that if no deal was made Griffith would construct a theater in Norman and take away the product which Mrs. Berry had at her theater. I understand that is substantially what this witness will testify to in addition to interviews which he had in New York City with Mr. Rogers, whom I think is vice-president and general sales manager of Metro, and a man by the name of Gould, whom I think is an official of United Artists, and I believe it was Mr. Depinet, but I am not sure as to that, one of the officials of RKO, with reference to the purchase of product, and that these three film executives in New York City

2061 told Mr. Leatherman, who was then acting in behalf of Mrs. Berry's theaters in Norman, Oklahoma, that they were powerless to act because their hands were tied. Now on the basis of the information that has come to me I understand that is in substance what Mr. Leatherman's testimony will be.

The COURT. The reason I asked is so that the defendants may know what to expect. I see no reason why the defendants cannot proceed and give you an opportunity to offer that when the witness arrives.

Mr. KALLIS. I am extremely solicitous your Honor does not construe my statement as being an unequivocal and unconditional offer of proof because really I haven't had an opportunity of having an adequate discussion with Mr. Leatherman.

The COURT. We understand that.

Mr. KALLIS. Of course, we do have an understanding that when Mr. Caskey arrives from New York that we may have the opportunity of offering the material which he will bring with him.

The COURT. Very well.

Mr. KIMR. There is another thing that just occurred to me, your Honor. Mr. Rice has some material prepared

which is similar to that testimony elicited from the witness McKenna with relation to the acquisition and building and so forth of theaters, and in order to produce
2062 that by witnesses he would have to have three witnesses. We want to reduce that to some form whereby it will not be necessary to produce those witnesses. I think we can do that.

The COURT. By stipulation.

Mr. KIMM. Something in the nature of a stipulation. Of course, we could not stipulate that those facts are true.

The COURT. You can stipulate if those witnesses testified they would testify to that.

Mr. KIMM. That is right.

Mr. RICE. That will be considered a part of the record, as far as the defendants are concerned.

(Hereupon, court adjourned until 10 o'clock a. m., September 12, 1945.)

2063 PROCEEDINGS

Sept. 12, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. KIMM. If your Honor pleases, yesterday when I mentioned the Hiram Edwards case, your Honor indicated he had pled guilty. In 113 Fed. 2, 286, at page 288 the court, through Judge Bratton says, among other things, that the 11th count charged the formation of a conspiracy to violate the provisions of the Security Act, and the Mail Fraud Statute. That opinion was handed down on June 29, 1940. The record in the clerk's office here shows that Binger, who was the other conspirator, had been dismissed on January 29, 1940. That case went to the Supreme Court and Mr. Justice Reed says: "This case is here upon the affirmance by the Circuit Court of Appeals of the sentence imposed after a plea of nolle contendere", and says further at page 475, "The eleventh count, a conspiracy to commit the offenses previously set forth." Then that came back to this court and he was tried again and it again went to the Circuit Court of Appeals, reported in 131 Fed. 2nd——

The COURT. In the first case there was a trial on the plea of nolle contendere and later, some months after that, after he was sentenced, the execution of the sentence
2064 was delayed on account of his physical condition. He filed a motion then attacking the indictment and it went to the Circuit Court of Appeals on a question of law as to whether or not the indictment stated an offense.

Mr. KIMM. That is right.

The COURT. It had nothing to do in that case with the introduction of evidence.

2065 Mr. KIME. The point I was citing, in this case, it was not necessary to have all of the co-conspirators as defendants in the action before the Court.

The COURT. I think that's true, but the question there arises, if a man is a defendant, if a co-conspirator is a defendant, his testimony might be competent, while if he were not a defendant, it would not be, because he is not in the case. It certainly wouldn't be binding on the other defendant, unless you had established your conspiracy.

Mr. KIME. That's right; there is no doubt about that. Then this last case from 131, Justice Bratton again, among other things says that a plea of guilty was entered. That was in the second trial.

The COURT. Yes.

Mr. KIME. And the co-conspirator had been dismissed in 1940.

The COURT. But he entered a plea in that case.

Mr. KIME. He entered a plea of not guilty.

The COURT. Yes, and that was withdrawn, and he entered a plea of guilty. There never was a trial in the Edwards case.

Mr. KIME. Well, I haven't examined the record, and what your Honor says is all right with me; all I can go by is what the Court said in the books.

The COURT. I might be mistaken, but I am satis-

2066 fied there was no trial in that case. Very well, you may proceed, gentlemen.

Mr. KALLIS. If the Court please, I want to make a motion at this time with respect to some written interrogatories that were served, one set yesterday in open court by Mr. Griffing, and another set on August 31st about 4:30 in the afternoon, which was on a Friday, being followed by Saturday, Sunday and Monday, which were not working days, in the Department of Justice, and August 31st, September 1st, and September 2nd, I believe, were the three days involved, with respect to written interrogatories to be taken of two particular film executives in New York City. I stopped in to say goodbye to Mr. Wright about 5:30 on August 31st, and he handed me a letter from Mr. Griffing with a copy of these written interrogatories that he served on Mr. Neal F. Agnew, and I left the following evening for Oklahoma City, and as soon as I arrived here I told Mr. Griffing the circumstances as I have just related them to your Honor, and that in the very nature of the situation it would be necessary to have additional time in which to serve written cross interrogatories, and Judge

Cochran and Mr. Griffing were very courteous and kind in granting us, incidentally, without bickering, an additional five days. So that notice to take written cross interrogatories on Mr. Agnew could be served by the end
2067 of September 15th. Now, I spent perhaps a whole day, 12 or 15 hours, in preparing a set of written cross interrogatories to those to be answered by Mr. Agnew in response to those which counsel for the defendant had drawn to be answered by Mr. Agnew on written interrogatories, and I sent them to Mr. Wright, Special Delivery Air Mail, for his comments and suggestions, and views, and talked with him last night at about 11:00 o'clock Oklahoma time, which is an hour later in Washington, and I am afraid I aroused him out of bed, and we discussed the matter, and he said he had been spending a great deal of time trying to frame a satisfactory set of cross interrogatories to those submitted by the defendants, with respect to Mr. Agnew. He had not at that time known that the same procedure was being followed by the defendants with reference to Mr. Paul Lazarus of United Artists.

2068 Mr. GRIFFING. Yes, sir.

Mr. KALLIS. Of United Artists, and under the circumstances I now move your Honor to enter an order that the depositions of Mr. Neal Agnew and Mr. Paul Lazarus be not taken on written interrogatories with special reference to certain of the interrogatories that counsel have to be answered by those two prospective deponents, and that, the testimony of Mr. Agnew and Mr. Lazarus be taken on oral depositions at any convenient place in the United States convenient to the parties concerned, or upon their oral examination in open court, and this motion is based, first, on the inherent character of several of the written interrogatories to be submitted to those two prospective deponents, and the impossibility of framing satisfactory cross interrogatories, and secondly, the motion is made pursuant to the Federal Rules of Procedure which expressly provide for the kind of order we are asking your Honor to enter in similar situations, and the interrogatories are rather involved, 36, with respect to Mr. Agnew, and approximately the same number, I believe, to be answered by Mr. Lazarus, and your Honor may see fit to read these written interrogatories and decide for yourself, or I can call your Honor's attention to those which particularly require answers on cross interrogatories.

The COURT. What are the ones you are objecting to?

2069 Mr. KALLIS. Interrogatory No. 8. I am now directing my attention to those which were to apply to Mr. Agnew. Interrogatory No. 8 reads as follows:

"State generally the several steps which were taken by your company in ascertaining the number and kind of feature pictures which would be licensed for a particular season and in determining the policies of the company for a particular season."

My comment with regard to that is this: I do not know specifically what Judge Cochran and Mr. Griffing have in mind with regard to the word "generally", nor do I know exactly how Mr. Agnew in answering this question, if he did so upon a written interrogatory, would construe the word "generally", and therefore, his answer might be unusually specific and detailed with regard to the whole industry, taking a broad view of it, or very narrow and confined, and whether or not we should submit to him cross examination in the form of cross interrogatories, would depend entirely on how he would answer this question. We cannot say how he would answer the question, therefore, we are not sure just exactly how to frame a written cross interrogatory to that question.

The next one is No. 9.

"Thereafter what was done in the matter of licensing the pictures to exhibitors throughout the country?"

2070 Your Honor, I am sure, will agree that that question is extremely general in its character and there have been a myriad of details concerning the licensing of films which have already been called to your Honor's attention, and again I submit that it is impossible for us to foresee the kind of an answer which Mr. Agnew would give to this question because of an interpretation he might give to it, concerning which we might not be able in advance to prepare a written cross interrogatory to that question, which would serve the purposes of the Government and the enlightening of the issues in this case.

The COURT. What is the objection to taking the depositions of those two men?

Mr. KALLIS. I might say this by way of Judge Cochran's favor. They served us with notice of us taking depositions of several witnesses, I believe about ten, to be taken in New York City on July 16 and 17. I do not remember that Mr. Lazarus was on that list. He may or may not have been. I do remember very distinctly that Mr. Agnew was on that list. I will say for Mr. Griffing and Judge Cochran that they tried, in my presence, in quite a few in-

stances to locate Mr. Agnew for the purpose of having him come to the place where the depositions were to be taken so that he could be examined upon oral interrogatories and oral cross examination. I would assume
2071 from what I know of the situation that they have been diligent with regard to Mr. Agnew. I cannot say that about Mr. Lazarus. I just don't recall the name. Judge Cochran and Mr. Griffing will tell you likewise we were extremely eager to have Mr. Agnew there, particularly with reference to certain testimony which was offered by the Government in this case, and with reference to certain exhibits which were actually received by your Honor and certain exhibits which were not received by your Honor, and I think it is an unfortunate situation that Judge Cochran and Mr. Griffing and Mr. Rice and I were not able to conduct this examination in New York City, but Mr. Agnew is an important witness, and it is just impossible to do justice to the case and to serve the purposes which the Government has in mind without the oral cross examination of Mr. Agnew.

2072 Mr. COCHRAN. If the Court please, there is no reasonable basis for this motion whatever. After we adjourned the last time, the defendants served notice on the Government for the taking of the depositions in New York City of certain men who had held high executive positions with these various distributors during the period that is involved here. Among the persons who were named in that was Mr. Neal Agnew, who during most of the period involved was general sales manager for Paramount Pictures, but who has not been with that company for some time, and is not connected with any of the defendants, or any of the parties who were defendants in this case. He is now connection with the promotion, I think it is, of the sale of pictures, foreign pictures through Selznick, or something of that kind. Anyhow, he is not with Paramount or any of the distributors who were named in this case, or anyone who was in business at that time.

Mr. Griffing and I called on Mr. Agnew and he gave us a conference. We found that his health was somewhat impaired, but nevertheless, he was working at his new job as much as he could. We arranged for certain dates for the taking of these depositions in New York City, two weeks; we set up the dates; we set up a date for Mr. Agnew. On that date Mr. Agnew's office 'phoned and advised that by reason of certain business developments that he could not come that afternoon, but he most
2073 assuredly would be present the next morning. My recollection is that the date we fixed was the day

before or two days before we had made our reservations to try to come back to Oklahoma City. You will recall that during that period travel was very difficult, I don't know how it is now, but it was practically impossible to get reservations. We had made our reservations and had set up this schedule in order to meet those reservations. So when he said he would assuredly be present the next day, we arranged to take it the next day, we appeared at the place where the deposition was to be taken, and Mr. Agnew's secretary advised us that he was sick at home and couldn't possibly be present.

We then discussed with Mr. Wright, and Mr. Wright had been anxious to get away as quickly as he could because he said he was busy trying to do things that had to be done in the case pending in New York City, we discussed with him what should be done, and Mr. Wright suggested that we go ahead and submit interrogatories for the taking of Mr. Agnew's deposition, and he went further and said "Any of these other parties whose depositions you haven't been able to take, go ahead and do that."

Mr. Lazarus was during this period, I believe his title was the contract department, head of the contract department, or something of that kind for United Artists; he had been in that position for a number of years.

2074 We were not able to use Mr. Lazarus at that time for the reason that the contracts or the cut-off cards as they call them, or records for some of these situations that we wanted the information in regard to, were not available there in the home office, and they set about to try to get those in before we left, and they hadn't been received.

So those interrogatories were prepared, as I have said and Mr. Wright was entirely agreeable to the matter of taking them on interrogatories, and avoid the necessity for him coming back, and avoid the necessity for us coming back. And that statement was made in the presence of Mr. Caskey, Mr. Griffing and myself, and Mr. Kallis, I believe, was present at the time.

Mr. KALLIS. On that last statement to the Court I was not present.

Mr. GRIFFING. You were not present.

Mr. KALLIS. I wasn't present.

Mr. COCHRAN. I am sorry you were not there.

Mr. KALLIS. The first time I knew there was any such arrangement between Mr. Wright and Judge Cochran was just a minute ago when he mentioned it.

Mr. COCHRAN. Those interrogatories followed the same general lines that were followed in the examination of the

number of witnesses who were examined on that occasion.

In addition to that, so far as the Government not
2075 being able to prepare other interrogatories, the Government has very definite theories in regard to what each one of these distributors did, that it ought not to have done. Our questions call for the statements of those witnesses in regard to the method that was used in the licensing of the product and the selection of customers. Counsel can follow the same method of examination that he did with each one of these other witnesses. In addition to that, as I say, they know the particular matters to be arrived at in asking the interrogatories. As to the exhibits that counsel refers to that he wants to produce by Mr. Agnew, he has those photostated, and they have been tendered in evidence, so there is no occasion for taking the oral examination or requiring us to go to the expense and trouble of going back to New York to take the depositions. The rules give you the discretion.

The COURT. What is the rule?

Mr. KALLIS. Rule 31–D reads as follows. your Honor, I will read the whole thing, or does your Honor have it?

The COURT. Yes, sir.

Mr. KALLIS. Rule 30–B and 31–D I would say are the two sections of the rules which we have in mind.

Mr. COCHRAN. Your Honor, if we hadn't had that understanding with Mr. Wright, regardless of our reser-
2076 vations, we would have stayed. We would have had those continued for thirty days; we would have stayed and had a subpoena issued and brought and made those parties come in, but he realized at that time, we thought he realized, and we certainly realized that with the type of examination that we were having and the field having been covered by these several other witnesses, and with the thorough knowledge that the Government has in regard to the methods that were used by each one of these companies by reason of their investigation, not only in this case, the Schine case and the Crescent case, but also the Paramount case in New York, there is nothing that they can develop on their cross interrogatories, and it is just an unreasonable hardship to require us to go back to New York to take these depositions.

Mr. KALLIS. I don't think it would be necessary, your Honor, for Judge Cochran or any of the attorneys associated with him to make the trip to New York. I think there are certainly plenty of able lawyers there who could conduct the matter, if they wanted to, and just submit these very same questions to Mr. Agnew and Mr. Lazarus, and then some representative of the Government could

make specific objections to improper, incompetent, irrelevant, and immaterial and hearsay questions or questions calling for hearsay or conclusions, that are beyond the power of the particular witness to answer, and which
2077 really invade your Honor's province in deciding the ultimate facts in this case, which we submit some of these questions do. They go to the very root of some of the very basic questions to be decided by your Honor, and there is no reason why, if they wanted to, they could submit the very same questions orally, subject to our right to make the proper objection, and to ask these witnesses orally on cross examination certain questions which we have in mind.

The COURT. Well, gentlemen, it seems to me that this arrangement was agreed upon between Mr. Wright and Judge Cochran. It is unfortunate that the situation arises like this, but I don't put the same construction on the question that is asked that counsel does. I don't see anything difficult about it. I think the word "generally" has a very definite meaning. The motion will be overruled.

Mr. KALLIS. That is not the only one. I was in the process of reading all the questions, your Honor.

The COURT. The motion is overruled and exception allowed. I don't care to go into the questions. If they are not proper, when they are submitted objections can be made to them. The Court is not going to consider them if they are not material and if they are not competent. But there is no need of spending the time over the construction of a word. I have had long arguments on what the word "now" means, and the word "immediately" means;
2078 the different constructions. It has but one meaning, and the ordinary layman understands it. Now, I think on this question you have asked on what was generally your procedure in the distribution of your product, that is a very proper question. Certainly if there is any part about it that you want to enlarge upon by your cross interrogatories, it can be done.

2079 Mr. KALLIS. There are other questions which we think are of such a nature that proper written cross examining interrogatories cannot be framed, proper and sufficient and satisfactory cross interrogatories cannot be framed, and I will be very glad to submit those to your Honor.

The COURT. You cannot frame a cross interrogatory? I am not going into the merits of the questions themselves. It is merely a matter of general procedure. You had this understanding to proceed in this matter and if they are difficult that can be raised later when the questions are submitted to the court.

Mr. KALLIS. As I said before, I am not disputing the statement which Judge Cochran made with respect to an understanding he had with Mr. Wright because I never heard of it until he mentioned it here a few moments ago.

The COURT. I did not assume you were aware of it from your statement.

Mr. KALLIS. Now we have, in addition to those, inter-office communications which I enumerated yesterday, several more, and I ask your Honor's indulgence, in view of your ruling, that you will not receive them, or your present inclination at the moment, to give you a complete list of them by, say the time you adjourn the naturalization hearing this afternoon. What time do you think that will be?

2080 The COURT. I don't think it will take over an hour. I think by 3:30.

Mr. KALLIS. Now, the other matter that is pending is the supplying of the documents pertaining to film rentals. Mr. Caskey is here and I understand he has them. We haven't seen them and I don't suppose, Judge Cochran, there will be any difficulty about submitting those within the next few days.

Mr. COCHRAN. No, we want the evidence in, and so far as submitting them is concerned, I don't know whether they will be competent. The only arrangement in regard to that is this: Mr. Wright, as I recall, told Mr. Caskey that he would like for him to produce certain figures from the various distributors when this trial resumed, and wanted to know if I would raise any objection to the fact that Mr. Caskey simply acquired this information from proper persons, from each distributor interested without having personal knowledge of the matter himself. I told him that we would have no objection to Mr. Caskey giving the information because of the fact that he had no personal knowledge of the matter, but that we would reserve the right to object to the admissibility of the evidence, and we would expect, if that agreement was going to hold for Mr. Caskey to produce that information, that he also would have available for offering under the same kind of

2081 arrangement by us, then, if we desired, the information as to the total revenue received each year by each of these distributors from the licensing of their product as a whole. In other words, this information relates to the revenue which was received by each distributor from the Griffith Companies, versus the amount that was received by each of these distributors from the theaters operating in opposition to Griffiths in certain towns, I believe excluding Oklahoma City, so I wanted Mr. Caskey

to be prepared to furnish the figures in the same way of the total revenue received by each of the companies, and also the revenue received by the distributors from all the Griffith operations and opposition in all the Griffith towns and not excluding Oklahoma City. That statement was made and that is the situation it is in, so anything you desire to offer through Mr. Caskey can come up in the regular way. I don't know what Mr. Caskey has.

Mr. KALLIS. I haven't seen it either. In regard to the last remark which Judge Cochran made, about not having these figures, or talks with Mr. Caskey, I am not prepared to say in advance those are over-all figures which Judge Cochran has in mind submitting to your Honor, or are not competent and material.

The COURT. Did your other witness arrive?

Mr. KALLIS. We are prepared to rest right now
2082 with three exceptions.

The COURT. Would you like an opportunity to go over this?

Mr. COCHRAN. Why don't you look over them right now?

The COURT. Would you like an opportunity to go over that?

Mr. KALLIS. You do not object, do you, Judge Cochran, to us submitting this matter at the convening of court this afternoon?

Mr. COCHRAN. Before we start offering our case we want the Government to rest. We have no objection to any time the Court may grant you to look over the records that have been produced here.

Mr. KALLIS. Yes, on that condition we are ready to rest now, aren't we, Judge Kime?

Mr. KIME. No, we can't rest now.

Mr. KALLIS. Unless these figures suggest something we will have to investigate later.

The COURT. We are spending a lot of time on this case and this is an important case to the Government and important to the defendants. I suggest that you take time to look this over. It is now 11 o'clock, approximately, and you go over these yourself and determine whether or not there is anything in there that is objectionable, but
2083 I think your case should be completed before you rest, so we will recess this case until 3:00 o'clock.

(Hereupon, court adjourned this case until 3:00 o'clock p. m. this day.)

2084 PROCEEDINGS

September 12th, 1945, 4:00 o'clock p. m.

The COURT. Do you desire to proceed this afternoon? You were going to check over that matter.

Mr. KALLIS. We are prepared to do that, your Honor, and also to offer the remainder of the inter-office communications. If the Court please, referring back for a moment to the motion I made this morning, with reference to our filing cross interrogatories to the written interrogatories which were submitted with reference to the depositions of Mr. Agnew and Mr. Lazarus, I discussed that matter with Mr. Wright this noon on the telephone and he had substantially the same idea as I had this morning and which I represented to your Honor. He told me he had been spending a great deal of time trying to frame a satisfactory set of written cross interrogatories to those which were submitted and that he found it was absolutely impossible to do so with reference to interrogatories 8, 9, 10, 11, 12, 13, 15, 17, 23, 25, 28, 29, 30, 31, 32 and 33. And he says that as to these interrogatories, and I am referring now only to the interrogatories that were to be answered by Mr. Agnew, because as yet I don't think that he has received the interrogatories which were submitted to me yesterday by Mr. Griffing, and which I mailed to Mr. Wright by Air

2085 Mail Special Delivery yesterday upon receipt of them from Mr. Griffing. So, in view of those circumstances, he feels that we should have the opportunity of seeing the answers which these witnesses make before we are required to submit written cross interrogatories to those which have been answered or will be answered by Mr. Agnew and Mr. Lazarus, and he represents that because of the character of the case and the character of those interrogatories which I just enumerated, we cannot frame a satisfactory written cross interrogatory, and therefore move at this time that we be excused from filing any written cross interrogatories until we have seen the answers that Mr. Agnew and Mr. Lazarus give to the written interrogatories submitted for counsel for the defendants.

2086 The COURT. How much time would you need after the answers to the interrogatories have been filed? We want to get through with this case some time.

Mr. KALLIS. I should think we could do it within two days from the time we receive the answers of these two deponents. One more observation along that line: Mr. Wright did admit that he had an understanding with Judge Cochran with reference to the taking of the depositions of

these two individuals, but he told me that the understanding was only with reference to those questions which had previously been put to Mr. Montague, Mr. McCarthy, Mr. Sears and Mr. Rogers, which were of a routine or historical character, and as to this I understand we do not particularly desire the opportunity of submitting the written cross interrogatories before we see the answers.

The COURT. If you are going to do it on one you had better do it on all.

Mr. COCHRAN. I can't see any reason why these interrogatories, when the rules describe how depositions shall be taken on interrogatories, if these gentlemen in good faith endeavor to cross the interrogatories, and it appears when these answers have been made that they have in good faith attempted to cross them, there are still matters there that the court should have further information on, the court would certainly give further time, but
2087 until that should appear there is no reason why you should have these answers and then permit them to take a shot at that, and then after he has answered that to permit us to take a further shot and so forth. In other words, we go ahead and follow the rule in regard to these matters, then the court will certainly, if there appears to be something that has taken them by surprise, not foreclose the Government, but I know these gentlemen know everything in regard to what Mr. Agnew is going to testify. He has testified in cases of this kind in which Mr. Wright was counsel. He was cross examined as to the matters involved here with the one exception of the Griffith franchise, which certainly they know how to interrogate him about, and there is nothing new or beyond what was involved in the other cases. There is no reason in the world why they cannot proceed. They just simply want to delay this matter——

Mr. KALLIS. If the Court pleases, I think with reference to this matter I have been extremely courteous——

Mr. COCHRAN. I withdraw the statement.

The COURT. How long will it take? Have you filed your interrogatories?

Mr. COCHRAN. Oh, yes. We filed them and their time to answer was up on a certain day. Then they asked for an additional five days which took it up to the 15th,
2088 and that agreement was by stipulation, then they come in this morning with this motion.

The COURT. The court will make this kind of an order. You submit such cross interrogatories as you feel you are able to submit and those that you are not, state your reason

why and the court will give you then an opportunity after the answers come in to submit further cross interrogatories. I want to get this case tried sometime. It has been here a long, long time.

Mr. COCHRAN. As I understand, you give permission to file further interrogatories if they have exercised diligence in the matter of crossing and so forth?

The COURT. But if they say it is impossible to anticipate what the answers would be to the extent they cannot cross examine on that point the court will give them an opportunity to do the very thing they want to do, just in a slightly different way.

2089 Mr. COCHRAN. Now, what are we going to do about submitting these cross interrogatories, what time? Are you going to abide by the stipulation in regard to that and submit them by the 15th?

Mr. KALLIS. I presume, in view of the Court's expression in this matter—I was just going to say that we will try our best to have them ready and submit it to counsel for the defendants by September 15th. That is how many days?

The COURT. This is the 12th. If you would like a day or two more, you can get permission for additional time.

Mr. COCHRAN. Your Honor, I think after any request for the privilege of asking additional questions after the answers have been made, should be presented within how many days after the depositions?

The COURT. I would say within five days after the filing of the answers. Would that be sufficient?

Mr. KIME. After the receipt of the filing of the answers by us.

The COURT. Yes, I will say after you have received the answers.

Mr. KALLIS. We would have five days in which to file——

The COURT. Additional interrogatories.

2090 Mr. KALLIS. Additional interrogatories.

Mr. COCHRAN. A request to submit additional interrogatories.

Mr. KALLIS. That seems perfectly reasonable.

The COURT. You submit your requested interrogatories with request for permission to file them.

Mr. KALLIS. Yes, sir.

The COURT. Very well.

Mr. KALLIS. Now the next item of procedure is to offer the remaining inter-office communications which I mentioned yesterday, and they are F-19, B, C, D, G, H, I, O, T, Y and EE; F-20, A, B, C, D, and E; F-21, A, B, and C; F-40, A and B; F-25, A, B, C, D, E, F, and G; F-36; F-37, A, B, C, D, E, F, G, H, I, J, K, L, M, N and O; F-38, A

through I, inclusive; F–39, A through K, inclusive; F–50, A through F, inclusive; F–56, A through J, inclusive, excluding G; F–91, A through F, inclusive.

The next one is the Paramount inter-office communications, P–75, and 88, A through D, inclusive.

The next are the United Artists, which have been designated as UA–33, 46, 47, 55, 58, 59, 64, and 67.

And Universal, designated as U–38 and U–39.

Now, your Honor, on page 1838 of the record, the statement is made that I was handing to Judge Cochran Plaintiff's Exhibit No. 374 which was the document taken
2091 from the Loew's file, which was marked in fact as Plaintiff's Exhibit No. 380, and I would like to have the record show that it was document No. 380, because your Honor correctly indicated that No. 374, was, as I recall, a certified copy of a corporation charter or some instrument supplied by the Secretary of State or Corporation Commission.

The COURT. The reporter will be directed to make the correction on the original so it will not appear twice.

Mr. COCHRAN. Is that the document from Loew's files that you said had not been identified, that was taken from their files but not previously identified?

Mr. KALLIS. That's right.

Mr. COCHRAN. And the correct number is what?

Mr. KALLIS. No. 380, and it pertains to Odessa, Texas.

Mr. COCHRAN. All right.

Mr. KALLIS. To be specific, I would like to have the record show that L–53, which we offered, was with reference to L–53 A and B, and that L–114 should read L–114–A. We have those photostats here, your Honor.

The COURT. Now, those are all inter-office communications, as I understand.

Mr. KALLIS. Except one, RKO–21–A, which is a letter which Mr. Mahone——

Mr. COCHRAN (interrupting.) You didn't offer any RKO.

2092 Mr. COCHRAN. You did not offer any RKO awhile ago.

Mr. KALLIS. Yes, sir.

Mr. COCHRAN. Oh, RKO, go ahead. What was that?

Mr. KALLIS. RKO 21–A, which is a letter which Mr. Mahone sent to Ned Depinet of the RKO organization.

Mr. COCHRAN. We object to the offer of the exhibits which have been described by counsel as being offered at this time and consisting of inter-office communications between representatives, purporting to be inter-office communications between representatives of Fox and Paramount, United Artists and Universal.

The COURT. Objection will be sustained on the same ground as to the others.

Mr. KALLIS. Does your Honor want to take these?

The COURT. Yes. They will be a part of the record and I will examine them and if the Court feels that any of those are competent evidence he will so state and they will be admitted in evidence.

Mr. KIME. If the Court please, we have three sets of stipulations here. This is a stipulation between the plaintiff and the defendants, R. E. Griffith and Wes-Tex and is signed——

Mr. COCHRAN. What stipulation is that?

Mr. KIME. A stipulation entered into between
2093 plaintiff and defendants R. E. Griffith and Wes-Tex, Inc.

Mr. COCHRAN. Covering what matter?

Mr. KIME. Covering the acquisition of the building and so forth of the theaters which they have built and acquired and so on.

The COURT. Do you have more than one stipulation?

Mr. KIME. I want to offer two others as soon as they are signed.

(The stipulation above referred to was received in evidence, identified as Plaintiff's Exhibit No. 381, and is as follows:)

Plff. Ex. 381.

In the United States District Court for the Western District of Oklahoma

Civil Action No. 172—Stipulation

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GRIFFITH AMUSEMENT COMPANY, ET AL., DEFENDANTS

IT IS HEREBY STIPULATED by the attorneys for the Plaintiff and for the Defendants R. E. Griffith Theaters, Inc., and Westex Theaters, Inc. that one or more representatives of said Defendants would testify in this cause, if called as witnesses, to the facts regarding acquisition and
2094 operation of theatres by said Defendants for the years 1932 and following to September 10, 1945 set out on the attached pages numbered 1 to 17 both inclusive:

The statement is in two sections. The first section gives the picture of the operation as of September 1, 1945. The second section concerns theatres and interests in theatres formerly owned but not now owned.

All acquisitions were for legal and adequate consideration and the term "purchase" includes without distinction

acquisition by purchase of fee titles and all leasehold interests.

The word "build" as used does not necessarily mean complete construction but includes remodeling of existing structures in order to fit them for theatre use.

Unless especially noted, every theatre acquired was operating when acquired and continued to operate to date.

Unless considered essential no distinction is made between acquisitions of R. E. Griffith Theatres and its practically wholly owned subsidiary, Westex Theatres, Inc.

Wherever a partial interest as disclosed by the statement was owned originally in any situation and there have been later acquisitions in that situation, such acquisitions were acquired in the same proportions by the Circuit and its local associates unless specifically noted.

The changes in names of theatres are set out in
2095 some detail with the thought that it may avoid confusions in discussion of these operations.

Acquisitions are set out in substantial chronological order.

Dated: Oklahoma City, Oklahoma, September 12, 1945.

(Signed) POSEY T. KIMP,
Attorney for the Plaintiff.
(Signed) L. M. RICE,
Attorney for the Defendants, R. E. Griffith Theatres, Inc., and Westex Theatres, Inc.

SECTION I

(Theatres now owned wholly or in part and included in R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., Circuit operation.)

1932

	Population 1930	1940
Roswell, New Mexico	11,173	13,482

Yucca—Built by Consolidated, purchased by R. E. Griffith in course of construction, opened April 1931. Transferred to R. E. Griffith Theatres, January 5, 1932.

Pecos—Originally Princes Theatre, operated by E. C. Trieb. Cahoon and McCullough, landlords, sued
2096 Trieb and through receivership acquired title to equipment. June 1, 1933, equipment sold and building leased to R. E. Griffith Theatres, Inc. by Cahoon and McCullough. At a later date renamed Pecos Theatre after remodeling.

Chavez—Built and opened in 1941.

Competition

El Capitan—Operated continuously by E. C. Trieb.

Princess—Operated by E. C. Trieb and receiver until June 1, 1933. (See above.)

	Population 1930	1940
Carlsbad, New Mexico	3,708	7,116

Cavern—Purchased from E. C. Trieb in 1931 by R. E. Griffith. One-half interest sold to Bartlett & Son. Remaining interest transferred to R. E. Griffith Theatres, Inc., January 5, 1932.

Crawford—Operated by Bartlett & Son who in 1931 sold one-half interest to R. E. Griffith acquiring one-half interest in the Cavern. This property given up as theatre and owner converted to another type of building.

Cactus—Built in 1934 with Bartlett & Son.

Tower—Built in 1939 with Bartlett & Son.

2097

	Population 1930	1940
Clovis, New Mexico	8,027	10,065

Mesa—Built by R. E. Griffith in 1931. Transferred to R. E. Griffith Theatres, Inc., January 5, 1932.

Lyceum—Operated by Hardwicke Bros. until 1933 at which time operations were pooled with the Mesa.

Plains—Built in 1937 with Hardwicke Bros. and closed in the summer of 1938 and not operated since. Now used as art shop for storage.

State—Built with Hardwicke Bros. opening January 3, 1940.

Competition

Sunshine—Opened by W. E. Bearden in 1941, operated continuously since.

	Population 1930	1940
Gallup, New Mexico	5,992	7,041

Chief—Operated as the Strand by Giles Masters. Purchased by Consolidated Theatres, Inc., in 1930, renamed the Cairo, transferred to R. E. Griffith in 1931 and by him to R. E. Griffith Theatres, Inc. January 5, 1932. Remodeled and renamed the Chief.

Navajo—Built in 1936, opening June 1st.

Competition

2098 El Morro—Operated in 1930 and continuously since then by Funk & Nagel and successors in title.

	Population 1930	1940
Hobbs, New Mexico	598	10,619

Rig—Built by Consolidated Theatres, Inc. at New Hobb, and oil development, operated for short time by Consoli-

dated Theatres, Inc., purchased by R. E. Griffith May 2, 1931, closed in the fall of 1931 and transferred by R. E. Griffith to R. E. Griffith Theatres, Inc. on January 5, 1932. Was never reopened and was moved to Carlsbad in 1934.

Rex—Closed theatre, partly equipped, leased July 1, 1931 from Fawn Theatre Company, building owners, by R. E. Griffith, equipped and opened under name of Rex. Destroyed by fire May 6, 1936.

Rig—Built (in old Hobbs) and opened July 26, 1934, operated until May 1944 when it was closed and not since been operated. Leased as storage room to furniture dealer.

Reel—Built in 1936, opened May 26.

Scout—Built and opened in October 1937. This replaced the Rex.

Roosevelt—See below.

Competition

2099 Roosevelt—Opened by T. A. Whelen in 1934, operated by him until May 20, 1940 when it was purchased by R. E. Griffith Theaters, Inc. Operated irregularly for some time but now full time operation.

	Population 1930	1940
Portales, New Mexico	2,519	5,104

Yam—Operated under name of Portala by Burl Johnson. Equipment purchased and building leased from Johnson in 1931 by R. E. Griffith and transferred by him January 5, 1932 to R. E. Griffith Theatres, Inc.

Kiva—Built in 1937, opening April 2nd.

Lyric—See below.

Competition

Lyric—Opened in 1944 by E. W. Capps. Sold in that year to R. E. Griffith Theatres, Inc.

1935

	Population 1930	1940
Plainview, Texas	8,834	8,263

Fair (formerly the Ritz)—Operated by Scaling and Lindsey, acquired by Foster McSwain and R. E.
2100 Griffith Theatres, Inc. and Lindsay, one-third each and renamed the *Texas*. This thatre leased by Scaling and associates at expiration of lease January 1936, and opened as the Fair. Re-purchased by McSwain, Lindsey and R. E. Griffith Theatres, Inc. in October 1936.

Texas—Built to replace theatre leased by Scaling et al. Opened January 1, 1936. (See above.)

Granada—Purchased from O. K. Theatres Corporation in 1935.

Palace—Closed house, purchased from O. K. Theatres Corp., in 1935 and never operated.

1934—None.

	Population 1930	1940
Hereford, Texas	2,458	2,584

Star—Purchased from J. C. Parker with Hardwicke Bros.

Texas—Built with Hardwicke Bros. in 1931.

	Population 1930	1940
Jal, New Mexico	404	1,157

Rex—Built by C. C. Caldwell in 1934. One-half interest purchased May 8, 1935.

2101

	Population 1930	1940
Belton, Texas	3,779	3,572

Beltonian—Operated by H. H. Cluck and R. L. Walker. A 25 percent interest was purchased on June 30, 1935.

Hood—Operated by H. H. Cluck and R. L. Walker. A 25 percent interest was purchased on June 30, 1935. This was originally the Beltex. Renamed when Camp Hood opened.

	Population 1930	1940
Clarksville, Texas	2,952	4,095

State—Operated by O. A. Engelbrecht and F. L. Wolf. A 25 percent interest was purchased on June 30, 1935.

Colonial—Operated by O. A. Engelbrecht and F. L. Wolf. A 25 per cent interest was purchased on June 30, 1935. Abandoned in 1938, and replaced by Avalon.

Avalon—Built in 1938 by Westex, Engelbrecht and Wolf, Westex owning 25 percent interest.

	Population 1930	1940
Georgetown, Texas	3,583	3,682

Palace—Operated by O. A. Engelbrecht. A 25 percent interest was purchased on June 30, 1935.

Ritz—Operated by O. A. Engelbrecht. A 25 per-
2102 cent interest was purchased on June 30, 1935. Destroyed by fire in 1937 and rebuilt.

Competition

Aztec—Opened in 1936 probably by Shepherd Stevens who sold out to a man named Kucera and perhaps a man named Dunlop. Operated a short time, burned and was never reopened.

	Population 1930	1940
Lameasas, Texas	2,709	3,426

Leroy—Operated by R. L. Walker and S. T. Donnell. A 25 percent interest purchased June 30, 1935.

Rio—Operated by R. L. Walker and S. T. Donnell. A 25 percent interest purchased June 30, 1935.

	Population 1930	1940
Brady, Texas	3,983	5,002

Palace—Operated by Brady Amusement Company, a corporation. 10 percent stock interest purchased June 30, 1935 from R. L. Walker.

Brady—Operated by Brady Amusement Company, a corporation. 10 percent stock interest purchased June 30, 1935 from R. L. Walker.

2103 Pix—Built and opened July 1943, now closed.

Competition

Ritz—Opened by Ford Taylor who sold to A. M. (Buck) Morgan. On November 12, 1936 Morgan sold to Brady Amusement Company, operated after purchased for short time, closed permanently.

	Population 1930	1940
San Saba, Texas	2,240	2,927

Palace—Operated by W. C. Doffelmeyer. One-third interest purchased December 23, 1935.

1936

	Population 1930	1940
Post, Texas	1,668	2,046

Garza—Operated by O. K. Theatres Corp. Purchased February 27, 1936 and rebuilt.

	Population 1930	1940
Eunice, New Mexico	700	1,127

Lea—Built with C. C. Caldwell in 1936, opening on
2104 March 1.

	Population 1930	1940
Spur, Texas	1,988	2,136

Palace—Operated by J. C. Parker. Purchased with Hardwicke Bros. April 1, 1936.

Spur—Built and opened July 15, 1937.

	Population 1930	1940
Olney, Texas	4,138	3,497

Princess—Operated by Curtis Richardson. Purchased June 1, 1936 with Hardwicke Bros. closed and policy moved to Olney Theatre. (See below.)

Westex—Operated by Curtis Richardson as Palace. Purchased as above noted.

Olney—Operated by a man named Antoine. Purchased in 1936 about the time of the Richardson purchase with Hardwicke Bros.

2105

	Population 1930	1940
Ballinger, Texas	4,187	4,472

Texas—Operated by H. T. Hodge and W. D. Scales. A 25% interest purchased on August 1, 1936.

Palace—Operated by H. T. Hodge and W. D. Scales. A 25% interest purchased on August 1, 1936.

Competition

Ritz—Operated by H. Ford Taylor in 1935 and continuously operated since then.

	Population 1930	1940
Merkel, Texas	1,848	2,005

Queen—Operated by H. T. Hodge. A 25% interest purchased August 1, 1936.

Competition

A small house opened and ran for a few weeks in 1938. Its name and the operator's name are not recalled.

	Population 1930	1940
Odessa, Texas	2,407	9,573

2106 Lyric—Operated by H. T. Hodge. A 25% interest purchased Aug. 1, 1936.

Texas—Built and opened July 1, 1937.

Competition

Rio—Included by Hodge in sale of interest as in case of Lyric Theatre, but Hodge lost possession and Mrs. Maggie Scott has operated the theatre since sometime in 1936.

	Population 1930	1940
Stamford, Texas	4,095	4,810

Grand—Operated by H. T. Hodge. A 25% interest purchased August 1, 1936.

Ritz—Operated by H. T. Hodge. A 25% interest purchased August 1, 1936. Part time operation. Closed December 1939 and not operated since.

Palace—See below.

Competition

Palace—Operated by Jimmie McCallum since sometime in 1936. This theatre later purchased by H. T. Hodge and associated. A one-fourth interest purchased

2107 November 1, 1939.

State—Opened by One Dennis about April 15, 1940 and now operated by one Anderson.

	Population 1930	1940
Winters, Texas	2,423	2,335

Queen—Operated by H. T. Hodge. A 25% interest purchased August 1, 1936.

Lyric—Operated by H. T. Hodge. A 25% interest purchased August 1, 1936. Replaced by State Theatre August, 1937.

State—Built and opened August 28, 1937 replacing the Lyric, the equipment from the Lyric having been transferred to it.

	Population 1930	1940
Alamogorda, New Mexico	3,096	3,950

Alamento—Operated by Geo. P. Robertson and Geo. A. Dowdle. Purchased June 1, 1936. Robertson on July 28, 1936 re-purchased one-half interest, operated until 1937 when the White Sands was built, and the Alamento closed until the War started.

Airdome—An open air theatre not operating, pur-
2108 chased as above in the case of the Alamento and never operated.

White Sands—Built with Geo. P. Robertson in 1937, opening August 1st.

	Population 1930	1940
Deming, New Mexico	3,377	3,608

Luna—Operated by Frank Nordhaus as the Princess. Purchased with Geo. A. Dowdle September 2, 1936. The interest of Dowdle in this theatre was acquired to replace his interest in Alamagorda it having been agreed with Dowdle that such replacement would be made.

El Rancho—Built and opened July, 1940.

	Population 1930	1940
Gonzales, Texas	3,859	4,722

Crystal—Operated by Gonzales Amusement Company, a corporation. 25% of the capital stock purchased December 30, 1936.

Pix—Built and opened January, 1940.

	Population 1930	1940
Lockhart, Texas	3,859	4,722

2109 Baker—Operated by Baker Show Company, a corporation. 25% of the capital stock purchased December 30, 1936.

Pix—Originally opened by W. H. Hall as the Square in January, 1938. It was closed and abandoned by Hall and was leased by Baker Show Company in fall of 1938.

Competition

Square (See "Pix" above).

	Population 1930	1940
Luling, Texas	5,970	4,437

Princess—Operated by Luling Amusement Company, a corporation. 25% stock interest purchased December 30, 1936.

1937

	Population 1930	1940
Burkburnett, Texas	3,281	2,814

Palace—Operated by C. P. Logan, purchased February 1, 1937.

Tex—Operated by C. P. Logan, purchased February 1, 1937.

1938

	Population 1930	1940
Lovington, New Mexico	961	1,961

2110 Mesa—Owned and operated by Lester Dollison. 50% interest purchased July 2, 1938. 15% interest purchased June 1, 1939. Remaining 35% interest purchased December 29, 1941.

1939—None

1940

	Population 1930	1940
Belen, New Mexico	2,116	3,038

Central—Purchased from Ruth B. Hicks, March 31, 1940, closed shortly after Onate opened.

Onate—Built and opened August 9, 1940, replacing the Central.

	Population 1930	1940
Denver City, Texas		3,000

Rhea—Built with C. C. Caldwell and M. R. Showalter, opening September 14, 1939. Burned 1944. Not rebuilt.

Ritz—Built with C. C. Caldwell and M. R Showalter, opening March 1, 1940. Now called the "Rhea", replacing the above.

	Population 1930	1940
2111 Alpine, Texas	931	3,495

Mojave—Closed theater. Purchased from O. K. Theatres, Corp. September 28, 1940, operated from time to time.

Granada—Operating theatre purchased as above.

Population 1930 1940

Brackettville, Texas 1,822 2,653

Palace—Purchased from O. K. Theatres September 28, 1940.

Population 1930 1940

Canadian, Texas 2,068 2,151

Palace—Purchased from O. K. Theatres September 28, 1940.

Population 1930 1940

Ft. Stockton, Texas 2,695 3,294

Grand Jr.—Purchased from O. K. Theatres September 28, 1940.

Pecos—This theatre (the Grand) has been burned and was in litigation. It was rebuilt by the landlord after settlement of litigation (by Korn) leased and opened August, 1941.

Population 1930 1940

2112 Crane, Texas 1,420

Palace—Purchased from O. K. Theatres September 28, 1940.

Population 1930 1940

Marfa, Texas 3,909 3,805

Palace—Purchased from O. K. Treatres September 28, 1940.

Texas—Purchased from O. K. Theatres Corp. September 28, 1940.

Population 1930 1940

McCamey, Texas 3,446 2,995

Grand—Purchased from O. K. Theatres, September 28, 1940.

Ritz—Then operated by L. D. Bowen, purchased November 20, 1940. Operated from time to time.

Competition

Ritz—See "Ritz" above.

Population 1930 1940

Monohans, Texas 816 3,944

Palace—Purchased from O. K. Theatres, September 28, 1940.

2113 Tower—Purchased November 3, 1940 from J. C. Clemens.

Competition

Tower: See "Tower" above.

	Population 1930	1940
Pecos, Texas	3,304	4,855

Grand—Purchased from O. K. Theatres, September 28, 1940.

Cactus—Operated by J. C. Clemmons, purchased by Westex Theatres, Inc., November 4, 1940.

Pecos—Opened by H. S. Leon and Harley Sadler in Spring 1943. Purchased in fall of that year.

Competition

Cactus and Pecos: See "Cactus" and "Pecos".

	Population 1930	1940
Quanah, Texas	4,464	3,767

Palace—Purchased from O. K. Theatres Corp. September 20, 1940.

Texan—Purchased from O. K. Theatres Corp. September 20, 1940.

Ritz—Purchased from O. K. Theatres Corp. September 20, 1940. Lost lease and abandoned June 30, 1945.

	Population 1930	1940
2114 Sanderson, Texas	1,875	2,270

Princess—Purchased from O. K. Theatres Corp. September 20, 1940.

	Population 1930	1940
Royalty, Texas		759

Palace—Purchased from O. K. Theatres Corp. September 20, 1940. Was closed when purchased, never operated.

SECTION II

(Theatres at one time owned by R. E. Griffith Theatres, Inc. or Westex Theatres, Inc. and included in Circuit operations, since disposed of.)

	Population 1930	1940
Alvin, Texas	1,511	3,087

Alvin—Operated by J. G. Long. 25% interest purchased February 27, 1938 at which time Consolidated Theatres, Inc. purchased a like interest. Interest sold to Consolidated March 1945.

	Population 1930	1940
2115 Bay City, Texas	4,070	6,594

(a) Texas—(Formerly named COLONIAL).

(b) Franklin—Operated by J. G. Long. Westex Theatres, Inc., purchased 25% interest February 27, 1938 at which time Consolidated Theatres purchased a like interest. Interest sold to Consolidated March, 1945.

Competition

State—Operated then and continuously since then by Reuben Frels.

	Population 1930	1940
El Campo, Texas	2,034	3,906

Floyds—Operated by J. G. Long. 25% interest purchased February 27, 1938. Consolidated also purchased a like interest at this time. Interest sold to Consolidated March, 1945.

Liberty—Operated by J. G. Long. 25% interest purchased February 27, 1938. Consolidated also purchased a like interest at same time. Interest sold to Consolidated March, 1945.

Competition

2116 Normana—Operated then and continuously since then by Reuben Frels.

	Population 1930	1940
Texas City, Texas	3,534	5,748

Texas—Operated by J. G. Long. Purchased 25% interest February 27, 1938 at which time Consolidated also purchased like interest. Interest sold to Consolidated March, 1945.

Jewell—Operated by J. G. Long. Purchased 25% interest February 27, 1938, at which time Consolidated also purchased a like interest. Interest sold to Consolidated March, 1945.

Show Boat—Built and opened June 4, 1943, with J. G. Long and Consolidated. Interest sold to Consolidated March, 1945.

	Population 1930	1940
Victoria, Texas	7,421	11,566

Rita—Operated by J. G. Long. Purchased 25% interest February 27, 1938. Consolidated purchased like interest at same time. Interest sold to Consolidated in March, 1945.

Queen—Operated by J. G. Long. Purchased 25% interest February 27, 1938. Consolidated purchased like in-
2117 terest at same time. Lease not renewed and ceased operation after.

El Rancho opened.

El Rancho—Built with J. G. Long and Consolidated opening January, 1940. Interest sold to Consolidated in March, 1945.

Competition

Uptown—Operated then and continuously since then by Reuben Frels.

Victoria—Opened by Frels in 1941 or 1942 and operated continuously since.

	Population 1930	1940
Wharton, Texas	2,691	4,386

Queen—Operated by J. G. Long. Purchased 25% interest February 27, 1938 at which time Consolidated Theatres purchased a like interest. Interest sold to Consolidated in March, 1945.

Plaza—Built with J. G. Long and Consolidated, opening in December, 1941. Interest sold to Consolidated in March, 1945.

Competition

Rio—Operated then and continuously since then by Reuben Frels.

	Population 1930	1940
2118 Conchas Dam, New Mexico	(From 600 to 1200 Transient)	

Conchas—Leased from U. S. Government December 22, 1936 on profit sharing basis and equipped by R. E. Griffith Theatres, Inc. Closed when Dam was completed.

	Population 1930	1940
Sterling City, Texas		886

Palace—Purchased from O. K. Theatres Corp. September 20, 1940. Sold in 1941.

	Population 1930	1940
Nebraska City, Nebraska	7,230	7,339

Arbor—(Formerly the Booth). Purchased from Williams-Griffith Theatres, December 1, 1940, sold to H. J. Griffith Theatres, March 1, 1945.

Pioneer—(Formerly the Paramount). Same as above.

	Population 1930	1940
Auburn, Nebraska	3,068	3,639

2119 State—(Formerly the Booth). Three-fourths interest purchased from Williams-Griffith Theatres, remaining one-fourth owned by Glenn Leonard. One-fourth additional interest sold to Viola B. Leonard, wife of Glenn Leonard who had purchased his one-fourth interest. R. E. Griffith Theatres, Inc., interest sold to H. J. Griffith Theatres, March 1, 1945.

	Population 1930	1940
Fredonia, Kansas	3,446	3,524

Kansan—(Formerly the Whiteway). Purchased from R. E. Morley, Nancy R. Wagner and Partnership Theaters, April, 1941.

Strand—(Formerly the Klock). Purchased same as above. Both theaters sold to H. J. Griffith Theaters, March 1, 1945.

	Population 1930	1940
Albuquerque, New Mexico	27,750	35,449

Rio—(Formerly the Liberty). Purchased November 5, 1932, with Foster McSwain. Pooled with other local operations. See Plaintiff's exhibits 125–126–127–128–129. Interest in theater and operations sold to trustees for Julie Joan Griffith, March, 1945.

	Population 1930	1940
2120 Hominy, Oklahoma	3,485	3,267

Ritz—5% interest exchange with Consolidated Theaters for like interest in a New Mexico Theater for tax purposes. Transferred March 1, 1945 to Consolidated Theaters. (See Plaintiff's Exhibits 33–34–153.)

The Court. We will recess until 10:00 o'clock tomorrow morning.

(Whereupon, Court adjourned until 10:00 o'clock a. m., September 13th, 1945.)

2121

PROCEEDINGS

September 13, 1945, 10 o'clock a. m.

Mr. Kime. If your Honor pleases, there are certain facts in the interrogatories which we would like to have in and I think we can do it by stipulation as to the date of incorporation of the four defendant companies. I will read the dates I have taken from the answers, and I believe Judge Cochran will agree that the Griffiths Consolidated was incorporated May 27, 1929.

The Court. Does the answer set up those dates?

Mr. Kime. The answer sets them up but that portion of the answers were not read into the record.

The Court. It isn't necessary. The pleadings are part of the record.

Mr. Kime. Answers to the interrogatories.

The Court. I beg your pardon.

Mr. Kime. Not the answers. I don't know about that.

Mr, Cochran. May 27 is correct for Consolidated.

Mr. Kime. For Griffith Amusement Company, it was incorporated on July 14, 1926.

Mr. Gripping. That is right.

Mr. Kime. R. E. Griffith Theaters, Inc. was incorporated December 23, 1931.

2122 Mr. Rice. December 23, 1931.

Mr. Kime. And Wes-Tex Theaters, Incorporated, March 27, 1936.

Mr. Rice. Correct.

Mr. Kime. If your Honor pleases, in the record at page 307 of the transcript there is some matter there copied

which purports to be answer to interrogatory No. 5 as propounded to R. E. Griffith. Interrogatory No. 5, as taken from the interrogatory itself reads as follows, without quoting the interrogatory, just the answer:

"R. E. Griffith in July, 1932, acquired a 22 per cent interest in the joint venture operating theaters in Ardmore, Oklahoma. He paid $14,623.99 to H. M. Loewenstine, Ardmore, Oklahoma, for this interest," and we ask that be substituted for what appears on page 607 of the record.

2123 The COURT. Does the record purport to copy that answer?

Mr. KIME. Yes, sir.

The COURT. And it isn't stated correctly?

Mr. RICE. The answer in the record relates to another interrogatory.

The COURT. All right, let it be substituted.

Mr. COCHRAN. What is that interrogatory number?

Mr. RICE. No. 5.

Mr. KIME. Now, I want to read Interrogatory No. 23 of Griffith Consolidated. The question is: "State the name and address of each theater operated at any time since April 28th, 1934 in the towns in which the complaint alleges the defendant operates one or more theaters in which the defendant has not owned a financial interest at any time since said date. If such theaters were not operated during the entire period from April 23rd to the present, state the approximate dates of their operation."

Mr. COCHRAN. What page of the record did you want to correct?

Mr. KIME. 607, I think it was.

Mr. COCHRAN. It isn't on page 607.

Mr. KIME. It is on 607 of the book I have, Judge. Here it is (showing).

Mr. COCHRAN. That's the answer of R. E. Griffith to Interrogatory No. 5.

2124 Mr. KIME. That's not the answer. That is something else.

Mr. COCHRAN. I was inquiring concerning the page where there is found the answer to Interrogatory No. 23 of Griffith Consolidated.

Mr. KIME. I haven't read that into the record at all.

Mr. COCHRAN. I understood you were correcting the record. Are you now offering some additional answer?

Mr. KIME. I am now offering the answer to Interrogatory No. 23 of Griffith Consolidated Theaters.

Mr. COCHRAN. Are you offering all of the answer or just a part of it?

Mr. KIME. I will read the notation on the bottom, if that is what you are inquiring about.

Mr. COCHRAN. I want to know, if answers to Interrogatories are read, we are insisting that the answers be read as given and not just a part of it. I want to be sure that is what you are doing.

Mr. KIME. Answer town, Chickasha, Oklahoma, the Midwest Theater; Cleburne, Texas, the Roosevelt Theater; Clinton, Oklahoma, the Ritz Theater; Goldsmith, Texas, the Wallace Theater; Hominy, Oklahoma, the Pettit Theater; Kingfisher, Oklahoma, the State Theater; Lubbock, Texas, the Tech, Rex, Cactus, Broadway and Lyric;
2125 Sapulpa, Oklahoma, the Criterion Theater; then we find this note: "This information is given from memory; no records were kept, no records were kept of opposition theaters. This list may be incomplete."

Mr. COCHRAN. All right.

Mr. KIME. In the same set of interrogatories, in the answer to Interrogatory No. 5 there appears on the first page thereof the name of Homer A. Ellison; on the fourth page——

Mr. COCHRAN (interrupting.) Homer A. Ellison of what?

2126 Mr. KIME. On page 4 there appears the name of T. P. Lee and on the seventh page there appears the name of H. U. Bailey.

Mr. COCHRAN. Hasn't that Interrogatory No. 5, the answer been read into the record?

Mr. KIME. I don't think it was.

Mr. COCHRAN. What is Interrogatory No. 5?

Mr. KIME. Interrogatory No. 5 is as follows: "State the total amount of indebtedness outstanding on April 28, 1934, describing the nature and terms of the securities evidencing such indebtedness and state all changes in said amount of fixed indebtedness and in the nature and terms of said securities which have taken place since that date."

What I would like to have is information as to who these three men may be, H. U. Bailey, T. P. Lee and Homer A. Ellison, referred to in that interrogatory.

Mr. COCHRAN. I suggest in regard to those matters you put Mr. McKenna on and let him give you the information.

Mr. KIME. Is he competent to answer as to all three?

Mr. COCHRAN. I assume he is.

2127 B. J. McKENNA, recalled as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. KIME:

Q. There is found in answer to Interrogatory No. 5 of Griffith Consolidated Theaters, Incorporated, the name of Homer A. Ellison. Do you know who Mr. Ellison is?

A. Yes, sir.

Q. Who is he?

A. He was a gentleman in Garden City, Kansas.

Q. What was his business?

A. He was in the theater business.

Q. As an exhibitor?

A. Yes, sir.

Q. And as an exhibitor only?

A. Yes, as far as I know.

Q. Who is T. P. Lee?

A. He was a gentleman in Houston, Texas, I believe. He was a banker, I believe, or financier.

Q. Do you know anything further about his business?

A. No, sir.

Q. Other than the fact he was a banker?

A. No, I don't.

Q. And who was or is H. U. Bailey?

2128 A. He was a gentleman, I believe, who lived in Illinois, in a town called Centralia. As I recall, he was also a banker or financier.

Q. Was he interested in the motion picture business in any way?

A. Not to my knowledge.

Q. That is all.

Mr. COCHRAN. That is all.

(Witness excused.)

Mr. KIME. We submitted some stipulations to the defendants yesterday and I understand we are unable to agree, which forces us to call Mr. John F. Caskey at this time. We are calling Mr. Caskey for two express purposes, and for those purposes only, and that is to elicit from him the gross film rental, inclusive of rental from short subjects and news reels unless otherwise indicated, received by Twentieth Century Fox Film Corporation, Loew's Incorporated, Paramount Pictures, Incorporated, RKO Radio Pictures, Incorporated, Warner Brothers, Incorporated, from the theaters understood to compose the Griffith circuit for the motion picture season of '34–35 to and including '38–39, representing the proportion of the total amount of business done by the Oklahoma City exchange and for the gross or consolidated income of these five distributors that I just mentioned for the same period.

2129 JOHN F. CASKEY, called as a witness on behalf of the Government, and being duly sworn, was examined and testified as follows:

Direct examination by Mr. KIME:

Q. State your name to the Court.

A. John F. Caskey.

Q. You are employed by Twentieth Century Fox Film Corporation, are you?

A. No, sir.

Q. Did you say, "No, sir"?

A. Yes, sir, I said, "No, sir."

Q. You are the agent of Twentieth Century Fox Film Corporation, Loew's, Inc., Paramount Pictures, Inc., RKO Radio Pictures, Inc., and Warner Brothers Pictures, Inc., are you?

A. I am attorney-at-law retained by them.

Q. Did they furnish to you data showing the gross film rental for the period 1934–'35 to and including '39, done by the Oklahoma City Exchange which you submitted to the Government attorneys on yesterday?

A. They furnished the information which was submitted yesterday, which shows in terms of percentages the revenue derived in each of the five motion picture seasons from the theaters understood to compose the Griffith Circuit in relation to the total billings of the Exchange.

2130 Q. The Oklahoma City Exchange?

A. Yes, sir.

Q. Will you give that to the Court?

A. Yes, sir.

Mr. COCHRAN. We object to that, if the Court please, for the reason that the witness is not qualified; he doesn't have personal information in regard to the matter. The matter was attempted to be covered by stipulation to avoid the question that we now have, but counsel were unwilling to admit the figures which related to the matters that we thought were material and competent; they were unwilling to include that in the stipulation; therefore, the stipulation is all off, and the testimony of the witness, we object to on the ground that it is not competent, and he is not qualified.

The COURT. Do I understand that this information was asked for at the conclusion of the other session of this trial?

Mr. KIME. Shortly before, as my memory serves me, shortly before the conclusion this material was subpoenaed from these companies, and subsequent to that time I understand an agreement was arrived at or attempted to

be arrived at whereby this material would be furnished in the form in which it is now furnished, and that is what we want to put into the record, so far as it pertains to
2131 the Oklahoma City Exchange. Now, if the defense wants other material in the record, they can put it in as a part of their case.

Mr. COCHRAN. If the Court please, the situation in regard to this matter is as follows, as I understand it. If I am incorrect, Mr. Caskey can correct me because I think he has kept up with the negotiations more than anybody else. As I recall, sometime during the previous hearing in this case the Government either subpoenaed some of these—issued a subpoena on somebody connected with these various distributors to produce certain information. Mr. Caskey, representing those parties, presented to Your Honor some kind of an objection, and I think took the position that the material which was requested was not available. The matter dragged along and we, representing the defendants, took no part in this effort on the part of the Government to obtain this information. The next that I knew about it, during the time the depositions were being taken in New York City, about the conclusion of that evidence Mr. Wright asked Mr. Caskey to get together those figures that he had previously been attempting to obtain and have them available when the trial resumed down here. As I recall it, the figures that he requested at that time were the rentals paid in the towns in which the several Griffith companies were operating, and the rentals
2132 paid by opposition theaters in the same town. It may have gone further than that, I would not be positive. As I say, Mr. Caskey can probably recall. I stated at that time that in the event that information was obtained, that I desired for him to also obtain the information in regard to the total film rentals, the total revenue from film rentals that were received annually by each one of these distributing companies, and, of course, information that had been requested by the Government related not only to the Oklahoma City, but to Dallas. That, I think, was the total of the statement that was made at that time. There was no definite agreement made in regard to what our attitude would be, but as I stated on yesterday, it was contemplated that if the information in regard to these various matters was all obtained by Mr. Caskey in satisfactory form, that we would probably be able to stipulate. On yesterday, Mr. Caskey prepared a statement reflecting the rentals not only from the Oklahoma City Exchange, but also Dallas, or rather, not the rentals, but the percentages of the rentals

from the Griffith Circuit as to Oklahoma City, and also as to Dallas, in order to get a complete picture, and also the percentage of revenue of each of these distributors, its total revenue for each year, and the percentage that Griffith ran in relation to that. We told counsel for the Government that we would execute the stipulation covering
2133 the matter as stated by Mr. Caskey, showing the percentages as to Oklahoma City, if they would also put in what he said in regard to Dallas, and would also stipulate in regard to the total gross revenue. That, they would not do.

2134 The COURT. He has the statement.

Mr. COCHRAN. Yes, but inasmuch as they are not willing to go ahead with the stipulation we now object to the witness testifying at all because he would not be competent to testify. They take the position, in other words, that inasmuch as he does not have the absolute, accurate figures in regard to Dallas that they are not going to stipulate, and the same thing in regard to the total revenue. The same thing applies in regard to Oklahoma City but they want Oklahoma City and do not want these others.

The COURT. If they asked for Oklahoma City you can have the other on cross examination so you can get it all in at the same time just the same as you could by stipulation. I don't know why it could not be stipulated.

Mr. COCHRAN. They will not stipulate so I am taking advantage of my rights to object to the witness testifying at all.

Mr. KIME. If there are any rights there it appears to me to be these. We subpoenaed the material and we sorted out what we wanted. We subpoenaed all of these vast numbers of photostats here. We took out what we wanted them. Should we be forced to offer something we do not want to offer, and isn't that exactly the same situation we have here?

2135 The COURT. We can get around that. Let's proceed with the answer.

By the WITNESS:

A. Twentieth Century Fox Film Corporation, during the motion picture season of '34–35, the revenue derived from the theaters believed to be operated by Griffith was 34 per cent of the total Oklahoma City Exchange revenue. In 1935–36 it was 31 per cent. In '36–37 it was 30 per cent. In '37–38, 34 per cent. In '38–39, 31 per cent.

Loew's Incorporated during the season of '35–36, on the same basis, 29.19 per cent; 1936–37, 31.82 per cent; for '37–38, 34 percent; for '38–39, 32.67 per cent.

Paramount Pictures, Incorporated, for '35–36, 33 per cent; for '36–37, 32 per cent; '37–38, 31 per cent; for '38–39, 33 per cent.

Warner Brothers Pictures, Incorporated, during the five seasons, the percentage varied from approximately 27 per cent to 33 per cent.

Mr. COCHRAN. You didn't give RKO.

A. RKO Radio Pictures, Incorporated, there was no contract during the '34–35 season; for '35–36, approximately 30 per cent; the same for '36–37 and for '37–38 and during '38–39 season it was 10 per cent.

By Mr. KIME:

Q. Do you have the gross consolidated income of these five?

2136 A. Yes, sir.

Q. Will you read that into the record, please?

A. These figures I am about to give in each case are exclusive of so-called miscellaneous income and dividends from corporations not engaged in the motion picture business.

For Loew's Incorporated, for the year ended December 31, 1935, $96,797,297.00.

The year ended August 31, 1936, $105,390,622.00.

For the year ended August 31, 1937, $118,464,900.00.

For the year ended August 31, 1938, $118,941,768.00.

For the year ended August 31, 1939, $122,577,543.00.

For Paramount Pictures, Incorporated, for the 52 weeks ended December 28, 1935, $90,581,000.00.

For the 53 weeks ended January 2, 1937, it embraces all of '36, $102,820,647.00.

For the 52 weeks ended January 1, 1938, which embraces most of '37, $104,185,953.00.

For the 52 weeks ended December 31, 1938, $100,927,939.

For the 52 weeks ended December 30, 1939, $96,182,939.

Warner Brothers Pictures, Incorporated, for the 52 weeks ended August 31, 1935, $80,950,261.00.

For the 52 weeks ended August 29, 1936, $86,459,761.00.

For the 52 weeks ended August 28, 1931, $95,816,069.00.

For the 52 weeks ended August 27, 1938, $97,926,-006.00.

2137 For the 52 weeks ended August 26, 1939, $98,024.-761.00.

For Radio Kieth Orpheum Corporation, which is the parent company of RKO Radio Pictures, Inc., for the year ended in each case on December 31, 1935, $45,475,244.00.

December 31, 1936, $49,178,050.00.

December 31, 1937, $52,921,033.00.

December 31, 1938, $56,275,419.00.

For the year ended December 31, 1939, $51,451,223.00.

Twentieth Century Fox Film Corporation, for the 52 weeks ended December 28, 1935, $42,447,609.00.

For the 52 weeks ended December 26, 1936, $51,670,-695.00.

For the 52 weeks ended December 25, 1937, $56,172,-192.00.

For the 53 weeks ended December 31, 1938, $58,201,-034.00.

And for the 52 weeks ended December 30, 1939, $53,201,-315.00.

By the COURT:

Q. These last figures you have given represent the total income of these corporations from films all over the country?

A. No, sir. The figures I have given you for the first four companies represented the total consolidated gross income for the entire world. The figures which I have given you for Twentieth Century Fox Film Corporation represents its film rental for the entire world. The generality, which would not be accurate for any year as to any company, but which is substantially accurate
2138 for the industry, is that the domestic revenue, that is, the United States and Canada, is 70 per cent of the world wide.

Q. As to your first answers, where you answered in percentages, that represents the total amount of film revenue from films sold or leased to the Griffiths from the Oklahoma City Exchange?

A. Yes, sir. Roughly speaking, the Oklahoma City Exchange represents from one to one and one-fourth per cent of the national gross income from film rentals, and the percentages which I gave you are the percentages of that one to one and a quarter per cent. I have here the figures, if they are wanted, showing the maximum dollar payment for the Oklahoma City Exchange in any one of the five years.

The COURT. I just wanted to understand the basis of it. You may proceed.

By Mr. KIME:

Q. You said as to the first four companies, I understood you to say, as to the first four companies it represented film rentals.

A. No, sir.

Q. And theater admissions?

A. Yes, sir, the consolidated gross income.

Q. And advertising and accessories.

A. Yes, sir.

Q. And as to Twentieth Century Fox it repre-
2139 sents the film rentals and advertising sales.

A. Yes, sir.

Q. Now, Mr. Caskey, at the outset of this examination I asked you if you were employed by Twentieth Century Fox and you responded you were not.

A. Yes, sir.

Q. You are attorney at law?

A. Yes, sir.

Q. A member of what firm?

A. Dwight, Harris, Cagle & Caskey.

Q. And a member of various bars throughout the country, I assume, New York, and a member of the Supreme Court of the United States, and member of the bar of the Supreme Court of the United States?

A. Yes, sir.

Q. That is all.

Cross-examination by Mr. COCHRAN:

Q. When you were requested to obtain information as the basis of your examination, the defendants requested that you obtain the information to show the total volume of revenue of the distributors, did they not?

A. Yes, sir.

Q. And why did you not give that information, or
2140 have it to give them for each of the distributors as you have for the Fox Film Corporation?

A. The four first mentioned companies do not publish separately the figures as to film rentals and theater admissions. That is not available. It is not filed with the stock exchange or with the Securities and Exchange Commission or submitted to stockholders. In case of Twentieth Century Fox Film Corporation, its theater affiliate during all those years was a minority subsidiary which held only 42 per cent of the stock, and accordingly its admissions were not consolidated, could not have been consolidated with Twentieth Century Fox Film Corporation.

Q. You have given us, in answer to the Government's questions, the percentages?

A. Yes, sir.

Q. Of revenue for the Oklahoma City Exchange and on this revenue from the distributors their over-all annual revenue, you have given us the amount in dollars and cents?

A. Yes, sir.

2141 Q. In order to have a comparable figure, will you please tell us the percentage that the revenue from

the Griffith Companies bore to this general revenue of Loew's?

Mr. KIME. May I have that question read again?

(The question read by the reporter.)

Mr. KIME. Now, your Honor please, we object to that because that is a simple mathematical calculation which your Honor can make from the figures that are now in the record.

The COURT. Overruled. Certainly it cannot be prejudicial if it is that simple, and I don't like to figure when I can get somebody else to do it for me.

A. For Loew's, the revenue paid in the Oklahoma City Exchange during the highest year, which in the case of Loew's was 1936–'37, was slightly more than 15/100ths of one per cent of the gross, the corporation's gross revenue.

By Mr. COCHRAN:

Q. Will you give us the same information in regard to Paramount?

A. In regard to Paramount, the highest year was 1937–'38, and the comparable figure would be about 12/100ths of one per cent.

Q. And the same information as to Warner Brothers?

A. As to Warner Brothers, the highest year was 1938–'39 and would be about 14/100ths of one per cent.

Q. And the same information as to RKO?

2142 A. The highest year was 1937–'38; less than 1/10th of one per cent.

Q. And Twentieth Century Fox?

A. The highest year there was 1938–'39, and it is about 29/100ths of one per cent.

Q. You have given the percentage of the Griffith revenue to the total Oklahoma City Exchange revenue for each of the years 1934–'35 to 1938–'39 for the five distributors. Will you now, please, give us the same information in regard to the Dallas Exchange?

Mr. KIME. To which we object, your Honor please, because as to Twentieth Century Fox and RKO Radio Pictures, Inc., this material is not available from the records, and this proposed answer is only estimated, and for the further reason that we specifically limited our direct examination to two subjects, to which this has no relation.

The COURT. But by your questions you opened up the whole subject. For Griffiths, in this case, it is not based on the Oklahoma City Exchange alone, but the Dallas Exchange as well. It goes over the whole proposition; most of these Texas towns come under the Dallas Exchange. Overruled and exception allowed.

A. Now, with regard to each of the companies, the figures, the Dallas Exchange serves certain theaters in the Dallas area which are operated out of Oklahoma
2143 City; they are operated by the exhibitor out of Oklahoma City, and also the theaters operated by R. E. Griffith Theaters, Inc., and Westex Theaters, Inc., and I have, unfortunately, not got the separate figures. I have only got for both the group operated out of Oklahoma City and the R. E. Griffith and the Westex.

By Mr. COCHRAN:

Q. Did you have included in the Oklahoma City revenue the revenue from, out of that, from the towns that are served out of the Oklahoma City Exchange for Griffith Amusement Company and Consolidated, such as Lubbock, for instance?

A. I am not familiar with where Lubbock is operated from, but my point is that the figures I gave of the Oklahoma City Exchange are the theaters which are billed out of the Oklahoma City Exchange. Now, out of the Dallas Exchange, we have in each case two or more separate customers, one customer being R. E. Griffith and Westex Theaters, and the other customer being Griffith Amusement Company and Consolidated Theaters, which also operate theaters in the area which is billed by the Dallas Exchange.

Q. Don't you know that none of the Griffith Amusement Company or Consolidated Theaters are billed out of the Dallas Exchange?

A. That is not correct.

Q. Which ones are billed?

2144 A. I don't know, but I know a substantial amount is billed out of the Dallas.

Q. Go ahead and give us the information.

A. I have added those. For Paramount during the 1934–'35, it represented 2.32 per cent of the Dallas total gross; 1935, 2.31; 1936–'37, 2.41; 1937–'38, 2.40; and 1938–'39, 2.92.

By the COURT:

Q. Do you mean by that two per cent plus?

A. Yes, sir, I mean that specifically the Paramount Exchange in Dallas was taking in over a million dollars a year. the Paramount Exchange in Dallas was taking in over a million dollars a year, and the Griffith Theaters that I have described didn't pay more, pay more than thirty-five thousand dollars in any one year.

Q. You mean by that two percent, you say two point something?

A. Yes, sir.

Q. It is two per cent plus?
A. Yes, sir.
The COURT. All right.

By Mr. COCHRAN:

Q. Proceed with the next distributor, Mr. Caskey.
A. Twentieth Century Fox, at the time this stipulation was drawn, the best information that I was able to
2145 secure was that the revenue varied from three per cent to five per cent of the total Oklahoma City Exchange.
The COURT. The Dallas Exchange?
A. The Dallas Exchange. Loew's, Inc. I have in detail. 1935–'36, 4.59 per cent; 1936–'37, 5.32 per cent; 1937–'38, 7.69 per cent; 1938–'39, 7.78 per cent. RKO, the best estimate is that it wouldn't amount to more than two per cent of the total business done, except during the year 1938–'39, when it did increase to about eight per cent.
Q. Warner Brothers?
A. Warner Brothers is estimated at from three to seven per cent of the total Dallas Exchange.
Q. Does that cover all of those five distributors?
A. Yes, sir, I think so.
Q. You have covered Paramount and Fox?
A. Loew's.
Q. Loew's, RKO, and Warner?
A. Yes, sir.

By the COURT:

Q. Did you give Fox?
A. Yes, sir. Two to five per cent.

By Mr. COCHRAN:

Q. We have Paramount covered there, don't we?
A. Sir?
Q. You covered Paramount, didn't you?
A. That is my recollection, sir.
2146 Q. Will you check, Mr. Reporter?
A. I will read it again. Paramount Pictures, Inc., 1934–'35, 2.32 per cent; 1935–'36, 2.31 per cent.
Q. That's the first one you covered, that's all right; that is the one His Honor asked you about. That's all.

Cross-examination by Mr. RICE:

Q. Mr. Caskey, are you familiar with any published figures, which are sometimes referred to as percentage expectancies, what we ordinarily call a quota, by which there is assigned to each exchange territory a percentage of the estimated business to be done in film rentals during the year, published in various publications and accepted by the trade; do you have any such figures?

A. I have.

Mr. KIME. Wait a minute. Your Honor please, let me interrogate to see the source of this information, please.

By Mr. KIME:

Q. Who prepares these figures, Mr. Caskey?

A. Well, in the case of Twentieth Century Fox Film, which I know about intimately, of each 17 week's period the estimate gross income from film rental is computed and then that is divided by the general sales manager, the vice president in charge of distribution, and the chief statistician among the 31 exchanges in the United
2147 States, and a percentage figure adding up to 100 is allocated to each exchange. Now, that is done on the basis of the actual experience during the preceding 10 like periods. That's because the compensation of the employees is predicated upon, in part upon the results which they achieve, so that those figures or quotas are set as accurately as possible in order to be fair to all of the employees in the distribution department all over the country. In addition to that, from time to time the general sales manager appoints a committee of representatives from the sales department to come to New York and confer with the chief statistician as to the fairness of these quota figures. Now, those I know about in detail because I participated in many of those conferences for Twentieth Century Fox Film Corporation, and we have general information as to what the other companies do. Naturally, many of the employees have worked for other companies from one time to another and are familiar with their procedures, and the figures have become available to me for other companies through applications to the Salary Stabilization Unit of the Treasury Department in which various bonus plans and compensation plans have been set out in detail.

Q. Do I understand that that is the amount estimated for the coming 17 weeks period?

A. Yes, sir.

2148 Q. At each time it is computed?

A. Every once in awhile it has to be an 18 weeks period; yes, sir.

Mr. KIME. That's all.

By Mr. RICE:

Q. As to Twentieth Century Fox, Mr. Caskey, did you give the figures as to the Dallas Exchange? I believe you gave them as to Oklahoma City. The percentage assigned to the Dallas Exchange by way of quota.

A. The current quota is 3.9 of the national quota. That has been increased since 1840, when the war camps went

in, and when Twentieth Century Fox also started to serve the Naval units at Corpus Christi, I believe. Formerly, 1939, it was 3.75. There was a change, some change in the geographical confines of the exchange prior to that time, but it ran for some years previous on the same geographical area about 3.60.

Q. How does that compare with the published figures relating to the major distributors as a whole?

A. Well, it is within two or 3/100ths of one per cent of the figures of other published companies.

Q. So that you have reason to believe that during the period of five years, the percentage which Fox, we will say, assigned to the Dallas and Oklahoma City Exchange was fairly close to those percentages of other major distributors?

2149 A. All except at the Paramount; it would be my judgment that the Paramount quota might have been as much as a half of one per cent higher, because of the Paramount ownership of theaters in that area.

Q. Do you have any division between the gross rentals paid to the Dallas Exchange by theaters operated by Griffith Amusement Company or Consolidated Theaters, as compared with the theaters operated by R. E. Griffith and Westex?

A. I have the current figures for Twentieth Century Fox.

Q. What are those figures?

A. One to two.

Mr. Kime. We object to that, your Honor please, for the reason it wasn't a part of the material called for in the answer to the subpoena duces tecum served on any of the distributors that Mr. Caskey represents, and further, it for the present has absolutely no bearing on any of the issues now before the Court.

The Court. Overruled and exception allowed. I think it cannot prejudice the Government's case in any way. What we want are the facts. I don't know how you are going to divide this. You may answer.

A. Currently it is divided into three parts, one of which is Griffith Amusement Company and Consolidated,
2150 and two parts are R. E. Griffith and Westex.

By Mr. Rice:

Q. What are the relationships between those two customers, so to speak, in the Dallas Exchange, according to the current figures?

A. Roughly speaking 50,000 and 100,000.

Q. 100,000 attributable to R. E. Griffith and Westex?

A. I have.

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By Mr. RICE:

Q. What are the relationships between those two customers, so to speak, in the Dallas Exchange, according to the current figures?

A. Roughly speaking 50,000 and 100,000.

Q. 100,000 attributable to R. E. Griffith and Westex?

A. Yes, sir.

Q. And 50,000 to the Oklahoma City units?

A. Yes, sir; I can give it exactly, if you want it.

Q. Well, that's close enough. Mr. Caskey, are you familiar generally with the exchange territory which Dallas serves as to the theater operators in that area, the larger ones?

A. Yes, sir.

Q. Are there any larger customers than the Griffith organizations in the Dallas Exchange area?

A. There are five.

Mr. KIME. To which we object, your Honor please; that has absolutely no bearing on any of the issues that your Honor might have to decide in this case.

The COURT. Objection overruled and exception allowed. I think it goes to the very heart of your case.

Mr. RICE. They claim they are dominant factors.

The COURT. If the Griffiths have a monopoly on business in these various towns, that ought to be disclosed.

2151 If they have not—here, he says, five others have more, and I think it is very material.

Mr. KIME. But, your Honor please, there may be many others; in fact, the reports of the Supreme Courts show that here in Texas they have another one, the Interstate, which was doing the same thing.

The COURT. All right, you may answer. Exception allowed.

By Mr. RICE:

Q. Are there larger customers, Mr. Caskey?

A. Yes, sir.

Q. How many?

A. The Interstate Circuit is the largest circuit.

Q. Do you know currently with reference to the rental being paid by the Griffith organizations as a whole, how much rental, that is, with relation to that, how much rentals the Interstate paid to the same people?

A. They paid about four and one-fourth times the total of the two Griffith organizations.

Q. Of the two Griffith organizations?

A. Yes, sir.

Q. Are there other larger customers?

A. Well, there is the Robb and Rowley, which paid substantially the same as the two Griffiths; that is, they paid more than either and about the same as the other. That is also true of East Texas and Jefferson.

2152 Q. The East Texas and Jefferson operated out of Beaumont, are they affiliated organizations?

A. Yes, sir.
Q. Known as the Jefferson Amusement Company?
A. Yes, sir.
Mr. RICE. That is all.

Re-direct examination by Mr. KIME:

Q. Do you have any figures there on Lubbock, Texas?
A. No, sir.
Q. Do you have any figures on any individual situation?
A. No, sir.
Q. This Interstate you mentioned, what was the full name of that?
A. Interstate Circuit, Inc.
Q. Is that affiliated with Paramount?
A. My understanding was that Paramount Pictures, Inc. owns 50 per cent of the common stock.
Q. Is that the same Interstate that was convicted here recently for violation of the Sherman Act?
A. Not to my knowledge of any conviction.
Q. That were found guilty in a civil case?
A. An injunction was issued against certain practices of the Interstate Circuit, Inc.
Q. Were you subpoenaed to appear here today?
2153 A. Yes, sir.
Q. And you appeared in answer to that subpoena?
A. Yes, sir.
Mr. KIME. That's all.
Mr. COCHRAN. That's all.
(Witness excused)

Mr. KIME. Now, if the Court please, the plaintiff now moves, at the conclusion of all the evidence, and as the last and final motion immediately before the Government proposes to rest the conclusion of its case, that in view of the admissions of the defense, that all of the acts and declarations of the co-conspirators is admissible after the conspiracy has been proven and since the conspiracy has been proven and since the distributors have been proven to have been a part of this conspiracy, that each and every piece of written evidence of such character be admitted, and that all oral evidence of this character heretofore rejected be admitted, and that an opportunity be afforded for the cross examination of witnesses offering such testimony, for the reason that the conspiracy has been established, the connection of the distributors with the conspiracy has been established by the contracts, by the course of dealing, by the conduct of the defendants and their co-
2154 conspirators, the distributors, in their handling of the independents, the knowledge of all, and the par-

ticipation of all, in their part of perfecting and prosecuting this conspiracy.

The COURT. Overruled and exception allowed. The Court cannot assume at this time that any conspiracy has been established. There have been matters and evidence pointing to that, but that goes to the very gist of this case, whether or not the conspiracy has been established.

Mr. KIME. The Government rests its case in chief, your Honor.

The COURT. Very well.

Evidence on Behalf of the Defendants

C. B. AKERS, called as a witness on behalf of the defendants, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. DUDLEY:

Q. State your name.
A. C. B. Akers.
Q. Where do you live?
A. Oklahoma City.
Q. How long have you lived here?
A. I have lived here since 1934, except 18 months, in 1938–'39.

2155 Q. What is your business or occupation?
A. I am assistant general manager of Griffith Theaters.

Q. How long have you been assistant general manager of the Griffith Amusement Company?
A. Since October of 1939.
Q. Are you assistant general manager of the Consolidated Theaters, Inc.?
A. I am employed by Griffith Amusement Company.
Q. You are employed by Griffith Amusement Company?
A. Yes, sir.
Q. How long have you been associated with the Griffith Amusement Company?
A. Since——
Q. How many years?
A. 18 years.
Q. 18 years?
A. Yes, sir.
Q. When did you first go to work for that company?
A. In July of 1927.
Q. In what capacity did you start work?
A. I was an advertising man.
Q. Where were you located?
A. Borger, Texas.

Q. How long did you remain in that position at Borger, Texas?

2156 A. Until January of '28 seven or eight months.

Q. What was your next position or job with the company?

A. I was assistant manager at Seminole, Oklahoma.

2157 Q. You were assistant theater manager at Seminole, Oklahoma?

A. Yes, sir.

Q. How long did you remain as assistant theater manager at Seminole?

A. Two months.

Q. Then where, if at all, did you go?

A. Wink, Texas.

Q. What position did you hold there?

A. Manager of the Rig Theater.

Q. How long did you remain as manager of that concern, that theater?

A. Eight or nine months.

Q. Then where did you next work or go for the company?

A. Shawnee, Oklahoma.

Q. What position did you hold at Shawnee for this company?

A. I was assistant manager and advertising man there.

Q. About how long did you remain in that position there?

A. Five weeks.

Q. Then where did you go for the company?

A. Pampa, Texas.

Q. What position did you hold at Pampa?

A. I was manager of the Rex Theater at Pampa.

2158 Q. How long did you remain there?

A. Three years.

Q. Then where did you go?

A. Lubbock, Texas.

Q. What position did you hold in Lubbock, Texas?

A. I went there as manager of the Lindsey and Palace Theaters.

Q. Those are two theaters owned by the Griffith interests?

A. By the Lindsey interests.

Q. Is that a corporation?

A. Yes, sir.

Q. When did you become manager?

A. In March of 1932.

Q. You were manager of what at that time, of those Lubbock Theaters?

A. The two Lubbock theaters, the Lindsey and Palace.

Q. How long did you remain in that position?

A. I was there until December of 1934.

Q. What was your position in December of 1934?

A. I became district manager of the western district for the Griffith Amusement Company.

Q. By whom were you employed as district manager of the western district?

A. The Griffith Amusement Company.

2159 Q. How long did you remain as district manager of the western district?

A. Until July of 1938.

Q. At that time what happened to you?

A. I became president of the Tad Screen Advertising Company of Dallas.

Q. When you took that position did you leave the employ of the Griffith Amusement Company?

A. Yes, sir.

Q. How long were you connected with, and in what capacity, this advertising company?

A. I was there until October of '39 and was president of the company.

Q. Then what position, if any, did you take for the Griffith Amusement Company.

A. My present position.

Q. And you have held that position since, is that right?

A. Yes, sir.

Q. Do you know W. O. Bearden and P. E. Smith of Lubbock, Texas?

A. Yes, sir.

Q. They were former owners and operators of the Tech Theater at Lubbock?

A. Yes, sir.

Q. Who owned and operated the Lindsey and Pal-

2160 ace theaters at Lubbock, Texas, while you were there?

A. Lindsey Theaters, Inc.

Q. That was a corporation?

A. Yes, sir.

Q. What other theaters do they own and operate in Lubbock?

A. At that time or now?

Q. Now.

A. They now operate the Lyric, Texan and Cactus, Broadway and Tower in addition to the Lindsey and Palace.

The Court. Who owned and operated those?

A. The Lindsey Theaters, Incorporated.

By Mr. Dudley:

Q. What theaters did Mr. Bearden and Mr. Smith own and operate in Lubbock?

A. They owned the Tech Theater and Arcadia Theater.

Q. Did they own and operate those theaters while you were in Lubbock?

A. No, sir.

Q. While you were manager of the Lubbock theaters, what theaters did these gentlemen own and operate?

A. I know of no theaters they had at that time.

Q. Now, when you left Lubbock in 1932——

A. 1934.

Q. 1934—I will put the question this way—while you were manager of theaters in Lubbock, what theaters
2161 did Bearden and Smith operate?

A. None.

Q. Now what theaters did the Lindsey Theaters, Incorporated, operate?

A. It operated the Lindsey and Palace when I went there and in August, 1933, we opened the Texan.

Q. Did they acquire any other theaters there in '39, you know of?

A. The Lindsey Theaters?

Q. Yes.

A. Yes. The Lindsey Theaters bought the Cactus Theater from Mr. Tate Sanders in '39 and bought the Lyric and Broadway theaters from Mr. and Mrs. Mauldin that same year.

Q. What year did the company acquire the Tower Theater?

A. The Tower Theater was a new project built in 1940.

By the COURT:

Q. What connection did the Griffith Amusement Company have with the Lindsey Theaters?

A. Griffith Consolidated, Incorporated, owned 50 per cent of the stock.

By Mr. DUDLEY:

Q. The Lindsey Theaters, Incorporated. You have made reference to 50 per cent of the stock which was owned by the Griffith Consolidated?

A. Yes, sir.

Q. Now you spoke of Mr. Mauldin. What theater did he and his wife operate there in Lubbock?

2162 A. When I went there they were operating the Lyric and later built the Broadway before I left there as manager.

Q. You spoke of the Cactus Theater. That was acquired or built by Mr. Sanders, did you say?

A. Tate Sanders.

Q. Were there any other theaters operated there, other than those you have mentioned, covering that period of time?

A. While I was there or later?

Q. Later.

A. Yes.

Q. Well, my question was, while you were there were there any other theaters other than those you have mentioned?

A. No.

Q. Now later were there any other theaters put in in Lubbock?

A. Yes. In 1936 Mr. Beardon and Smith built the Tech Theater, and some two or three years later the Arcadia and the Midway Theater were opened.

Q. After the Tech Theater was operated—how long was that operated before the Aradia Theater was opened by Beardon and Smith?

A. I don't know exactly but for three or four years.

Q. You mentioned the Midway Theater. Who owned and operated that?

2163 A. Originally a brother of Mr. Mauldin's I mentioned awhile ago, Joe Mauldin opened it but kept it only a short time and turned it over to another fellow there.

Q. What was the other fellow's name?

A. Joe Bryant.

Q. Now, was this theater built, opened before or after the Tower was opened?

A. It was after the Tower.

Mr. COCHRAN. Are you talking about the Midway?

Mr. DUDLEY. I am talking about Joe Bryant's theater, the Midway.

By the WITNESS:

A. That is it.

By Mr. DUDLEY:

Q. That is the one you are talking about. Now then, how long did Mr. Bryant operate this Midway Theater, if you know?

A. He is still operating it.

Q. Do you know what became of Mr. Beardon and Mr. Smith and what connection they have with theater operations there in Lubbock now?

A. Mr. Beardon is operating the Arcadia and Mr. Smith is operating the Tech.

Q. Now speaking about the ownership of the stock in the Lindsey Theaters, Inc., who owned the other 50 per cent of that stock, if you know?

A. The other 50 percent is owned by Mrs. Betty Lindsey.

2164 Q. You knew her?

A. Very well.

Q. While you were manager of the theaters in Lubbock and later while you were district manager of Griffith Theaters, Inc., did you have occasion to make any surveys from time to time in Lubbock, looking toward the building of additional theaters there?

A. Yes, sir.

Q. What were your duties at that time with reference to the theaters in Lubbock? I mean when you were district manager, what were your duties in that regard?

A. I acted in an advisory capacity to the management; had to do with advertising, personnel policies and operations in general.

Q. And expansion?

A. Yes.

Q. Did you have control at that time of the theaters?

A. Not control. I was merely advisor to the manager.

Q. Did you have occasion to become familiar with the city of Lubbock, its population trend and theater problems while you were manager?

A. Yes, sir.

Q. Who became manager of the Lubbock Theaters after you changed your position?

A. When I left I was succeeded by Hal Grady.

2165 Q. He died, did he not?

A. Yes, sir.

Q. Then who took his place?

A. Arlie Crites.

Q. When did Mr. Crites become the manager of the Lubbock Theater?

A. In June of 1937.

Q. And he really succeeded you. Is that correct?

A. Yes, sir, after Mr. Grady died he followed me.

Q. Who succeeded you as district manager and when?

A. Claude Motley.

Q. About when, do you recall?

A. In July, 1938.

Q. Now while you were connected with this screen advertising company, I will ask you whether or not you served the Lindsey-Lubbock Theaters in any capacity during the year 1938?

A. I tried to help them out at their request.

Q. Were you requested by the operators of those theaters to make a survey and investigation as to the advisability of building other theaters in Lubbock?

A. Yes. Mrs. Lindsey requested it.
Q. And did you do that work?
A. Yes, sir.
Q. Did you become familiar with the situation
2166 there, the Lubbock situation?
A. I had remained familiar with it.
Q. You knew what the situation was?
A. Yes, sir.
Q. What was the situation at Lubbock at that time as to new comers or otherwise? What was the situation when you made this survey?
A. Lubbock was growing very rapidly and has for several years.
Q. How long were you engaged in making this survey you speak about in Lubbock?
A. Well, the first time I went there, I must have been there two or three weeks.
Q. Were you paid anything for your services?
A. No, sir.
Q. What particular work were you to do in making this survey?
A. I was to study the growth of Lubbock and make recommendations for the location of a new theater, where it should be located and the type.
Q. Previous to this had you rendered similar service and made recommendations with reference to expansion and things of that kind?
A. Yes. As early as 1934 I had been recommending a new theater in Lubbock.
2167 Q. In 1934 you had been making surveys and recommendations concerning the expansion of the theater business in Lubbock?
A. Yes, sir.
Q. When did you complete your survey in Lubbock? I mean in what year or month, if you remember, in 1938?
A. I went out there on this particular survey to discuss the matter with Mother Lindsey and the others in August or September, August, I believe, of 1938.
Q. After you made the investigation did you make any recommendation with reference to other theaters in Lubbock?
A. Yes, I recommended that a theater be built near the college.
Q. Why did you recommend the building of a theater out near the college and give the name of the college?
A. Texas Technology College was growing very rapidly and Lubbock was growing very rapidly and the residential area building up very fast in every direction.

Q. After you made your survey and recommendation, what was done, if you know, with reference to purchasing a site for the erection of a new theater out near the campus?

A. A lot was purchased on Broadway just off College Avenue.

Q. Do you remember about when that lot was purchased?

2168 A. In September of 1938.

Q. After the lot was purchased, do you know whether or not they had any difficulty with reference to building a theater on that particular lot?

A. Yes.

Q. State briefly what the situation was.

A. This lot was purchased and was not zoned for business, and the property owners across the street started a movement to circulate a petition against the building of a theater there.

Q. What did you do about those difficulties? Did you have a conference with anyone about them?

A. Yes. We tried to get the lot zoned but were not successful.

Q. After you tried to get this particular lot zoned and were not able to do so, I will ask you whether you acquired another lot?

A. Yes.

Q. Another site?

A. Yes.

Q. Where was that site with reference to the first site you acquired?

A. It was approximately half a block or three-quarters of a block, I guess, north on College Avenue.

Q. I wish you would state briefly now, after this

2169 zoning situation developed, what you did or caused to be done with reference to acquiring another lot and having that lot zoned for business purposes.

A. Well, as it became obvious we could not get that lot zoned and Mr. Dick Green owned a piece of property west of there, in fact the lot adjoining, which was zoned, and owned all the business buildings on that corner, lacking 50 feet, I believe, of having buildings on all his property, and I tried to work out a deal with Dick Green where we would trade the Lindsey lot for his lot and give him a bonus so we might build on his property or he might build for us and lease to us.

Q. In your effort to solve these difficulties there did you confer with an attorney with reference to it?

A. Yes.

Q. With whom?
A. Owen McWhorter.
Q. Whom did you understand he represented?
A. He has represented the Lindsey estate for several years.
Q. After you acquired this lot, or before you acquired the lot, did you have a conversation with Mr. Bearden?
A. Yes, I had a conversation with him.
Q. About when was that conversation and where?
A. It was early in October in his office.
2170 Q. 1938?
A. 1938, yes, sir.
Q. Where did that conversation take place?
A. In his office.
Q. Who attended that conference?
A. Mr. Bearden, Arlie Crites and myself.
Q. Who arranged the conference, if you know?
A. Mr. Crites called for the conference.
Q. Why did Mr. Crites come into the picture at that time?
A. I asked him to accompany me.
Q. Why?
A. Well, Mr. McWhorter in my conference with him concerning the zoning of this lot, told me he represented the man who owned the building in which the Tech Theater was located, and that he knew that Bearden and Smith wanted to sell, and suggested I go see them. I was hesitant to do so because they had made, to my knowledge, numerous complaints to the film companies and I understood they had complained to the Department of Justice, and I was afraid to talk to them for fear my conversation might be misconstrued. Mr. McWhorter, being attorney for the Lindseys, suggested I go see them anyway and take a witness so whatever I said would be remembered by that witness.
Q. Then did you take a witness along with you?
2171 A. I took Mr. Crites.
Q. What was his name?
A. Arlie Crites.
Q. What connection, if any, did he have with the theaters at that time?
A. He was manager.
Q. What was the occasion of having this conference with Mr. Bearden?
A. To see if he wanted to sell, he and Mr. Smith.
Q. What particular theaters did he own and operate there at that time?
A. The Tech. The Arcadia he had not built yet.
Q. Where was the Tech located?

A. On College Avenue.

Q. Was that the only theater out on College Avenue, in that neighborhood?

A. At that time, yes.

Q. So you arranged the conference and talked with Mr. Bearden with reference to this situation; is that right?

A. Yes, sir.

Q. Do you remember about when that conversation took place?

A. In October of 1938.

Q. Do you remember the day of the week?

A. No, I don't. I believe it was on Saturday but I
2172 am not sure.

Q. Where did the conversation take place?

A. In Mr. Bearden's office.

Q. In his office in the Tech Theater?

A. Yes, sir.

Q. And you and Crites and Bearden were the only persons present. Is that right?

A. Yes, sir.

Q. Was Mr. Crites present during the entire conversation you had there with Mr. Bearden on this occasion?

A. He was.

Q. Now, do you remember the substance of the conversation which you had there with Mr. Bearden on that occasion on which Mr. Crites was present?

A. Yes, sir.

Q. I wish you would state briefly your recollection of that conversation.

A. When we first went in I was introduced to Mr. Bearden by Mr. Crites and I commented on the sound and the appearance of his theater—it was a little larger at that time than it was the last time I have seen it—then I told him that Mr. McWhorter had informed me that he wanted to sell and asked him if that was so and he said yes, he would sell anything he had if the price was right. I asked him what he considered a right price and he told
2173 me $26,000. I said that was considerable more money than we had in mind and that we had in mind a price of ten or twelve thousand dollars. I told him that we figured on a larger theater and the remodeling cost on top of the $26,000 purchase price would make it prohibitive for the type theater that the Lindseys and I thought should be erected out there. Then he asked me about this lot around the corner, where we had purchased this lot, which was just half a block from there, and asked me if I thought another theater would be profitable in Lubbock, and I told him

I thought it certainly would, and even another theater down near Avenue Q might be profitable venture because that section of town was growing. He repeated that his price was $26,000, and I thanked him and left. As well as I remember, that is all that was said there.

Q. That is about the substance of the conversation as you recall it?

A. Yes, sir.

Q. I believe you said you had in mind remodeling his theater in some respect if you bought it.

A. Yes. It would not be the type of theater I was recommending to the Lindseys to be located near that school.

Q. You discussed with him during this conversation the probable cost of remodeling the theater that you thought would be appropriate out there near the college?

2174 A. Yes. I told him we would have to spend a great deal of money on the Tech, in a general way.

Q. Was your relations with him friendly or unfriendly during this conversation?

A. Very friendly, I would say.

Q. Prior to having this conversation, had you put a sign on this lot you had purchased out there or not?

A. Yes.

Q. Caused one to be put there?

A. Yes.

Q. Was there anything said about this sign during this conversation, that you recall?

A. I don't remember.

Q. Mr. Bearden has testified in this case and I am going to read you the testimony which he gave and ask you with reference to it. I will read the questions and answers.

(Counsel read as follows:)

"A. I received a phone call on the evening of October 6, 1938.

"Q. October 6?

"A. October 6, 1938, from Mr. Crites, wanting to come out and talk to me. He came out and came into my office and had another fellow with him, whom he introduced as Mr. Akers.

2175 "Q. Mr. Akers with what company?

"A. With Griffith, or ' with our company' he said; 'Mr. Akers, with our company.'

"By Mr. COCHRAN:

"Q. Did he say with what company he was, or just said 'our company'?

"A. He said, 'our company.'

"By Mr. WRIGHT:

"Q. What was the conversation you had with him?

"A. Mr. Akers commented on the theater we had there, about it being nice, and what good sound system we had, and first one thing and another of that nature; then he mentioned the fact about them planning to build a theater out by the campus and asked me if I had heard of it. I told him yes, I had heard of it, and I had also noticed the sign posted on the lot around the corner, and he asked me if I thought there was enough business out by the college to furnish or supply two theaters. I told him I didn't know, but I doubted it. And he says, 'Well, we have intended to have a theater out here for a long time, and we feel like this part of town really belongs to us because we have been in the theater business a long time.' And he says, 'We plan to control the theater business here, if we have to put them here as thick as service stations.'

"By the COURT:

"Q. If we have to what?

"A. If we have to put them here as thick as serv-
2176 ice stations. So I told him it was a free country, and that I could do nothing about it. He then asked me if I would be interested in selling. I told him yes, that I would. And he asked me what I would take for it. I told him I would take $20,000. He said, 'That's unreasonable; we can pay only about $10,000.' And I told him we couldn't accept that, that wasn't enough; that we had more money in it than that. That was about the extent of the conversation until he got ready to go. And he stated he would give me until Monday morning, which was the 10th, to call him up and accept the offer that he made, else they would start immediately to construct a theater on the lot that they had the sign on. So I told him that he already had my answer, that I couldn't take $10,000; that sometime he might have the theater, but I wouldn't give it to him. So he shook hands with me and said he would be going, and that's the last time that I saw Mr. Akers." (End of reading.)

Q. Now, Mr. Akers, you have heard the conversation as given by Mr. Bearden. I will ask you if the conversation took place as he related it?

A. No, it did not.

Q. Did you tell him that you believed "this part of town really belongs to us because we have been in the theater business a long time"?

2177 A. No, sir.

Q. Did you say "We plan to control the theater

business here if we have to put them here as thick as service stations"?

A. I did not.

Q. Did you tell him his offer was unreasonable and that you would pay only $10,000?

A. I told him that $26,000, which was the price he quoted, was too much for us and we had in mind $10,000 or $12,000.

Q. Did you say you would give him until Monday morning to call you up and accept the offer which you had made or else you would start immediately the construction of a theater on the lot you had the sign on?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you ever at any time during your conversation with him make any threats of any kind with reference to building a theater?

A. I did not.

Q. This Mr. Crites, was he with you during the entire conversation?

A. He was, and I had requested him to pay particular attention to what I had to say.

2178 Q. From your experience in the theater business, I will ask you whether or not it is customary to erect signs on sites you contemplate building a theater on?

A. Yes, sir.

Q. Is that a common practice in the theater business?

A. It is almost always done.

Q. What is the purpose of that?

A. The erection of a sign really starts as an advertising idea to establish the location of the theater that is to be built there; advertise to the public the type of theater it is going to be. It is changed from time to time, giving the type of equipment or the policy that it may play, and has another purpose, to stop the public from asking the workmen what is going on and holding them up.

2179 Q. So that the putting of that sign on this property site was the customary practice of the theater business at that time, was it?

A. It was, and still is.

Q. I believe you testified that after you acquired this lot and put this sign up, that you received some protests from property owners in that section of the city?

A. Yes, sir; not directly, but we heard of the activity that was going on.

Q. And then you took the matter up with the attorney for the Lindsey interests and other parties, as you have heretofore outlined?

A. Mr. McWhirter advised me of the protests. It seems that someone at the City Hall called him.

Q. Did you have any more to do with that situation from that time until you later returned to the service of the Griffith Amusement Company?

A. Yes, sir; I was back there three or four times, trying to work out the Dick Green deal.

Q. All right. When you went back the second time, when was that, as near as you recall, with reference to the time you were there and had this conversation with Mr. Bearden; was it a short time after that?

A. Couple of months, I guess.

The COURT. Was that Pearson or Bearden?

2180 Mr. DUDLEY. Bearden.

Q. Now, when you went back the second time, state what you did with reference to straightening out this difficulty there about this zone situation?

A. Oh, I couldn't do much about straightening that out. That was in the hands of the attorney. He was trying to get the property zoned, and I was trying all the time to work out the deal with Dick Green.

Q. Well, tell us about Dick Green, and what you did with him in an effort to work out the situation, and over what period of time?

A. Oh, for a year or more, I tried to contact Mr. Green and tried to get him to work out a swap or to have him build for the Lindseys, and I was unsuccessful.

Q. You didn't succeed?

A. No, sir.

Q. Did you then secure another location?

A. Yes, sir.

Q. And where was that location?

A. About half a block north of Mr. Green's property.

Q. Was that on College Avenue?

A. Yes, sir, it is on College Avenue.

Q. And when was that obtained, if you know?

A. That deal was worked out either in late 1939 or early in 1940, with Mr. Leftwich, who owned that property.

2181 Q. After you worked out the deal for this new site with this party, was a theater built there?

A. Yes, sir.

Q. What was the name of that theater?

A. The Tower.

Q. About when do you understand the Tower Theater was built out near the college?

A. The Tower was built in the summer of 1940.

Q. Are you familiar with the Tower Theater and the Tech Theater's construction, the seating, location, and things of that kind, in comparison?

A. Yes, sir.
Q. How many seats are in the Tower?
A. Approximately 800.
Q. How many?
A. 800.
Q. How many are in the Tech?
A. Approximately 500, I would say.
Q. How would you compare the construction of these two theaters, I mean the Tech and the Tower? Give your conception of each of these theaters, taking the Tech first.
A. The Tech is a remodeled commercial building; it is about 100 feet deep, very short; originally the Tech Theater was 25 feet wide, and they later took out a partition and made it, I guess it is 50 feet or thereabouts; it has a
2182 very low ceiling, much shorter than that type of theater should be, of 50 feet wide. I don't know what they have in the way of sound equipment; they had fair sound. The seats were not of the best.
Q. Were they cushioned?
A. Part of them were cushioned bottoms.
Q. Now give the Court a description of the Tower Theater, as to its construction, seating capacity, sound condition, seats, and things of that kind.
A. The Tower is a deluxe neighborhood theatre, it was designed by one of the leading theater architects of the country. It has a large mezzanine room, wide foyers, ample space, the best of seats, and sound equipment. It is strictly a deluxe house.
Q. Is there anything else you want to say about the Tower or the Tech that you haven't stated?
A. I don't know of anything.

By the COURT:

Q. What are the dimensions of the new theater?
A. The Tower?
Q. Yes, sir.
A. The Tower is about, the building proper is about 165 feet long; its ceiling height, I would say, averages about 25 or 28 feet; it is 70 feet wide, but actually the auditorium is only 60. The sides are used for mezzanines.
2183 It has a corner entrance; in other words, you go into the theater and turn to your left to get into the auditorium proper. That portion which is the entrance extends in the shape of an "L" out through the street line. We have 33 inch seating in there, which in our judgment is quite important. In other words, 33 inches back to back, where many theaters, in many theaters it is 28.

(Defendants' Exhibits 80 and 81 were then marked for identification.)

By Mr. DUDLEY:

Q. I call your attention to Defendants' Exhibits 80 and 81, and will ask you to examine them and state what they are, if you know, whether they are the interior and exterior of the Tower Theater?

A. It is.

Q. Which you were talking about?

A. Yes, sir.

(Defendants' Exhibits 82 and 83 were marked for identification.)

Q. I hand you Defendants' Exhibits 82 and 83 and I will ask you to examine them and state what they are, if you know.

A. This one is a picture——

Q. (Interrupting.) Which one, what number?

A. No. 83 is a picture of the front of the Tech Theater, and partial side view; and the other is a picture of
2184 the interior.

Q. How far is the Tech Theater from this Tower Theater?

A. Slightly over a block.

Mr. DUDLEY. We offer in evidence Defendants' Exhibits 80 and 81, and also 82 and 83.

Mr. KALLIS. Now, if the Court please, I object to the reception of those pictures, unless there is a showing here that they were made under precisely the same conditions with reference to lighting effects and other factors which are material, in the photographic reproductions. There is no showing of anything like that here, no showing that there is not any distortion whatsoever.

By Mr. DUDLEY:

Q. Is each of those pictures a fair representation of those two theaters as you know them?

A. I think so.

Mr. DUDLEY. We think we have laid the proper foundation in order to help the Court get a picture of those theaters, which is all the purpose for which we are offering them.

The COURT. Overruled, and exception allowed. The Court is not interested in anything except the general appearance, anyway. Well, it is now 12:00 o'clock, gentlemen; we will recess until 2:00 o'clock.

(Whereupon, Court recessed until 2:00 o'clock p. m. of this same date.)

2185 PROCEEDINGS

2 o'clock p. m.

The COURT. You may proceed.

Mr. KALLIS. If the Court pleases, I would like to interrupt the proceedings at this point and advise the Court I have just received, within the last five minutes, a letter from Mr. Wright in which he encloses four copies of cross interrogatories and objections to the direct interrogatories which were directed to Neal F. Agnew, and requested me to serve a copy on Judge Cochran, and Mr. Wright's letter, which I have here. Then Mr. Wright continues: "I believe it would be desirable to give one copy to Judge Vaught and assure him at the same time there was no agreement whatever between me and Judge Cochran whereby questions of the kind we have objected to could be propounded on written interrogatories", which statement by Mr. Wright is substantially the one I made yesterday, but I think, in view of this letter, I would like to file with the clerk a copy of the cross interrogatories and objections to certain direct interrogatories directed to Neal F. Agnew, and I might advise further that I have advised Mr. Wright as to the proceedings which occurred yesterday afternoon in connection with our motion that we be given the opportunity of not propounding written cross interrogatories to Mr. Agnew and Mr. Lazarus

2186 until we have seen the answers that they make to the direct written interrogatories submitted by the defendants.

The COURT. What the Court had in mind was that when you submit your cross interrogatories, when you come to those where I feel you cannot comply with the order with the information you have, and that you desire to see the answer before you complete your cross interrogatories, then the court can act on that and I am sure that can be worked out so as to give you what you want and you will be complying with the order of the Court.

2187 Mr. KALLIS. That's right. and we have acted in accordance therewith, by submitting certain written cross interrogatories which we feel we are able to put to the witnesses under the circumstances, and at the same time noting our objection to certain others.

Mr. COCHRAN. Our position, if the Court please, is that this doesn't attempt to comply with the order of the Court. There are some of these interrogatories that they have neither stated why they can't ask or shown any good faith or attempt to do so. These interrogatories will each show that they are certainly capable of being crossed to some extent. They have made no attempt to cross them, or to go as far as they can, but simply say they object to answering

them, so we take the position that they have not complied with the order of the Court.

Mr. KALLIS. If the Court please, I don't know why Judge Cochran talks that way. We have seventeen cross interrogatories, which I just handed him, a copy of which your Honor has before you.

Mr. COCHRAN. The point I am making is this, here are 29, 30, 31 and so forth, and some of these interrogatories you crossed and some of them you didn't.

Mr. KALLIS. That's right. I represent to your Honor, as a member of this bar, that we feel that we cannot do so until we know the answers that the witness is
2188 going to give.

The COURT. Well, the Order of the Court has been made, and you can follow that.

Mr. KALLIS. Thank you, your Honor, for interrupting this direct examination.

The COURT. Very well.

C. B. AKERS, being heretofore duly sworn, resumed the stand and testified further as follows:

Direct examination (resumed) by Mr. DUDLEY:

Q. When was the Midway Theater built with reference to the Tower, before or after?

A. The Midway was built before the Tower.

Q. Do you remember——

A. It opened——

Q. In 1940, what year was the Midway built?

A. I believe it was 1939.

Q. 1939?

A. Yes, sir.

Q. And what year was the Tower built?

A. 1940, opened in August.

Q. At the time this site was acquired and the sign put on it at the Tower Theater, were there any other persons endeavoring to build additional theaters in Lubbock at that time?

A. I don't know.

2189 Q. At any rate, between the time that you purchased this site and put the sign on it, and before you actually built the Tower Theater, the Midway Theater was built, wasn't it?

A. Yes, sir.

Q. How far was the Midway Theater from the Tower Theater when it was finally built?

A. The Midway is about six blocks east of the Tower, on Broadway.

Q. Who built the Midway?

A. I don't know as for the building itself, but it was opened by Joe Mauldin, a brother of W. A. Mauldin.

Q. Now, after the Tower Theater was built, what if anything happened to the old Lindsey Theater?

A. The Lindsey?

Q. Yes, sir.

A. It was torn down and replaced by the new Lindsey, in 1941.

Q. When was the new Lindsey constructed?

A. It was opened November 7th, 1941.

By Mr. KAIMS. Nineteen what?

A. 1941.

2190 Q. I wish you would briefly describe the new Lindsey Theater as to seating capacity and other things that go to make up a good theater.

A. The new Lindsey?

Q. Yes, sir.

A. The new Lindsey is the finest theater out there. It has about 1400 seats, a little less than 1400 seats. It is 75 feet in width and has the finest appointments throughout.

Q. I believe you said the new Lindsey was built in 1941.

A. 1940.

Q. I will ask you if it wasn't in 1940.

A. It was in 1940, in November following the opening of the Tower in August.

The COURT. That is downtown?

A. Yes, sir, that is downtown.

By Mr. DUDLEY:

Q. The new Lindsey, of course, was a downtown theater?

A. Yes, sir.

Q. How many blocks is the Lindsey Theater from the Tower, we will say?

A. It is 12 blocks east.

Q. All the theaters in Lubbock except the Tower and Tech were downtown theaters?

2191 A. Yes.

The COURT. The Midway was not downtown?

A. The Midway was half way.

By Mr. DUDLEY:

Q. Except the Midway, the Tech and Tower, what might be termed downtown theaters.

A. The Cactus is not in the center of town. It is south a few blocks from the central business section.

Q. Which theater do you regard as the best and most modern and up to date theater in Lubbock?

A. The new Lindsey.

Mr. KALLIS. I object to that unless showing is made that this man is able to judge that and the factors he takes into consideration.

The COURT. Overruled. Exception allowed. He ought to know as he lived there for years. He can give his opinion about it.

By Mr. DUDLEY:

Q. You may proceed.

A. The Lindsey is the finest.

Q. What, in your judgment, is the next best theater?

A. The Tower.

Q. And after the new Lindsey was built you became familiar with it and are familiar with it now, are you not?

A. Yes, sir.

Q. I hand you Defendants' Exhibits 84, 85, 86, 87 and 88, and will ask you to examine each of them and
2192 state what they are as applied to the new Lindsey Theater.

A. Exhibit 84 is a photograph of the exterior of the new Lindsey. Exhibit 85 is a photograph of the interior or the foyer of the new Lindsey, showing the stairway to the mezzanine. Exhibit 86 is a photograph taken from the stage of the interior of the new Lindsey. Exhibit 87 is a photograph of the interior of the new Lindsey taken from the back of the balcony and Exhibit 88 is a picture of the interior showing the mezzanine and the foyer, taken from the first landing of the stairway.

Q. In your judgment are those pictures true and correct photographic views of what they purport to show?

A. Yes.

Mr. DUDLEY. We offer these exhibits in evidence, Defendants' Exhibits 84 to 88 inclusive.

Mr. KALLIS. No objection.

By Mr. DUDLEY:

Q. Do you know Mr. P. E. Smith?

A. Yes, sir.

Q. Where and when did you first become acquainted with him?

A. I met him in Oklahoma City. I had seen him before but had not been introduced to him.

Q. What connection, if any, did he have with Mr. Bearden in the operation of the Lubbock Theater?

A. He was a partner.

2193 Q. And what theaters do he and Mr. Bearden own now that they are operating as partners?

A. They own the Tech and Arcadia and also are partners in the Phillips Theater at Borger.

Q. They own these two in Lubbock, as I understand.
A. Yes, sir.
Q. You say they also had a theater in Borger, Texas, these same patries?
A. They did, in partnership with another gentleman.
2194 Q. What was the name of the theater which they operated in Borger?
A. The Phillips.
Q. Where was that theater located, if you know?
A. It was located in the residential area of Borger, known as Phillips Camp.
Q. Do you know about when these parties opened this Phillips Theater in Borger?
A. I believe it was opened in 1939, in March.
Q. March, 1939, or '40?
A. '40.
Q. '40?
A. Yes.
Q. Was there another theater in Borger at the same time they opened this theater, or about that time?
A. Was there another theater there?
Q. Yes, sir.
A. There were three others, four others there.
Q. Well, was another one opened there about that time?
A. Yes, sir.
Q. What was the name of that one?
A. The 66.
Q. Who opened that theater?
A. Griffith Amusement Company.
Q. Do you know about when it was opened?
2195 A. March, 1940, about a week before the Phillips.
Q. It was opened about a week before the Phillips?
A. Yes, sir.
Q. Was anyone else interested with Mr. Bearden and Mr. Smith in this Phillips Theater?
A. Yes, sir, Mr. Seale.
Q. Did you ever have a conversation with these parties, or either of them, with reference to the purchase of the Phillips Theater?
A. Yes, sir.
Q. Where and when did this conversation take place?
A. In Oklahoma City, in Mr. Griffing's office, on May 10th of that year, 1940.
Q. What year?
A. 1940.
Q. What was the occasion and purpose of that conference?

A. Some of these partners had asked Mr. Motley to make an appointment for them to discuss business matters.

Mr. KALLIS. Now, if the Court please, I think this witness ought to be instructed to refrain from any hearsay testimony, and what was said to Mr. Motley, of course, is purely hearsay so far as this witness was concerned.

By the COURT:

Q. At whose instance was this meeting held; who requested the meeting?

A. Mr. Motley called us and asked us to see these
2196 gentlemen.

By Mr. DUDLEY:

Q. Who was Mr. Motley?

A. The district manager for Griffith Amusement Company.

Q. Do I understand you to say that these other parties, or some of them, requested Mr. Motley to arrange a conference here in Oklahoma City?

A. That's what Mr. Motley told us.

Q. That is what he told you?

A. Yes, sir.

Q. That is the information you had?

A. Yes, sir.

Q. And prior to that time had you made any effort to discuss with these gentlemen, or any of them, the purchase of the Phillips Theater?

A. No, sir.

Q. When do you say you had that conference in Oklahoma City?

A. May 10th, 1940.

Q. Who attended the conference?

A. Mr. Bearden, Mr. Smith, Mr. Seale, Mr. McKenna, Mr. Griffing, and myself.

Q. Before you went to this meeting, did you know the object and purpose of it, in a general way?

A. We didn't know definitely what they wanted.

Q. Now, you say you met in Mr. Griffing's office;
2197 do you mean Mr. Griffing, the attorney?

A. Mr. Henry Griffing, yes, sir.

Q. Mr. Henry Griffing?

A. Yes, sir.

Q. And he was present?

A. He was.

Q. I will ask you whether or not there was a record made of what occurred at this conference?

A. We made a record of the conference.

Q. Why was a record made of this particular conference?

Mr. KALLIS. I object, if the Court please.

The COURT. Overruled, I suppose they wanted to keep a record of it. Why did you make the record?

A. Mr. Griffing was familiar with the fact, so were we all, that these two men, Bearden and Smith, had been making complaints.

Mr. KALLIS. Now, if the Court please——

The COURT. Just state the reason, without giving these preliminaries.

A. We wanted to be sure——

Mr. KALLIS. If the Court please, we move that the answer of the witness be stricken.

The COURT. That part of it will be. Just state why you wanted it.

A. We wanted the record to be accurate of what
2198 was said at the conference.

By Mr. DUDLEY:

Q. Now, do you recall the substance of the conversation which was had on this occasion?

A. Yes, sir.

Q. Please state it.

A. They brought up the fact that both of us were operating theaters in that particular residential area.

Mr. KALLIS. If the Court please, if a record was made, I submit that the record is the best evidence.

By the COURT:

Q. Do you have the record?

A. We have a wax record of the conversation.

Mr. DUDLEY. I don't know if it is here. I don't think we have the record here, if the Court please. We can produce it for them, if they want to see it, if we have it.

The COURT. Go ahead and tell it as you remember it.

A. They brought up the fact that we both were operating——

The COURT. If the Government wants that record, they will be entitled to it.

Mr. DUDLEY. Yes, sir.

A. That we were both operating theaters in this area of Borger, probably both operating at a loss, and they discussed the advisability of one operator buying out
2199 the other one, the possible sale of the Phillips Theater by them to Griffith, or the sale of the 66 Theater by Griffith to them, and that was the total of the conversation.

2200 By Mr. DUDLEY:

Q. That was about the substance of that part of the conversation?

A. Yes, sir.

Q. During this conversation was there any reference made or discussion had concerning the Arcadia and Tech Theaters at Lubbock?

A. No, sir.

Q. In that conversation you are talking about did Smith, Bearden or Seale state to you the cash investment they had in the Phillips Theater was $5,828?

A. Yes, sir.

Q. What did that include?

A. That was the money they had paid for the remodeling of the building and the theater plus improvements on equipment.

Q. Were they informed that if a satisfactory lease could be made with their land-lord that you would take the deal? Was that the result of this conference?

A. No.

Q. Was anything agreed upon as a result of this conference at all?

A. Nothing came of it.

Q. How did the conference end; was it pleasant or otherwise?

A. It seemed to be pleasant enough.

2201 By the COURT:

Q. What did they say and what did you say in that conversation?

A. Your Honor, we just got no where. We didn't want to buy their theater——

Q. What did you tell them?

A. We told them that we were not interested in buying the theater at that time with the money they had in it, and then as I remember it, Mr. Seale said he would go back to Borger and if he could work out a more satisfactory arrangement on their lease with Mr. Olstrum, who was the landlord, that he might approach us again, but he never came back.

By Mr. DUDLEY:

Q. Did he ever approach you again?

A. No, sir.

Q. What did these gentlemen do, Bearden, Smith and Seale do, with reference to this Phillips Theater in Borger?

A. The theater was burned twice, was partially destroyed by fire once and then almost totally destroyed the second time and then they abandoned it.

Q. About when did they abandon it, if you know?
A. They must have abandoned it about '42, I believe.
Q. Well, is there a theater there now?
A. Yes.
Q. What theater is that?
A. That is the Phillips Theater.
Q. Was it closed or abandoned?
2202 A. It isn't now. No, it is running.
Q. What happened to your Sixty-Six Theater there in Borger?
A. We abandoned it.
Q. Why?
A. The expansion of the refinery there, which is a Phillips Petroleum Company refinery, almost closed off that street and all the business houses on that street have been given up. It was just a short half block.
Q. What did you do after you abandoned the Sixty-Six? What did you do then with reference to the New Deal?
A. We made a deal with Mr. Olstrum and repaired the damage done by the fire to the Phillips and re-equipped it.
Q. That is what you did after the Sixty-Six was abandoned?
A. Yes, sir.
Q. Now at the time you made this lease was the Phillips Theater being operated?
A. No.
Q. Do you know Mr. James Bennett, a former theater operator at Drumright?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. In 1935.
Q. Did you have any business transactions with
2203 him in 1936?
A. Yes, sir.
Q. What was the nature of that business transaction?
A. I met him in Drumright when I accompanied Mr. Griffing and Mr. Slocum up there to close the deal for the purchase of the three theaters in Drumright.
Q. Give the names of those three theaters.
A. The Rex, Midwest and the Strand.
Q. Who purchased those three theaters?
A. Griffith Consolidated.
Q. And what was the occasion of your going up there and having something to do with that transaction?
A. I went to take an inventory of the equipment included in the sale and placed a price on it for our records.
Q. Who accompanied you to Drumright?
A. Mr. Henry Griffing and Mr. E. R. Slocum.

Q. What connection did Mr. Slocum have at that time?

A. Mr. Slocum was a field man with Griffith Consolidated Theaters, handling leases, the purchase of real estate, theaters and various other duties.

Q. At the time you went to Drumright on this occasion did you understand that theretofore an option had been given for the purchase of these theaters?

A. Yes, sir, and we went up there to exercise the option.

2204 Q. And did you understand the option had been exercised and you were going up there for the purpose of closing the transaction; is that correct?

A. That is right.

Q. What did Mr. Henry Griffing have to do with that transaction? What was the occasion for him going along?

A. He went along to handle the legal matters in connection with the closing of the deal.

Q. Do you know what law firm he was connected with at that time?

A. He was employed by Keaton, Wells, Johnston & Barnes.

Q. Now, what are the duties of Mr. Slocum who was with you on this occasion?

A. Mr. Slocum was working as a real estate man in the purchase of theaters, and he made recommendations and worked on deals like that for Griffith Consolidated.

Q. Did he have any authority, as far as you know, to close transactions, make transactions and close them?

A. No, he could make his recommendations but he could not close them.

Mr. KALLIS. If the Court pleases I object to the question and move the answer be stricken.

Mr. DUDLEY. Well, I will withdraw it. I can prove it from some other source.

By Mr. DUDLEY:

2205 Q. What was the particular part you were expected to play in closing up this deal?

A. I was to take inventory of the equipment.

Q. Now, was Mr. Henry Griffing at that time the regular attorney for the Griffith Amusement Company or Consolidated Theaters?

A. No, he was employed by the firm that represented us.

Q. Had you known him prior to that?

A. That was my first experience with him.

Q. What time did you gentlemen arrive in Drumright on that occasion?

A. In the early evening about dinner time.

2206 Q. Do you remember the date that you went up there?

A. About the 1st of September.

Q. What year?

A. 1936.

Q. After you three parties arrived there, when, if at all, did you see Mr. Bennett?

A. We checked in at the hotel and went right on down to the theater and saw him.

Q. Where was he when you saw him?

A. He was standing in front of the Rex Theater, I believe; yes, the Rex Theater.

Q. Did you know Mr. Bennett yourself at that time?

A. No, I was introduced to him then.

Q. Who introduced you to him?

A. Mr. Slocum.

Q. Mr. Slocum, did he also introduce him to the other two parties?

A. Yes, sir, he introduced him to Mr. Griffing.

Q. To Mr. Griffing?

A. Yes, sir.

Q. Was there any conversation between Mr. Slocum and Mr. Bennett when he introduced you and Mr. Griffing to him?

A. Yes, sir.

Q. If so, state what it was?

2207 A. He told Mr. Bennett he had come to exercise the option and close the deal, and asked that I take the inventory and that Mr. Griffing would handle the legal phases.

Q. Then where did you go, after you met him there in front of the office?

A. We went into his office; he invited us in.

Q. After you went into the office, what did you and Mr. Bennett do?

A. Well, I asked Mr. Bennett if he had a prepared inventory that I might check, which would facilitate my work, and he said he didn't have, but he suggested that he would help me check it, go with me and point out the various items and help me get the serial numbers.

Q. After that conversation took place, where did you and Mr. Bennett go and what did you do, if anything, that evening?

A. I suggested that it might speed up things a little if we would take part of the inventory that night, in the part of the theater that could be reached while in operation, and complete the inventory the next morning.

Q. All right.

A. And he went with me to do that.

Q. What became of Mr. Griffing and Mr. Slocum?

A. Mr. Bennett suggested that they might watch the show while we were making the inventory, and they
2208 entered the theater to see the show.

Q. And after you and Mr. Bennett went off to take the inventory, did you return to Mr. Bennett's office or the theater there that evening?

A. Yes, sir.

Q. I will ask you whether or not you again saw Mr. Griffing and Mr. Slocum?

A. Yes, sir; I went into the theater and told them that I had gone as far as I could that night, and they came out.

Q. Did you hear any conversation there when you first arrived there at the theater, or after you returned, you and Mr. Bennett returned, any conversation between Mr. Griffing and Mr. Bennett?

A. Yes, sir.

Q. What was that conversation?

A. Well, Mr. Bennett advised Mr. Griffing that he wanted to close the deal in Cushing at his bank, and we discussed——

By the COURT:

Q. (Interrupting.) Do what?

A. He wanted to close the deal in Cushing at his bank.

The COURT. All right.

A. And Mr. Griffing told him certain things would be required: that the next morning he would have to go check the records at Sapulpa and that I could finish the inventory, that is, while Mr. Griffing was in Sapulpa, and that after all of the details had been straightened out we
2209 could then go to Cushing and close the deal.

Q. All right. Now, the following morning, where did Mr. Griffing and Mr. Slocum—where did Mr. Griffing go, if you know?

A. He and Mr. Slocum went to Sapulpa.

Q. And where did you go and what did you do?

A. I went down to the theater and met Mr. Bennett and completed the inventory.

Q. Did Mr. Griffing and Mr. Slocum return to Drumright that day?

A. Yes, sir.

Q. About when did they come back?

A. Oh, about noon, I guess.

Q. And after they returned, where did you people go, you and Mr. Slocum and Mr. Griffing and Mr. Bennett?

A. Why, they came back to the hotel and got me. I had

already finished my work. Then we went down to the theater and advised Mr. Bennett that we were ready to close, and he said he was ready too. We told him that we would meet him in Cushing at the bank, and we went back and checked out at the hotel and drove to Cushing.

Q. Did Mr. Bennett accompany you parties up there, or did he go alone?

A. He went alone and met us in Cushing.

Q. Where did you people meet then in Cushing?

2210 A. At the bank.

Q. And was the deal then closed that day?

A. Yes, sir.

Q. What, if anything, was done in connection with the closing of the matter up?

A. The papers were signed and the cash was paid.

Q. And after the transaction was closed, where did you and Mr. Slocum and Mr. Griffing go?

A. Mr. Slocum and Mr. Griffing, we walked back down the street with Mr. Bennett to his car.

Q. And the matter was closed up in a satisfactory way, was it?

A. Yes, sir.

Q. Now, what request, if any, did Mr. Bennett make of your group as to certain accommodations for members of his family, as applied to these theaters?

A. He asked that we take care of his family with passes.

Q. Was that done?

A. I instructed the new manager to do it.

Q. So far as you could see, all business transactions, all of the business transactions was closed in a very friendly way, was it?

A. Yes, sir.

Q. All right, now, during all of the conversations which were had there upon your arrival that afternoon and

2211 the next morning, which you had with Mr. Bennett, and which Mr. Griffing had with Mr. Bennett, were you and Mr. Slocum present?

A. Yes.

Q. What I mean to say is, during any of the conversations which Mr. Henry Griffing had with Mr. Bennett, were you and Mr. Slocum present?

A. Yes, sir, I was with Mr. Bennett all of the time, more than the rest of them.

Q. Well, did he ever have any conversation with Mr. Griffing in which you were not present?

A. No.

Q. All right. Did you make any threats or statements of any kind to Mr. Bennett to the effect that if he didn't sell, you were going to open a theater there, or did Mr.

Griffing make any such statements in your presence to Mr. Bennett, or anyone else?

A. No, sir.

Q. Mr. Bennett testified in this case—did Mr. Slocum make any such statements, any threats or statements of any kind to Mr. Bennett?

A. No, sir.

Q. Mr. Bennett testified in this case, and I will read his testimony from the record, this: Question: "Did Slocum come back in company with any other representative
2212 immediately prior to the time you received the registered letter?" Answer: "About the same time he came back, and he had Mr. Griffing with him." Question: "Henry Griffing sitting here?" Answer: "Yes, sir." Question: "What happened at that time; what was the object of their visit?" Answer: "Well, the object was to see if we were going through with this option. That is what they wanted to know."

Mr. KALLIS. What page?

Mr. DUDLEY. Page 1313.

Q. Question: "What did they learn?" Answer: "I told them no, we were not." Question: "Did you assign any reason?" Answer: "I said Mrs. Tessin objected and would not sell." Question: "What was the comment, if any, of either Mr. Griffing or Slocum?" Answer: "I think my conversation at that time was entirely with Mr. Griffing." Question: "What did Mr. Griffing say?" Answer: "Griffing said, 'Well, whether you sell to us or not, we are coming into Drumright and when we come in you will know what will happen to you.'" I have read you the testimony of Mr. Bennett and I will ask you whether or not during any of the conversations you had with Mr. Bennett, or that Mr. Griffing had with Mr. Bennett, or that Mr. Slocum had with Mr. Bennett, if those statements were made as I have read?

2213 Mr. KALLIS. If the Court please, I object to that because this witness couldn't possibly tell what conversations Mr. Slocum or Mr. Griffing might have had with Mr. Bennett unless this witness was present.

Mr. DUDLEY. He has said that he was present during all of the conversations with Mr. Bennett and Mr. Griffing.

The COURT. Overruled and exception allowed. You may answer, if you know. Of course, if you were not present, you can't tell. If you were present, you would know.

A. I was there all the time, sir.

By Mr. DUDLEY:

Q. Were these statements that I have read from his testimony made?

A. No, sir.
Q. Or anything in substance that?
A. No, sir.
Q. I will ask you this question: Did Mr. Griffing at any time tell Mr. Bennett, "Well, whether you sell to us or not, we are coming in to Drumright and when we come in you will know what will happen to you"?
A. No, sir.
Q. Did he make any such statement?
A. He did not.
Q. Was Mr. Griffing at that time authorized to negotiate the deal with Mr. Bennett or to enter into any conversation with reference to the sale, so far as you know?
2214 A. No, he wasn't.
Q. What was his sole duty in connection with this particular transaction?
A. To check the legal phases of it.
Q. Do you know whether or not Mr. Griffing prior to this occasion had ever handled any business matters of this type, or trading propositions, for the Consolidated Theaters?
A. As far as I knew, he had not.
Q. Now, with reference to these theaters, what condition was the Strand Theater in when it was purchased, if you know?
A. The Strand had been partially destroyed by fire and was not in operation at that time.
Q. Did your transaction cover the purchase of the salvage materials in the Strand Theater?
A. Yes, sir, and the leasehold.
Q. And the leasehold?
A. Yes, sir.
Q. Did that also include the assignment of the lease?
A. Yes, sir.
Q. At the time those transactions occurred, was it your duty to take inventory of theaters that were being purchased?
A. That was one of my duties.
Q. One of your duties?
2215 A. Yes, sir.
Q. Was this inventory taken before the deal was closed and the payment made for the property?
A. Yes.
Q. You say when you made this inventory, Mr. Bennett accompanied you at all times; can you explain why it was necessary for him to accompany you and watch the taking of this inventory?
A. Yes, sir.
Q. State that.

A. There were a number of personal items around the theater that were not to be included in the sale. He wanted to check to see that the inventory covered only those items that he was selling.

Mr. DUDLEY. That's all; you may cross examine.

By the COURT:

Q. Do I understand now that you bought three theaters?

A. Yes, sir, we bought the Rex, the Midwest, that were operating, and the Strand salvage, and assignment of the lease.

Q. Prior to this visit which you made on this occasion, about which you have related, had you already received an option to purchase those theaters?

A. Mr. Slocum had secured an option for Griffith Consolidated sometime before this.

2216 By the COURT:

Q. It was an original agreement?

A. Yes, sir.

Q. Did you have anything to do when you were up there except closing the deal?

A. That is all.

Q. You don't know whether Mr. Griffing was up there with Mr. Slocum before this or not?

A. No, I don't.

Q. You, of your own knowledge, don't know what occurred between Slocum and Bennett?

A. No.

Cross-examination by Mr. KALLIS:

Q. Mr. Akers, with reference to the conferences you had with Mr. Bennett back about the first of September, 1936, I don't suppose you made any phonographic records of those talks, did you?

A. No, sir.

Q. And is your testimony based entirely on what your memory suggests to you as to what happened and as to what was said?

A. Yes, sir.

Q. And you didn't make any notes of what was said and what was done, did you?

A. No.

2217 Q. And did Mr. Slocum or Mr. Henry Griffing make any?

A. Not to my knowledge.

Q. What is your recollection with respect to that item at the present moment? Do you recall?

A. About notes?

Q. Whether they did or did not.

A. I don't know that they did.

Q. Did you make any notes of the conversation you had with Mr. Bearden at his office at the Tech Theater on or about October 6, 1938?

A. No, sir.

Q. Did Mr. Arlie Crites make any notes in your presence?

A. No, sir.

Q. You just heard the questions and answers which Judge Dudley read to you on page 1313 of the transcript relative to the appearances in Drumright, Oklahoma?

A. Yes, sir.

Q. Will you please repeat what you remember of those questions and answers?

A. All right, sir.

Mr. COCHRAN. I don't think that is proper cross examination of the witness.

The COURT. I don't know what questions and answers you refer to. I think you should be a little more
2218 specific in your question.

Mr. KALLIS. Your Honor has consistently held, as I recall, and I say respectfully I may have been mistaken in your Honor's rulings, that certain lines of examination could be conducted for the purpose of testing the memory of a witness.

The COURT. It can.

By Mr. KALLIS:

Q. You say that certain conversations such as were read to you by Judge Dudley from page 1313 of the record did not occur. Will you repeat what you remember now the conversations were as they were read to you by Judge Dudley?

Mr. DUDLEY. We object to that as incompetent, irrelevant and immaterial.

The COURT. You can state what you can remember.

Mr. DUDLEY. It is not proper cross examination. He can ask him what he remembers the conversation to be and interrogate him about that.

By Mr. KALLIS:

Q. All right. What do you remember the conversations to be?

A. I remember that Mr. Slocum introduced us and told Mr. Bennett that we had come to close the deal and he said "All right, come on in my office and we will discuss it." We went in and then Mr. Griffing said "Mr. Akers will handle part of this and I will handle part of it," or
2219 words to that effect. He said, "Mr. Akers is familiar with the equipment and he will check the inven-

tory." I asked him then if he had his prepared inventory, which he said he did not have, and suggested, however, that he would help me take it, and he did.

Q. Now, as I understand, you started with the Griffith organization in 1927.

A. July 11th.

Q. And your first services were performed in Borger, Texas?

A. Yes, sir.

Q. As a projectionist and assistant manager?

A. No, sir, as advertising man and sign painter.

Q. And then in 1928 you moved to Seminole, didn't you?

A. Yes, sir.

Q. With the Griffith organization and your capacity there was assistant manager?

A. Yes, sir, assistant manager to J. E. Jones.

Q. And he stayed about two months and moved to Wink, Texas?

A. Yes, sir.

Q. Your capacity there was manager of the theater?

A. Rig Theater.

Q. Operated by the Griffith organization?

A. Griffith Amusement Company.

2220 Q. You stayed there approximately eight or nine months, is that right?

A. That is right.

Q. Then you moved to Pampa and became manager of the Griffith Theaters there?

A. There was one there at that time.

Q. And you remained in Pampa then until about March of 1932?

A. March 18, to be exact.

Q. 1932?

A. Yes, sir.

Q. And then you went to Lubbock as manager of the theaters there?

A. The Lindsey and Palace.

Q. Now the Palace and Lindsey were operated and owned by the Lindsey Theaters Corporation?

A. Lindsey Theaters, Inc.

Q. I believe you said 50 per cent of the stock was owned by Consolidated Theaters, Inc.

A. Yes, sir.

Q. A defendant in this suit. Is that right?

A. Yes, sir.

Q. And the other 50 per cent was owned by the Lindsey family?

A. No, owned by Mrs. Betty Lindsey, the widow of

2221 J. D. Lindsey.

Q. You remained in Lubbock then how long?
A. Until December of 1934.
Q. Now during that period I suppose you saw on numerous occasions R. E. Griffith in connection with the operation of the Palace and Lindsey, didn't you?
A. No, sir.
Q. Did you see L. C. Griffith?
A. Yes.
Q. On numerous occasions?
A. He was in Lubbock a few times when I was there, yes, sir.
Q. You saw him on other occasions in Oklahoma City. Is that right?
A. Yes, sir.
Q. And these conferences with him were with reference to the operation of the Palace and the Lindsey Theaters in Lubbock. That is correct, isn't it?
A. Yes.
Q. And I presume that your discussions with Mr. L. C. Griffith covered the general aspect of the theater operations, is that right?
A. Not so much the operations with Mr. L. C. Griffith as the general over-all picture of the operations. I handled
2222 the operations, as far as getting them opened and closed was concerned.
Q. And whatever instructions you received in general were from Mr. L. C. Griffith?
A. Yes, sir.
Q. I suppose you saw from time to time the gentleman who is affectionately mentioned here as Benny McKenna in connection with the theaters in Lubbock?
A. Yes, sir.
Q. Then in December, 1934, the Griffith organization promoted you, didn't it?
A. Yes.
Q. And you became district manager of district A. Is that right?
A. Yes, sir.
Q. What territory did that cover?
A. It covered most of the towns west and south of Oklahoma City.
Q. What towns did it include? Can you enumerate them?
A. I think so.
Q. Confine it to the Texas towns.
A. Wellington, Borger, Pampa, Lubbock, Wink, Midland, Kermit, Sunray and Cleburn.

Q. Were any of those towns purchased by the Griffith organization during the time you were district manager?

A. Sayre was.

2223 Q. And those were the theaters which were owned by Roy McAmis. What was the name of the other gentleman?

A. George Stovall.

Q. And you were acquainted with both of those gentlemen?

A. Yes.

Q. You say Sayre was one town you remember?

A. Yes, sir.

Q. And what others?

A. Clinton. Sayre is in Oklahoma. You said of the Texas towns were any purchased during the time I was district manager.

Q. That is right.

A. Yes. Sunray was not purchased. We purchased a lot and built a theater. It was a new oil town at that time.

Q. When was that?

A. 1936.

Q. And the theaters in Sayre were purchased in 1940. Is that right?

A. Yes, sir.

Q. Do you remember when they were purchased?

A. No, they were purchased prior to 1940.

Q. When?

A. I couldn't give you the exact date.

Q. Do you remember the year?

A. No, sir.

2224 By Mr. COCHRAN:

Q. May I inquire whether this witness participated in that Sayre transaction?

A. No, sir, not at the time of the purchase I didn't.

Mr. COCHRAN. We will put on a witness who is familiar with that sale.

By Mr. KALLIS:

Q. What part did you take with reference to the purchase of those two theaters?

A. Sayre?

Q. Yes, sir.

A. I entered into the picture after they were purchased. I remodeled the former Princess Theater, now the Ute.

Q. During the time you were district manager, do I understand that the only Oklahoma theaters that were purchased were the two in Sayre?

A. No, I didn't say that. I said we did purchase the Sayre during that period.

Q. What other theaters were purchased during that period when you were district manager of district A?

A. I was manager of district B. I will have to refer to the record to know exactly what was purchased during that time.

Mr. COCHRAN. I will state for the benefit of counsel we expect to put a witness on the stand who is familiar with these acquisitions.

Mr. KIMB. That is not the purpose of this exam-
2225 ination.

Mr. KALLIS. I am afraid that Judge Cochran does not see the point at all.

The COURT. He said he didn't have anything to do with the purchase of those theaters.

By the COURT:

Q. Did you have anything personally to do with the purchase of any theater during the time you were superintendent of district B?

A. I didn't enter into the purchases. I was operating the theaters after they acquired them.

By Mr. KALLIS:

Q. Did you have anything to do with the purchase of a theater in Clinton, Oklahoma?

A. No.

Q. Nothing whatever?

A. No, sir.

Q. What about theaters in Cushing?

A. No, sir. That is in the other division.

Q. What about a theater in Hereford?

A. No, sir.

Q. Did you have anything to do with the purchase of any theaters in Kermit, Texas?

A. Yes, sir.

Q. You are acquainted with Lester Dollison, I presume?

A. Yes, sir.

2226 Q. Do you remember when the sale of his theater was made to the Griffith organization?

A. I don't remember the exact date, no, sir.

Q. What part did you take in the purchase of that theater?

A. I had some discussion with Mr. Dollison, as I remember it, and Mr. McKenna, in a cafe adjoining his theater.

Q. Do you remember what the discussion was?

A. Yes, sir.

Q. Please state what the discussion was.

A. The discussion had to do with the fact that Mr. Dollison had previously been with us and we would like to have him back with us; we would like to make a deal for the merger of the two theaters.

Q. You were at that time competing with him?

A. Yes, sir.

Q. Do you remember anything further of the conversation?

A. There was a lot of personal conversation. Mr. Dollison is an old, old friend.

Q. And it was a very friendly discussion, I presume?

A. Yes, sir.

Q. You don't remember anything more that was said, though, do you?

A. Yes, I can remember the way we just dis-
2227 cussed the deal generally, and what type of operator we thought he was and he would make a good addition to the organization.

Q. Did you have anything to do with the purchase of theaters at Holdenville?

A. No, sir.

Q. What about the purchase of the theater at Manville?

A. I had nothing to do with it.

Q. What about theaters at Frederick?

A. I had nothing to do with that.

Q. In connection with the purchase of Alva, Bay City, El Campo——

A. No, sir.

Q. Goldsmith?

A. No, sir. The Goldsmith was purchased by George DeOro, our manager in Wink, who wanted it and told us he bought the lot. He had the theater under discussion before I ever got out there.

Q. Griffith opened two theaters in Borger in 1939. Is that right?

A. Opened two theaters in '39?

Q. Yes.

A. I don't know for sure.

Q. Did you have part in the purchase or leasing of those theaters?

2228 A. No.

Q. Not at all.

A. In 1939 I was with the Ted Screen Advertising Company.

Q. As a screen advertising service?

A. Yes, sir.

Q. What was the nature of that business?

A. We produced and distributed short advertising films for use in theaters, advertising for merchants.

Q. Now, Mr. Akers, in your capacity as district manager, I suppose you made trips throughout the territory, didn't you?

A. Yes.

Q. And how often did you go throughout the territory? A. Trips were irregular. I spent probably half the time on the road.

Q. And while you were president of this screen service you say you devoted considerable amount of time to making a survey of the population trends of Lubbock and the prospect for additional theaters in that town?

A. Yes.

Q. Lubbock has enjoyed a great growth of population, isn't that true?

A. It has grown very rapidly.

Q. And you were there from 1932, March of 1932,
2229 until December of 1934?

A. Yes.

Q. How many students were there at Texas Technology College at that time?

A. Approximately 1750.

Q. I suppose from time to time you became acquainted with some of them.

A. I knew some of them. In fact, I worked a few of them.

Q. They used to patronize the Lindsey and Palace, did they?

A. Yes, sir.

Q. Prior to the time you had this conversation with Mr. Bearden in the presence of Arlie Crites on March 6, 1938, you had been in the Tech Theater, hadn't you?

A. I don't believe I had.

Q. You don't reemember definitely?

A. I was not in the Tech Theater.

Q. That is your best recollection now?

A. Yes, sir.

Q. Did you make any inquiry as to how the theater was going with respect to business?

A. Yes. I had just made an independent observation that they were doing a nice business.

Q. You concluded they were doing a nice business?
2230 A. Yes, sir.

Q. You knew, didn't you, that Mr. Bearden was married and had a child and Mr. Smith was married and that theater was giving them a very nice living?

A. No.

Q. You didn't know that?

A. I didn't know that.

Q. You were not acquainted with their domestic affairs?

A. No, sir.

Q. The Tech is located in a very desirable spot on College Avenue, isn't it?

A. I think so, yes, sir.

Q. In fact, that was a more desirable spot than 2410 Broadway where the sign was posted. Isn't that true?

A. Well, that would be a matter of opinion, whether it was better than the lot on Broadway. I preferred the Broadway location at the time.

Q. There were houses on both sides of the street, weren't there?

A. There were.

Q. They wouldn't have as much parking space as on College Avenue, particularly the west side of the street?

A. There was a large open area which we hoped to acquire for parking space.

Q. But you had not closed the deal on it?

A. No.

2231 Q. Did you say you posted this sign?

A. No, I didn't post the sign. I discussed it with Mr. Crites and he had it posted.

Q. At that time he was the manager of the Lindsey Theaters, Inc., in Lubbock?

A. Yes, sir.

Q. You made the statement this morning that it is the usual procedure to post signs on prospective theaters, and one of the reasons that you gave was that people came by and interrupted the workmen who were in the process of construction, and the purpose of the sign is to avoid the necessity of asking the workmen questions. Now, that didn't apply in this particular instance, did it?

A. No, that is only a minor part of it, anyway.

Q. But you thought you would just tell the court about it anyway. Is that true?

A. No. It was fresh in my mind. We now have a sign posted on one location and the foremen complain before we put up the sign about the interruptions.

Q. You are talking about the year of grace of 1945?

A. Yes, sir.

Q. You didn't know in 1938 that was going to happen, of course. You understood that there were certain defects in the title, didn't you, with respect to constructing the property for theater purposes?

2232 A. Yes, sir.

Q. You know the title had not been cleared?

A. We knew there were restrictions against business buildings there.

Q. And when was that sign constructed on this lot at 2410 Broadway?

A. The Broadway lot, I am not sure. That is 2410.

Q. Whatever the lot was, it was on the north side of Broadway, wasn't it?

A. Yes, sir.

Q. Right east of College Avenue in the first block?

A. Yes.

2233 Q. When was that posted?

A. Right after the lot was purchased.

Q. And when was that, if you know?

A. September 25th, 1940, I mean 1938, excuse me; September 25th.

Q. September 25th?

A. Yes, sir.

Q. Then you paid Mr. Bearden a visit about eleven days after posting the sign?

A. Somewhere around that, ten or twelve days, or two weeks.

Q. Now, Mr. Akers, I want you to think back, with reference to this conversation you had on October 6th, 1938 at the Tech Theater, when you discussed this matter with Mr. Bearden and Mr. Crites present. Is there anything about that conversation which you don't recall now?

A. Oh, certainly.

Q. A great many things you have forgotten, is that right?

A. Nothing important.

Mr. KALLIS. Well now, if the Court please, I move to strike that.

The COURT. I think it is a very sensible answer. It is the important things that one remembers; it is the immaterial things that one forgets.

2234 Mr. KALLIS. If the Court please, I want your Honor to decide whether they are important, and not this witness.

The COURT. Overruled, and exception allowed.

By Mr. KALLIS:

Q. What do you call important, Mr. Akers?

A. Mr. Kallis, no one can repeat word for word any conversation back in 1936.

Q. Mr. Akers, you just stated that you didn't forget anything that was important that took place in that conversation?

A. That's right.

Q. Is that right?

A. That's right.

Q. You testified this morning that you do not remember whether anything was said about the sign being posted on that lot previous to your conversation with Mr. Bearden?

A. I am sure that it was, by Mr. Bearden.

Q. This morning your testimony was it wasn't mentioned?

A. No. No, it wasn't. I just said that I didn't recall at that moment.

Q. You didn't recall at that moment what?

A. Whether the sign was mentioned or not.

Q. What has happened since you testified this morning that refreshed your recollection on that subject?

2235 A. Nothing in particular.

Q. It has just happened to come to your mind all of a sudden?

A. (No answer.)

The COURT. Do you have the testimony this morning? I think it was mentioned in this morning's testimony.

Mr. KIME. We have the record here, your Honor.

Mr. KALLIS. What does it say?

Mr. KIME. I am looking for it now.

Mr. KALLIS. Will your Honor grant us the indulgence of perhaps sixty seconds?

Mr. KIME. Go ahead and ask some other questions.

The COURT. I would like to have you settle that right now.

Mr. KALLIS. I would like to too. I have a recollection of having written something in my notes about it.

The COURT. Where is that?

Mr. GRIFFING. On page 1983, it says: "Question: Prior to having this conversation, had you put a sign on this lot you had purchased out there or not?" Answer: "Yes, sir." Question: "Caused one to be put there?" Answer: "Yes." Question: "Was there anything said about this sign during this conversation, that you recall?" Answer: "I

2236 don't remember."

Mr. KALLIS. Which I submit is precisely the question I put to the witness.

The COURT. I remember that something was said about the sign, but I don't recall just what it was.

By Mr. KALLIS:

Q. As a matter of fact, Mr. Akers, you did say something to the effect of calling Mr. Bearden's attention to the fact that a sign was posted and asked him whether he had seen it, didn't you?

A. No, sir.

Q. You remember that distinctly, do you?

A. I remember distinctly I didn't do that.

Q. What is your recollection now as to whether he mentioned it in your presence?

A. He mentioned it.

Q. He did?

A. Yes, sir.

Q. You didn't remember that this morning.

A. In order to correct you, Mr. Kallis, I said this morning that there was something about a building of another theater, whether another theater would be profitable. That is where the location, where this location came up.

Q. Are you acquainted with a man named C. R. Simmons, from Sweetwater, Texas?

A. No, sir.

2237 Q. Will you say you had some discussion with Mr. McWhorter, who was the attorney for the building where the Tech was located?

A. Mr. McWhorter was attorney for the Lindseys and he advised me that he was also attorney for the man who owned the real estate where the Tech was located, or had represented him at some time.

Q. Did you ever see the owner of the building?

A. No, sir.

Q. You testified that the Cactus was a few blocks from the business district?

A. It is in a business district, but not the central business district.

Q. What is that?

A. It is in a business district.

Q. What question did you understand Judge Dudley was putting to you when you mentioned the Cactus?

A. He asked me if exclusive of the Tower, Midway and Tech, all these theaters were in the busines district of Lubbock.

Q. And you were thinking, weren't you, of the same business district in which the Texas, the Broadway, and the Lyric and the Palace and the Lindsey and the Arcadia were located?

A. Yes, sir, the central business district.

2238 Q. And with the exception of the Texas, they are all a block or two west of the Federal Building and the Courthouse, down town, aren't they?

A. Yes, sir.

Q. Did you mean to imply that the Cactus was a few blocks from that business district?

A. It is a few blocks south of Broadway. Broadway is a main street from Avenue J down to the east side of the square in Lubbock, and is the principal business district, and the business district tapers off towards the south. By tapering off, I mean the important stores are centrally located, and the less important ones are located further out.

Q. They don't go more than about two blocks south of Broadway, do they?

A. Yes, sir.

Q. The important stores?

A. Oh, the big stores?

Q. The big stores?

A. No, sir.

Q. And the big hotels don't either, do they?

A. No, sir.

Q. How far is the Cactus south of the business district, from the County Courthouse, say?

A. About three and one-half blocks.

2239 Q. That is your best judgment, three and one-half blocks?

A. That is right, about right.

Q. It is more like a mile, isn't it?

A. I think not.

Q. Would you say it is less than a half mile?

A. Yes, sir.

Q. What kind of neighborhood is the Cactus located in?

A. The Cactus is in, it is a bunch of automobile shops and garages.

Q. And junk shops?

A. There is a junk yard down there.

Q. And automobile places?

A. There is a tourist court on past it. It is a lot, a much better business district today than it was when the Cactus was built.

Q. And Griffith was playing second run at the Cactus until the Tower was built, is that true?

A. I don't remember the policy exactly.

Q. Well, you were the district manager at the time?

A. Yes, sir.

Q. Wasn't that one of the functions that came within your duties?

A. I pay very little attention to the films or the bookings.

Q. I suppose, Mr. Akers, that you have discussed

2240 this matter with counsel for the defendants, haven't you?

A. Surely.

Q. On several occasions?

A. Surely.

Q. And you have read the transcript of the testimony that was offered here last spring, haven't you?

A. A portion of it.

Q. What is that?

A. A portion of it.

Q. Referring to what town?

A. The portion that referred to Lubbock.

Q. And you were familiar with it before you took the witness stand this morning, were you?

A. Yes, sir.

Q. What comments did you make to Mr. Bearden on October 6th, 1938 with reference to this theater?

A. I remember that I complimented him on the improvements, on what had been done in making it from a narrow theater to a wide theater.

Q. You thought that they had accomplished something worthwhile from the standpoint of theater operation in changing it from a 25 foot to a 50 foot house, and increasing the seating capacity, and improving the various facilities, like sound and the rest of it, is that right?

A. That's right. I asked him what he had done,
2241 how much he had done, and he explained certain things about the lighting fixtures and the sound, and type of equipment he had.

Q. You had a lot of confidence in the town of Lubbock, didn't you?

A. I did, sir.

Q. And that confidence has subsequently proved to be correct, has it not?

A. Yes, sir.

Q. And the town had a great increase in population and activity, between 1930 and 1940, didn't it?

A. Yes, sir.

Q. And you recommended prior to the time that the Tech Theater was built that a theater be constructed out there in the vicinity of the campus, didn't you?

A. I made a trip to Oklahoma City in 1934 with Cliff Lindsey to try to convince Mr. H. J. Griffith that we should build a theater on the campus at that time.

Q. What did he say?

A. He voted against it. I was on the Chamber of Commerce and was rather sold on the town.

Q. At the time you were with this Tad Screening Company, where did your family reside?

A. Dallas.

Q. You moved your family back from Lubbock, I presume?

2242 A. No; I wasn't in Lubbock at that time. I moved from here to Dallas in July, 1938 to go to work for Tad.

Q. But you were manager of the Lubbock Theaters for a period of about two years, were you not?

A. That was up until 1934.

Q. And you lived in Lubbock at that time?

A. Yes, sir.

Q. You are familiar with the Midway Theater, aren't you?

A. I have been in the Midway once or twice.

Q. And how large a house is it, approximately?

A. I would say it is about 35 to 40 feet wide.

Q. I mean in terms of seats?

A. Probably, 600.

Q. About 600?

A. I imagine something like that, maybe 650.

Q. It is an attractive theater from the outside, isn't it?

A. Yes, sir.

Q. And has a comfortable foyer?

A. Yes, sir.

Q. And nice lounge sheets there?

A. And very well kept.

Q. And very well kept, and the inside of the house is attractive?

2243 A. Yes, sir.

Q. And with respect to appointments and equipments, it compares favorably, doesn't it, in general with the Tower Theater?

A. It is not as nice as the Tower.

Q. But it is a nice house?

A. It is a very nice little theater.

Q. And just about halfway between the Tower Theater and the main business district of Lubbock?

A. Yes, sir.

Q. On the south side of Broadway?

A. Right.

Q. And then Broadway is the main thoroughfare going out to the campus from downtown, isn't it?

A. Yes, sir.

Q. What do you mean by somebody from your organization trying to make a more satisfactory lease on the Phillips than that which Bearden and Smith had?

A. I didn't say anything about someone from our organization making a more satisfactory lease.

Q. Perhaps I didn't remember or catch what you said. What was your statement?

A. I said Mr. Seale said something about working out a deal with Mr. Olstrum and then approaching us again with something that would be attractive to us, or
2244 words to that effect.

Q. It was a 15 year lease, wasn't it, that had about 13 or 14 years, was it?

A. It was a ground lease.

Q. Yes, and the rental was comparatively low, wasn't it?

A. Yes, sir.

Q. By the way, when were you the last time in Phillips?

A. The last time in Phillips?

Q. Yes.

A. I was there on June 23rd of this year.

Q. And prior to that time, was there—strike that. Was there a gap in time that you visited Phillips between the time that Bearden and Smith closed their theater and we will say up to the beginning of 1943?

A. Was there a gap, do you say?

Q. During which time you didn't go to Phillips at all?

A. Oh, no, I have been in Borger off and on at intervals ever since I started with Griffith.

Q. Now, as I recall, your dealings with Mr. Bennett of Drumright occurred on an evening and the following morning, is that right?

A. That's right.

Q. And how long did the conversation take place in which you and Mr. Bennett and Mr. Griffing and Mr. Slocum were present in the evening?

2245 A. In the evening?

Q. Yes, sir.

A. It only took a few minutes, until I started on the inventory, possibly 20 minutes.

Q. And how long did the inventory take?

A. I could only work about an hour. There were certain parts of the theater that were inaccessible during operation, and I remember they didn't get to see all the show.

Q. Mr. Bennett, I suppose, went to the box office a time or two during the evening and spoke with various employees at the theater?

A. No, he seemed to be more interested in watching to see that I didn't get something in that inventory that didn't belong there. In other words, he said, "This belongs to my sister, and this belongs to someone else."

Q. He did make those comments, did he?

A. Yes, sir.

Q. He didn't want to sell you anything that didn't belong to him, or to his sister-in-law, is that right?

A. There were not a large number of those items, but some of them seemed to have a sentimental value, and they were personal.

Q. He was in and about the theater during the time you were making the inventory, was he?

A. With me, yes, sir.

2246 Q. Did he go up to the projection booth at all alone?

A. We climbed up together.

Q. I mean alone?

A. No, sir.

Q. Your recollection is that he was with you all the time, or was he away from you during a few moments?

A. He was with me all the time, sir.

Q. And was that true the following morning?

A. Yes, sir—well, no, the following morning, I, I went to the theater, and from the time I found him until we completed the inventory I was with him.

Q. You don't recall whether any of you gentlemen had an occasion to get a drink of water or go out for a smoke?

A. No, sir.

Q. It might have happened, but you don't recall whether it did or not?

A. I don't recall that it did.

Q. And you don't recall definitely whether it did or didn't occur, is that right?

A. No, sir; I was with Mr. Bennett all the time, sir.

Q. I didn't ask you that.

Mr. KALLIS. I move that the answer be stricken, if the Court please.

The COURT. Overruled. I think that is in response to the question.

2247 By Mr. KALLIS:

Q. How long were you with him the following morning?

A. With Mr. Bennett?

Q. Yes, sir.

A. Approximately two hours.

Q. And he was by your side constantly?

A. Yes, sir.

Q. He didn't leave you for a moment?

A. No, sir.

Q. You remember that distinctly after nine years, do you?

A. No, he could have stepped away a few feet, but he was with me all the time, I mean we were working together, sir.

Q. You don't know whether he stepped out of your presence for a drink of water or to go out and buy a package of cigarettes, do you?

A. It is possible that he did.

Q. It might have happened, and you don't know whether, as you sit there now, whether or not that did or did not occur?

A. No, sir, that's right.

Q. And you didn't know on the 1st of September, 1936 that this suit was going to be instituted, did you?

A. No, sir.

2248 Q. Do you remember what your 66 Theater in Phillips cost you?

A. No, sir.

Q. Have you any approximate idea?

A. I can tell you the price of the seats, per seat; $5.75 per seat.

Q. How many seats were there?

A. 425, I believe, approximately that figure.

Q. The seats then would cost about $2,700, wouldn't they?

A. Something like that.

Q. What about the equipment?

A. I don't know the cost of the equipment.

Q. What did the sound equipment cost?

A. I don't remember.

Q. You have no definite recollection whatever?

A. No, sir.

Q. What about the screen; do you know what that cost?

A. No, sir; approximately $1 a foot.

Q. Did you know at that time what it cost?

A. I expect I did, sir.

Q. But you have forgotten?

A. The mechanical department bills all those things out, and I have nothing to do except order them, and sometimes dicker for the price of the seats.

2249 Q. You did tell Bearden and Smith that the price they had mentioned was too much, is that right?

A. That's right.

Q. Fifty-eight hundred and something, is that what I understood you to say, $5,823 for the equipment and the money that you put in the building?

A. I think it was $5,382. Don't you have your figures crossed?

Q. I wrote $5,823, but I may be wrong.
A. I think it was $5,300 and something.
Q. You didn't reach an agreement?
A. You see that was only the money they had in it; there was still a large amount to be paid out as I remember.
Q. Do you remember how much?
A. No.
Q. What do you mean by "large"?
A. They had bought the equipment new and they owed the seating company.
Q. What do you mean by "large", Mr. Akers?
A. More than half of it; in other words, I believe they had paid somewhere around 25 or 30 per cent of the cost of the equipment.
Q. What would that amount to altogether?
A. If it was 25 per cent, and $5,000, it would make it, make the total 20, and they would owe 15.
2250 Q. They would owe $15,000 on the theater?
A. No, part of that was in the leasehold. I mean in the construction of the building.
Q. According to your present computations, how much money would that theater have cost then?
A. I don't know, sir.
Q. Give me the best figure you can.

By the COURT:

Q. According to their statements, what would you be expected to pay if you had bought the theater under their figures?
A. A portion of that $5,300 we thought had been unwisely spent; in other words, they didn't have as much theater as they should have had for the money, and I believe they still owed several thousand dollars, I couldn't say exactly what it was.
Q. Well, could you estimate what the total cost of the theater would be to you, if you had bought it at that time?
A. I believe it would involve around sixteen or seventeen thousand dollars, I don't remember exactly.

By Mr. KALLIS:

Q. That was just for the equipment?
A. That was just for the equipment and leasehold.
Q. And leasehold?
A. Yes, sir.
Q. That sounded like a reasonable figure to you,
2251 didn't it?
A. I believe if it had, we would have accepted the proposition. I don't know.

Q. Well, you say that your best estimate is that they had put that much, including obligations incurred, into the theater, is that right?

A. Yes, sir.

Q. What was the size of the theater?

A. The Phillips?

Q. Yes.

A. It was approximately 50 by——

Q. (Interrupting.) I mean——

A. (interrupting) In seats?

A. (Interrupting.) In seats?

A. 440.

By the COURT:

Q. At that time, when they made this proposition, had you already built your theater?

A. Oh, yes, we were both in operation. We opened one week apart.

By Mr. KALLIS:

Q. Who started construction first on a theater in Phillips, you or Bearden and Smith?

A. I don't know.

Mr. KALLIS. I think that's all.

By the COURT:

Q. Mr. Witness, I believe you stated that you had
2252 nothing to do with the selection or buying of the films for the theater?

A. I had nothing to do with that, sir.

Q. You are just in the operation end?

A. Yes, sir.

Mr. KALLIS. I have another question, your Honor; I will wait until counsel finishes conferring.

The COURT. Very well.

By Mr. KALLIS:

Q. Mr. Akers, referring back now to the lot on Broadway in Lubbock, Texas, where Griffiths caused the sign to be posted, which you say was on or about, as I recall your testimony, September 25th, 1938, a theater has never to this day been constructed on that particular site, has it?

A. No, sir.

Q. And construction was never started?

A. No, sir.

Mr. KALLIS. That's all.

Re-direct examination by Mr. RICE:

Q. Mr. Akers, Mr. Kallis asked you if while you were at Lubbock, on the district, you received orders regarding or consulted with R. E. Griffith, regarding theater operations. Since the year 1930, to what extent, if any, did you as an official of Griffith Amusement Company or an agent of Griffith Amusement Company or Consolidated, receive any directions from or consult with R. E. Griffith,
2253 regarding the operation of theaters?

A. None.

Q. Did you during that period receive orders from or consult with Mr. R. I. Payne?

A. No, sir.

Q. Regarding your theater operations, or Mr. F. L. Stocker?

A. No, sir.

Q. Or Mr. Fred Morley?

A. No, sir.

Q. Or anyone else connected with or anyone else representing R. E. Griffith Theaters, Inc., or Westex Theaters, Inc.?

A. No, sir.

Q. They maintained a separate organization?

A. That's right.

Q. And you did not at any time receive any instructions from or consult with them, or any of them, regarding the operations of Griffith Amusement Company or the Consolidated Theaters, anywhere in the territory?

A. No, sir.

Mr. RICE. That's all.

By the COURT:

Q. In regard to this lot that counsel just asked you about, on which you first placed the sign, what steps were taken to have the restrictions removed on
2254 that, if you know?

A. I took the matter up with this attorney, Mr. McWhorter. In fact, at the time we bought the lot, he told us——

Mr. KALLIS (interrupting.) If the Court please, I object to anything that counsel told him as not binding on the Government.

The COURT. I am not asking him that. Don't tell anything that Mr. McWhorter said. Just what did you do, or what was done.

Mr. KALLIS. I don't want to foreclose your Honor in asking any questions, but in order to protect the rights of the Government we wish to show that we note an objec-

tion, not to your question, but to the answer that he gives that is based upon what somebody told him.

The COURT. Overruled. The Court is not asking for any incompetent testimony. I just want to know what steps were taken to eliminate those restrictions so it could be built.

2255 A. We retained Mr. McWhorter to go before the City Planning Commission to see if something could be done. He never went because of the protests of the property owners. If there was a matter of public relations, we didn't want to make people mad in that territory.

By the COURT:

Q. Did the people protest?

A. I don't believe it was ever placed in formal form.

Q. Well, did they express opposition to the building of a theater on that lot?

A. They never did to me.

Q. Do you know whether or not they did to any officer of the Lindsey Company?

A. Mr. Ralph Lindsey was, as I understand it, approached by one of the property owners out there.

Q. Was the option to buy that lot for this Lindsey Company?

A. It wasn't an option. It was an outright purchase. The Lindsey Theater is a corporation.

Q. Do you think that would have been a good location?

A. I did at that time. I was much more sold on it than I was on the College Avenue property.

Q. Who selected that site originally?

A. It was done in conference with Mr. Lindsey, Mrs. Lindsey and Mr. Motley.

Q Well, did you make the selection in good faith,

2256 believing that was a good location for a theater?

A. I certainly did.

Q. Was it your intention to erect a theater there if you were permitted to do so?

A. Yes, sir.

Mr. KALLIS. If the Court please——

The COURT. Exception allowed. The Court wants the facts in this case; wants to know the truth about it. Proceed.

Re-direct examination by Mr. COCHRAN:

Q. I hand you Defendants' Exhibit No. 89 and ask you to state what it is.

A. It is an official map of the city of Lubbock.

Q. Does it have noted thereon names or locations of the various theaters which are in the city of Lubbock?

A. Yes.

Mr. KALLIS. There is no objection to the map, your Honor.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 89.

By Mr. COCHRAN:

Q. Do you have available a map of the city of Borger?

A. No, I haven't.

Q. Will you state whether the Phillips 66 Theater
2257 about which you have testified was located in a portion of the city of Borger?

A. Yes, sir.

Q. Explain to the court whether that location where those theaters were erected and operated was in the residential area of the city of Borger at the time those two theaters were constructed.

A. It was.

Q. At that time was the plant of the Phillips Petroleum Company one of the principal industries in that city?

A. It was.

Q. What kind of a plant was that?

A. A gasoline plant and refinery.

Q. Well, is it an oil refinery or oil refinery and gasoline, natural gasoline plant together?

A. It is both.

Q. A very large facility?

A. Yes, and it is much larger now.

Q. You have stated that after you had been operating your 66 Theater for some time the enlargement of that plant necessitated the abandonment of your 66 Theater?

A. Yes, sir.

Mr. COCHRAN. That is all.

Re-cross-examination by Mr. KALLIS:

Q. How do you know that? Did somebody
2258 tell you that?

A. You are asking two questions there.

The COURT. Answer the first one first.

Mr. KALLIS. I will withdraw the double question and ask you this: When did that enlargement occur?

A. The Phillips Petroleum plant in Borger has been expanding almost constantly since the depression.

By Mr. KALLIS:

Q. And with reference to the approach close to the business district, when did that occur?

A. It has gradually encroached on that particular section of the Phillips Camp.

Q. By encroachment what do you mean in terms of blocks or tenths of miles?

A. There are engines running within a quarter of a block, I would say, of that old 66 Theater location; large gasoline engines.

Q. When did that first occur?

A. I couldn't tell you the exact date. They just gradually moved in.

Q. What year would you say?

A. The fastest expansion has been since the start of the war.

Q. 1941?

A. Just prior to it because they were manufacturing and expanding very rapidly even prior to the war.

2259 Q. But you had closed your 66 Theater about a year or two before that, hadn't you?

A. Hardly. It opened in 1940, you remember.

Q. That is right. You closed it right after you bought the Phillips property?

A. That is right. The Phillips property was more desirable then.

Mr. KALLIS. I move that be stricken as not responsive to the question.

Mr. DUDLEY. I think it is.

The COURT. It may be stricken.

By Mr. KALLIS:

Q. On what street is the Cactus Theater located? Avenue H, did you say?

A. Yes.

Q. And between what blocks?

A. I will have to refer to the map. I don't know.

Q. You lived in the town for two years but you can't answer the question without referring to the map. Is that right?

A. That is right. What was it you wanted to know? (Witness examines the map.) It is located between 18th and 19th streets.

Q. Between 18th and 19th on Avenue H?

A. That is right.

Q. Main Street runs east and west and Broadway

2260 is the street directly south, is that right?

A. Right.

Q. What is the street directly south of Broadway?

A. 12th, I believe.

Q. And then if the numerical system would be used the Palace and Lindsey would be the equivalent of 10th Street, is that right?

A. That is right.

Q. Then do you wish to modify your answer that the Cactus was about three and a half blocks from the downtown section?

A. From Broadway it is obviously, numerically speaking, six blocks and those are very short blocks in Lubbock.

The COURT. I measured it a moment ago and I made it three and a half blocks exactly. Perhaps I started at the wrong place for the business district. What is the south boundary of the business district?

A. Well, it is not sharply defined. Broadway is the main street.

Q. You say Broadway is the southern boundary of the business district?

A. No, sir. There is at least one pretty good business block south of Broadway. In fact, the principal dry goods store of Lubbock is located a block south of Broadway.

Q. That would make it five and a half blocks south
2261 of the business district?

By Mr. KALLIS:

Q. And the principal hotel is located a block north of Broadway. Is that right?

A. Well, there are two principal hotels, one on Broadway and one a block north on Main.

Q. Referring to the Hilton——

The COURT. It seems to me we are spending a lot of time on immaterial matters. I don't care where the Cactus is located, whether it is five blocks or ten blocks, I don't think it has anything to do with this case.

Mr. KALLIS. It may be an important element when both sides have rested. Just one or two more questions and I am through.

By Mr. KALLIS:

Q. Calling your attention to this conversation that occurred in Mr. Henry Griffing's office, at which time he and you and Wendell Bearden and P. E. Smith of Lubbock were present, what was the recording device you used?

A. It was a device built up by our sound engineers.

Q. Does it have the same function and operation as the dictaphone?

A. Yes, it has a microphone and recording equipment.

Q. You didn't tell Mr. Bearden or Mr. Smith all the proceedings were being recorded, did you?

A. No.

2262 Q. They didn't know anything about it?

A. No, not as far as I know they didn't.

Q. And you didn't want them to, did you?

A. No.

Q. Now, referring to Phillips. In the theatrical business it is a fact that you separate and distinguish communities. Whether it is one municipality or two municipalities does it make any difference, with respect to the type of business, with the theater being on one side of the city limits or on the other side of the city limits?

A. Repeat your question. It is not clear to me.

Q. I understood you to say in answer to Judge Cochran's question that the place where the Phillips 66 Theater was located is part of the municipal corporation known as Borger, Texas.

A. I don't know for a fact that it is in the municipality but it is part of the town.

Q. But you would say Borger is part of the community of Phillips?

A. It is all one community.

Q. Will you read the question?

(Question read.)

A. I don't know that Phillips is a community. I mean an incorporated town or anything like that.

2263 Q. In terms of a great many homes, and in terms of a separate and distinct district, Phillips is regarded as a separate community, isn't it?

A. Not by me. You see there are four different——

Q. Just a minute, "not by you." You have used the name Phillips many, many times, haven't you?

A. Phillips Camp.

Q. You always say "Phillips Camp", or do you say Phillips, Texas.

A. Three times out of four I will say Phillips Camp because I lived there in the early days.

Q. What did the people say in 1940?

A. They said it both ways.

Q. Just as many of them call it Phillips as they do Phillips Camp?

A. I don't know the percentage on it.

By the COURT:

Q. Are Phillips and Borger a part of the same community?

A. Yes.

Q. Do people who live in Borger work for the Phillips Petroleum Company?

A. Yes.

Q. How many people live out at Phillips?

A. I don't know. It is inflated considerably now. I would say in the Phillips Camp area there are proba-

2264 bly 3000 people north of 10th Street in Borger.

Q. And how many in Borger?
A. There is no way of telling.
Q. Well, can you make an approximation of the population of Borger?
A. I believe Borger probably has 20,000 people in and around the area.
Q. You say there are about 3000 people at Phillips?
A. I think so.
Q. What separates the two communities?
A. Nothing. There are houses built all the way out.
Q. Are they solid all the way from Phillips to Borger?
A. Practically so.
Q. All built up, I mean?
A. The entire area is built up. Borger being a typical oil field area has residence everywhere; even out past Borger.
Q. The space between Borger and Phillips, that is generally built up, is it?
A. Yes, sir.

By Mr. KALLIS:

Q. How far apart were the business districts of each of these communities in 1940?
A. You mean how far was it from downtown Borger to surburban Phillips?
Q. To the business district of Phillips.
A. I would say it is a mile and a half.
2265 Q. That is all.

By the COURT:

Q. You spoke of 10th Street. Is 10th Street a street separating the two communities?
A. Tenth Street and Borger—I might explain—Borger in the beginning was made up, that is, what is now Borger, was made by grouping the town sites, each promoted by a different promoter. There was Isom, Phillips, Dixon Creek and two or three others, and 10th Street was the center business section of the Dixon Creek townsite. Now they have all been welded into one community, grown into each other.

By Mr. COCHRAN:

Q. Speaking of Dixon Creek and Phillips and so forth, each of those names you have mentioned represents manufacturers of natural gasoline who were operating a plant in that area at that time?
A. No, sir. Dixon Creek was a townsite promoted by some individual. Isom was a townsite promoted by the Santa Fe Railway representatives. Phillips was original-

ly Whittenburg, and the entire townsite was owned by the Whittenburg estate.

Q. Were each one of those townsites incorporated as a separate town or were they part of the Borger community?

A. They were gradually taken into Borger, most of them.

Q. So as the area grew they all became a part of the Borger area?

A. That is right.

2266 Q. That is the way it existed at the time the Phillips Theater and 66 Theater were built?

A. Yes, sir.

By Mr. DUDLEY:

Q. At the time you purchased this lot for a new theater and put the sign on in Lubbock, that was in a residential area or section of Lubbock, was it not?

A. Yes.

Q. It was not zoned for business purposes?

A. No.

Q. And for that reason you could not build and did not build a theater on that lot?

A. That is right.

Q. Now later you acquired a lot. How far away was that from this first lot?

A. We didn't acquire another lot.

Q. I mean you built a theater, how far away?

A. We constructed a theater on the property of Mr. Leftwich.

Q. How far away was that from this lot you first acquired?

A. About three quarters of a mile.

Q. Was that particular lot zoned for business purposes?

A. Yes, sir.

Q. And that is the nearest location you could get to the first lot which you selected. Is that right?

2267 A. We might have been able to secure others, but this was a fine location.

Re-cross-examination by Mr. KALLIS:

Q. And if you had been able to make a deal with Bearden and Smith and bought their theater you would not have built another one at that time?

A. I don't know.

Q. That is all.

(Witness excused.)

(Hereupon court adjourned until 10 o'clock a. m., September 14, 1945.)

2268 PROCEEDINGS

September 14, 1945, 10 o'clock a. m.

Mr. RICE. May it please the Court, I have a correction for the record. At page 1918, being the afternoon session of September 12, in the fourth line Mr. Kime and I have agreed that the record should be corrected by inserting after the word "all", the words "in the fall of 1938", and at the end of the sentence for "1938" substitute "1941." It was purely a typographical error, not on the part of the reporter but of my own stenographic help.

The COURT. The record will be corrected. You may proceed.

ARLIE CRITES, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. DUDLEY:

Q. What is your name?

A. Arlie Crites.

Q. Where do you live?

A. Lincoln, Nebraska.

Q. What business, if any, are you engaged in?

A. Theater business. I am manager of the Lincoln Theaters in Lincoln.

2269 Q. What is the name of the company?

A. Lincoln Theater Corporation.

Q. Is that a corporation?

A. Yes, sir.

Q. Organized under the laws of Nebraska, is it?

A. I am not sure where it is incorporated.

Q. Does this company, the Lincoln Theater Corporation have any connection with the Griffith interests, Griffith Theaters?

A. No, sir.

Q. Were you ever employed by the Lindsey Theaters, Inc. of Lubbock, Texas?

A. Yes.

Q. Over what period of time were you employed by that concern?

A. I was city manager of Lindsey Theaters, Incorporated, from June, 1937, through May, 1942.

2270 Q. What do you say your position was with that concern during that period of time?

A. I was city manager of Lindsey Theaters, Inc.

Q. Prior to your employment by the Lindsey Theaters, Inc., by whom, if anyone, were you employed?

A. Prior to that I was employed by Griffith Consolidated Theaters.

Q. Had you been connected with Griffith Theaters sometime prior to that?

A. Yes, sir.

Q. How long had you been connected continuously with Griffith Theaters?

A. Continuously since 1926.

Q. All right. When you first went to Lubbock and became the city manager of Lindsey Theaters, Inc., what theaters were there in Lubbock at that time?

A. That was in June, 1937. The Lindsey, Palace, the Texan, the Broadway, the Lyric, and the Tech Theaters were then operating.

The COURT. The Broadway?

A. And the Lyric and Tech.

By Mr. DUDLEY:

Q. What concern owned and operated the Lindsey and Palace and Texan Theaters at Lubbock at that time?

2271 A. Those three theaters were operated by Lindsey Theaters, Inc.

Q. Who operated the other theaters you mentioned and which were there at the time you speak of?

A. The Broadway and Lyric Theaters were operated by Mr. W. A. Mauldin; the Tech was operated by Mr. W. O. Bearden and P. E. Smith.

Q. And P. E. Smith; all right. Do you know the approximate population of Lubbock at the time you went there?

A. The approximate population was close to 30,000.

Q. All right. State whether or not that city was growing, or otherwise, at that time?

A. It was definitely growing by leaps and bounds.

Q. While you were there, were there any other theaters opened or built?

A. Yes, sir; there was the Cactus Theater, which was opened and built in 1939, I believe; the Arcadia Theater was built during that time, in 1939; the Tower Theater was built in 1940; if I remember, it was opened in August of 1940; and the Midway Theater was built in 1940 also.

Q. Was that 1939?

A. That, I am not sure; it seems to me that it was 1939 or '40.

Q. Do you know who built and opened the Cactus Theater?

2272 A. The Cactus Theater was built and operated, and opened rather by Mr. M. A. Tate Sanders.

Q. And who opened and operated the Midway?

A. The Midway Theater was opened by Mr. Joe Mauldin, and later sold to Mr. Joe Bryant.

Q. And now the Arcadia Theater, you testified I believe, was opened and operated by Mr. Smith and Mr. Bearden?

A. That is correct.

Q. About when, now, do you say that the Tower Theater was opened, built and opened?

A. It was opened in August of 1940.

Q. Who opened and operated that theater, or what concern opened and operated that theater?

A. That was built and operated—I use the word "built", I mean it was constructed and operated later by Lindsey Theaters, Inc., but it was constructed by Mr. Leftwich.

2273 Q. Now, when you became city manager of the Lindsey Theaters, Inc. of Lubbock, I will ask you whether or not there were any discussions with reference to the expansion of the theater business for that concern and the acquisition of other theaters?

A. Yes.

Mr. KALLIS. If the Court please——

Mr. DUDLEY. Answer that yes or no.

A. Yes.

Mr. KALLIS. I am not making any objection yet.

By Mr. DUDLEY:

Q. While you were there, I will ask you whether or not there were continued discussions with reference to the expansion of the theater business in Lubbock by Lindsey Theaters, Inc.

A. Yes, regularly.

Q. After you became city manager of the Lindsey Theaters, Inc. did that concern acquire some other theaters?

A. Yes, the Broadway and Lyric were acquired.

Q. From whom?

A. From W. A. Mauldin, and the Cactus Theater was acquired from M. A. Tate Sanders.

Q. Do you know about when the Tower Theater was built and opened?

A. Yes, I know exactly. It was opened in August, 1940.

2274 Q. Were you still employed as city manager at that time?

A. Yes, sir, I was.

Q. Do you know Mr. C. B. Akers?

A. Yes, sir.

Q. How long have you know him and when did you first become acquainted with him?

A. I have known Mr. Akers since 1932, the early part of 1932.

Q. At the time you moved to Lubbock was Mr. Akers living there at that time?

A. No.

Q. What position did he have, if any, with the Lubbock theaters at any time to your knowledge?

A. At the time I moved to Lubbock, Mr. Akers was divisional manager.

Q. And by whom was he employed at that time?

A. Mr. Akers was employed by Griffith Consolidated Theaters.

Q. And he held that position as division manager at the time you went to Lubbock. Is that right?

A. Yes, sir, in 1937.

Q. Do you know what his general duties were as divisional manager and if so, state.

2275 A. Yes, his duties were——

Mr. KALLIS. If the Court pleases, I object to that. That is entirely calling for a conclusion and inference of this witness, and I say, instead of that he should lay a proper foundation to present the matter in the regular way.

The COURT. There isn't any controversy as to what his duties were, is there?

Mr. KALLIS. I am not aware of any at the moment.

The COURT. If you know of your own knowledge you can state. Do you know what his duties were?

A. I was working directly under Mr. Akers in the operation of the theaters in Lubbock, Texas. Mr. Akers was in charge of operation of the theaters in all of the western district for the Griffith Consolidated Theaters, and he was my immediate superior.

The COURT. Overruled.

By Mr. DUDLEY:

Q. What, if anything, did Mr. Akers do as district manager with reference to the Lubbock theaters or the acquisition and expansion of the theater business generally?

A. May I have that question again, please?

Q. I withdraw that question. What, if anything, did he do in connection with the work which you had as city manager of the Lubbock theaters? Did he aid and

2276 assist you in any way, and if so, state what the facts are.

A. Yes, Mr. Akers was in charge of the supervision of all theater operations and I regularly discussed with Mr. Akers all problems of operation in Lubbock, Texas.

Q. During the year 1938, I will ask you whether or not

the Lindsey Theaters, Inc. had any discussion with reference to the acquisition and building of other theaters in Lubbock in the year 1938?

A. Yes, sir.

Q. Who, if anyone, took part in those discussions besides yourself?

A. Mr. Akers, Mrs. Betty Lindsey and Mr. Ralph Lindsey.

2277 Q. Do you remember the occasion of Mr. Akers becoming employed by the Tad Screen Advertising Company of Dallas?

A. Yes, sir.

Q. Do you remember about what year that was?

A. I believe it was in 1938.

Q. After he became connected with that concern, I will ask you whether or not he aided and assisted you in any way in connection with the operation of the Lubbock Theaters and the acquisition of other theaters there?

A. Yes, Mr. Akers did, regularly.

Q. I will ask you whether or not he, in connection with yourself, made a survey of the question of whether or not additional theaters should be acquired or built in Lubbock?

A. Yes.

Q. Was a survey made of that situation?

A. Yes, sir, it was.

Q. Who participated in that, if anyone?

A. Mr. Akers was extremely interested at all times in that survey, and I remember he took a particular part in it.

Q. Well, as a result of these discussions and the survey which was made, I will ask you whether or not the Lindsey Theaters, Inc. did anything toward acquiring a site for the construction of another theater in Lubbock?

A. Yes, they did.

Q. What did you have to do with this effort, if anything?

2278 A. I had nothing to do with it.

Q. Do you know whether a lot or site was acquired for the purpose of constructing a new theater in Lubbock?

A. Yes, sir, I do.

Q. Where was the lot located?

A. The lot was located on West Broadway, near the campus of the Texas Technological College.

Q. After that lot was acquired what, if anything, was done with reference to giving notice of an intention to build a theater there?

A. I distinctly remember that a newspaper story was released to the effect that the Lindsey Theaters, Inc. planned

on building a new Campus theater. The newspaper story also carried a sketch of the proposed architectural sketch, I am speaking of, of the proposed campus theater building to be erected on that site. On that site we erected a sign stating that that was the home or site for the location of the new Campus theater.

Q. Do you know who put this sign on this city lot?

A. Yes, sir, I do.

Q. Who?

A. I put the sign on it.

Q. What was the object and purpose of putting the sign on that lot?

Mr. KALLIS. Now, if the Court please, I object
2279 to that.

The COURT. For what reason?

Mr. KALLIS. For what reason?

The COURT. Yes, sir.

Mr. KALLIS. That this man can testify with respect to what might be in his own mind, but what other people felt would be purely hearsay.

The COURT. He said he put it up there. What was your object in putting that sign up?

A. The sign was erected to inform the people that that was the location and site for a proposed theater.

By Mr. DUDLEY:

Q. Now, you say plans and specifications were prepared for the proposed building?

A. Yes, sir.

Q. Do you recall the name of the architect?

A. Yes, sir, I do.

Q. Give us his name.

A. Jack Corrgan of Dallas, of the firm of Corrgan and Moore at that time. He drew up a detailed set of plans for construction of the campus theater.

Q. All right. Did you and Mr. Akers have a discussion or conversation with Mr. W. O. Bearden concerning the purchase of the Tech Theater in Lubbock?

A. Yes, we did.

Q. Do you recall about the date of that conversa-
2280 tion and where it took place?

A. I don't recall the exact date, but I believe it was in the early fall of 1938, I believe in October.

Q. In October, 1938?

A. Yes, sir.

Q. Do you know who, if anyone, arranged this conference between you three parties?

A. Yes, sir.

Q. Who?

A. I arranged this conference between Mr. Akers and Mr. Bearden and myself.

Q. All right. And did you have the conference?

A. Yes, sir.

Q. What was the purpose of that conference, briefly?

A. The purpose of the conference was to find——

Mr. KALLIS (interrupting.) Just a moment, please. Whose purpose?

The COURT. Just state what you did.

Mr. DUDLEY. All right, I will withdraw the question.

By Mr. DUDLEY:

Q. A conference was had, and you attended it?

A. Yes, sir.

Q. Were you present during the entire conversation?

A. Yes, sir, I was.

2281 Q. Please state the substance of the conversation as you recall it.

The COURT. State as nearly as you can just what each one said.

A. In this conversation, we met at the Tech Theater, and I introduced Mr. Akers to Mr. Bearden. We met in the lobby, or inside of the theater, and we discussed a few improvements that Mr. Bearden had made in the theater since I had been in the theater the last time. We talked for a few moments, and Mr. Bearden invited us upstairs to his office. In the office I distinctly remember that Mr. Akers explained to Mr. Bearden that he had heard that he might be interested in selling the properties or the Tech Theater, and if so, that perhaps Lindsey Theaters, Inc. might be interested in the purchase of those properties. I remember Mr. Bearden stating that he would be interested in selling, providing he could get his price. And he quoted a price of $26,000. That I remember Mr. Akers distinctly saying was too much, was much too high in his opinion, and that it was more than Lindsey Theaters, Inc. would be interested in paying, that they would not be interested in paying over ten or twelve thousand. That's the essence of the conversation, that's the important parts of it as I remember.

By Mr. DUDLEY:

Q. That is the way you recall it?

A. Yes, sir.

2282 Q. To refresh your recollection, I will ask you was there any discussion with reference to making any improvements or modifications of this Tech Theater?

A. Well, Mr. Akers at that time stated he would have to make improvements on the theater by enlarging it because

it wasn't as large as Lindsey Theaters had planned for their site at the campus theater.

Q. In that conversation, was anything said with reference to the new theater which you contemplated building?

A. I believe Mr. Bearden made reference to the previous publicity we had given, that a new theater would be built on the Campus theater site, where we had the sign erected, and Mr. Bearden asked if we were planning on building in the new future, or starting construction, and Mr. Akers informed him that we had planned to. So Mr. Bearden asked Mr. Akers particularly if he thought that two theaters could be operated profitably, Mr. Bearden asked Mr. Akers particularly if he thought two theaters could be operated in that locality only, on or near the campus of Texas Technological College, and I distinctly remember Mr. Akers saying, "Yes," he thought that two theaters and perhaps even more could be operated profitably because of the increase in enrollment and the extension of the city in that direction.

Q. Is there anything else now that you recall, Mr.
2283 Crites?

A. That's all I recall that was discussed. It was a friendly meeting.

Q. Do you recall whether any reference was made to the sign on this lot?

A. Yes, I believe there was.

Q. What?

A. Mr. Bearden stated he had noticed the sign, that it had been up there for some time, and he would like to know if it was planned, if they planned to build soon.

Q. During this conference I will ask you whether Mr. Akers told Mr. Bearden that the Lindsey Theaters had intended to have a theater near the campus for a long time, and that they felt that that part of town really belonged to Lindsey Theaters because they had been in the theater business for a long time. Did he make any such statement as that?

A. No.

Mr. KALLIS. Pardon me, Judge. What page is that on, if you don't mind?

Mr. DUDLEY. I haven't got the place.

Mr. KALLIS. All right.

By Mr. DUDLEY:

Q. Did Mr. Akers say to Mr. Bearden, or did you say to Mr. Bearden in the presence of Mr. Akers, on this occasion, that the Lindsey Theaters, Inc. planned to control the

theater business in Lubbock, if they had to
2284 build theaters as thick as service stations?

A. No, sir, no such statement was made.

Q. No such statement was made by either you or Mr. Akers?

A. No, sir.

Q. During this conversation I will ask you if Mr. Akers or yourself said to Mr. Bearden that he had until the next Monday morning to accept his offer to purchase the theater?

A. No.

By the COURT:

Q. Was any offer made to purchase the theater?

A. No, sir, no offer was made.

By Mr. DUDLEY:

Q. During this discussion, during this conference, rather, was there any discussion wtih reference to the product situation or what pictures would be shown in the new theater to be constructed by the Lindsey Theaters, Inc.?

A. No, sir.

Q. No discussion at all on that?

A. None whatsoever.

Q. Was there any discussion as to whether this new theater would have first run, second run, or any particular kind of run?

A. No, sir, no reference was made at all to film.

Q. Mr. Crites, Mr. W. O. Bearden in his testimony testified as follows, at page 681, and I will read you the
2285 questions and answers: Question: "(By Mr. Wright) What was the conversation you had with him?" Answer: "Mr. Akers commented on the theater we had there, about it being nice, and what good sound equipment we had, and first one thing and another of that nature, then he mentioned the fact about them planning to build a theater out by the campus, and asked me if I had heard of it. I told him, 'Yes,' I had heard of it, and I had also noticed the sign posted on the lot around the corner, and he asked me if I thought there was enough business out there by the college to furnish or supply two theaters, and I told him I didn't know, but I doubted it, and he said, 'Well, we have intended to have a theater out there, out here for a long time, and we feel like this part of town really belongs to us because we have been in the theater business a long time,' and he said, 'We plan to control the theater business here if we have to put them here as thick as service stations.' " (By the Court) "If we have to do what?" Answer: "If we have to put them

here as thick as service stations, so I told him it was a free country, and that I would do nothing about it, that I could do nothing about it. He then asked me if I would be interested in selling. I told him, yes, that I would and he asked me what I would take for it. I told him I would take $20,000, and he said, 'That is unreasonable. We can only pay about $10,000.' And I told him we couldn't
2286 accept that, that wasn't enough, that we had more money in it than that. That was about the extent of the conversation until he got up to go, and he stated he would give me until Monday morning, which was the 10th, to call him up and accept the offer that he made, else they would start immediately to construct a theater on the lot that they had the sign on. So I told him he already had my answer, that I wouldn't take $10,000. That sometime he might have the theater, but I wouldn't give it to him. So he shook hands with me and said he would be going, and that's the last time I saw Mr. Akers."

2287 Q. Now, I have read you the statement made by Mr. Bearden. I will ask you whether or not the statement as outlined by him was made.

A. No.

Q. As related by Mr. Bearden? You say it was not?

A. No, it was not.

Q. Mr. Bearden also testified at page 685:

"Q. At that conversation you had with Mr. Crites and Mr. Akers in the fall of 1938, was anything said as to what kind of pictures would be put into the new theater?

"A. Yes, sir. Yes, Mr. Akers told me that, when he said they were going to control the theater business, if they had to build them as thick as service stations, he said, 'Besides, we are going to put first and second run pictures in our theater that we build out there.' "

Did that conversation take place as related by Mr. Bearden?

A. No, it did not.

Q. How long have you been in the theater business, Mr. Crites?

A. Continuously since 1924.

Q. How long?

A. Since 1924.

Q. Are you at the present time connected in any capacity with or employed in any capacity by the Griffith
2288 Theaters?

A. No.

Mr. DUDLEY. Cross-examine.

Cross-examination by Mr. KALLIS:

Q. Do you have any financial interest of any kind, Mr. Crites, in any of the Griffith theaters?

A. No, sir, none whatsoever.

Q. Does anybody related to you own any stock or have any other kind of financial interest?

A. No.

Q. This corporation for which you are now working, is that connected in any way with any of the theatrical activities of H. J. Griffith?

A. No, sir.

Q. Not at all involved in any of the new theatrical corporations which were formed since 1933?

A. No, sir.

Q. Have you in the last year or so had occasion to see any of the Griffiths?

A. In the last year or so?

Q. Except the last few days.

A. Yes.

Q. When was that?

A. I believe it was August a year ago; I remem-
2289 ber it was during my vacation in August.

Q. Where?

A. In Kansas City.

Q. How many days did you spend there?

A. One day, or two; two days in Kansas City.

Q. Did you have occasion to have frequent visits with H. J. Griffith there?

A. Yes, sir, that is true.

Q. You are on very friendly terms, are you?

A. Correct.

Q. After you came to Lubbock, I presume that you had occasion to become acquainted with Mr. Bearden and Mr. Smith?

A. Yes, sir.

Q. And you knew that they were both graduates of Texas Technological College, did you?

A. I didn't know that, no, sir.

Q. You had no idea or belief at all on that subject?

A. I heard they attended Texas Tech, is all.

Q. Each one of them?

A. Yes.

Q. Do you know that Mr. P. E. Smith, who has been operating the Tech since it was opened in June of 1936, is now a member of the Texas Legislature?

A. No, sir, I did not know that.

Q. You did not know that?

2290 A. No, sir.

Q. Your relationship with those two gentlemen during the time that you were in Lubbock was cordial, wasn't it?

A. Yes, sir.

Q. And you had a high regard for them, didn't you?

A. That's correct.

Q. Now, you gave some testimony with reference to a survey which Mr. Akers made of the theater possibilities in and population trend in Lubbock, and then you said that you caused the sign to be erected on this lot on West Broadway?

A. That's correct.

Q. Do you recall whether 2410 is the correct number?

A. I don't remember whether that is the correct address, because it was a vacant lot. We attached no address to that property.

Q. You said you were interested in informing the people that a theater was contemplated on that site?

A. Yes, sir.

Q. And also a newspaper item was released?

A. That's correct.

Q. And was the item published in a newspaper?

A. The item was published, yes, sir.

Q. You say a picture also?

A. A picture, architectural sketch of the proposed Campus Theater.

2291 Q. Did you submit that story to the paper?

A. I did.

Q. And was it published in accordance with the story you gave the newspaper officials?

A. It was.

Q. Do you remember when, Mr. Crites, that item was published in the newspapers?

A. I don't remember the exact date, but it was in 1938.

Q. Does December 18th sound familiar to you, 1938?

A. It doesn't, it seems to me it was earlier.

Mr. KALLIS. Will you please mark this as the plaintiff's next exhibit.

(Plaintiff's Exhibit No. 382 was marked by the reporter for identification).

Q. Showing you Plaintiff's Exhibit No. 382 for identification, I will ask you whether that is the newspaper item that was published in the Lubbock Avalanche Journal?

A. Yes, that's correct.

Q. What kind of a newspaper is that Avalanche Journal, the Lubbock Avalanche Journal?

A. It is a daily newspaper, I will say a class A newspaper for that size town.

Q. You say a daily?

A. Yes, sir.

Mr. KALLIS. We offer in evidence Plaintiff's
2292 Exhibit No. 382. Pardon me, may I have that just a moment? I will offer it at the present time.

Mr. DUDLEY. No objection, if you want to offer it.

Mr. KALLIS. At this time, if the Court please, if there is no objection, I would like to read the statement that was published, as this exhibit is an exact copy.

By Mr. KALLIS:

Q. Your recollection now is, Mr. Crites, that it was published in the December 18, 1938, issue of the Lubbock Avalanche Journal?

A. I don't recollect that. It seems to me that it was an earlier date.

Q. How much earlier?

A. It seems to me several months; it was in the early fall of 1938.

Mr. KALLIS. "Campus Theater is Planned For City.

"Announcement that a new theater, fireproof and ultra-modernistic architectural design, to be known as the 'Campus' is to be erected immediately after the first of the New Year at 2410 Broadway was made on behalf of Lindsey Theaters, Inc., by Manager Arlie Crites here Saturday. Estimates were that the cost, including building, fixtures and new equipment of the most modern type will exceed $50,000.

"The building, Crites reported, will have a front of 62½ feet. A depth of 125 feet and will seat approximately 800 persons on the one floor. There will be no
2293 balcony. Crystal, brown and cream colored bricks will be used in construction of a front of unusual and striking architectural beauty, Crites said. It will be strictly a first run theater presenting programs designed to appeal to discriminating audiences, he added.

"The theater will be the fourth in Lubbock for Lindsey Theaters, Inc. Others are the Palace, Lindsey and Texan."

Mr. DUDLEY. You have offered that in evidence?

Mr. KALLIS. Yes.

Mr. DUDLEY. All right. Does the record show that that exhibit has been identified and offered and become a part of the record?

Mr. KALLIS. That's right.

The COURT. It will be admitted in evidence.

By the COURT:

Q. Is this the article that appeared in the newspaper, and was this the newspaper in which the picture of the architectural drawing was published?

A. Yes, sir.

Q. This is the article?

A. That is one of the articles. There might have been probably another article or two.

The COURT. Anything further for the plaintiff?

Mr. KALLIS. Yes, your Honor, just a few moments.

2294 By Mr. KALLIS:

Q. Mr. Crites, at the time that you posted this sign—I will withdraw that question. Were you in court yesterday when Mr. Akers testified?

A. I was.

Q. And you heard his entire conversation, did you?

A. Yes, sir.

Q. And since court adjourned yesterday, did you read a transcript of his testimony?

A. No, sir.

Q. Did anyone read it to you?

A. No, sir.

Q. Did anyone tell you what the contents of his story was?

A. No, sir.

Q. Did you hear a discussion of the testimony yesterday after court adjourned?

A. No, sir.

Q. And did you read a copy of Mr. Bearden's testimony in the transcript?

A. No, sir.

Q. You have had a conference with counsel for the defendant concerning the testimony you were going to give, have you?

A. That's correct.

2295 Q. Now, you related from the witness stand the incident and remarks, the incident that occurred, and the remarks which were made, at the time you and Mr. Akers had this conference with Mr. Smith in October of 1936 at the Tech theater; and as I gather, you proceeded to state on the witness stand the important parts of the conference, as you remember them.

Mr. DUDLEY. Pardon me. You said '36, you meant '38?

Mr. KALLIS. Yes, sir, thanks very much, Judge Dudley for the correction; I meant October '38.

The COURT. And you said Mr. Smith; do you mean Mr. Bearden?

Mr. KALLIS. Did I say Mr. Smith; I meant Mr. Bearden. Now, will you read that?

The COURT. Just substitute '38 for '36, and Bearden for Smith.

By Mr. KALLIS:

Q. You didn't make any notes, either, of the conversation which occurred at Mr. Bearden's theater, did you?

A. No, sir, I made no notes. The only note that I had was the amount and the figure that he quoted, $26,000. I distinctly remember that, I did write that down immediately as we left the office.

Q. Wasn't there another figure mentioned?

2296 A. By Mr. Bearden?

Q. Yes; as a matter of fact, didn't he say he might consider some lower figure?

A. No, sir, no reference was made to a lower figure at any time.

Q. You don't remember that at all?

A. No, sir.

Q. A statement to that effect by Mr. Bearden might have been made, and if it was, you might have forgotten it, is that right?

A. I was paying particular attention to that point, and the amount involved.

Q. Your memory isn't perfect, is it?

A. No, sir.

Q. And you have forgotten some important things in your life, haven't you?

A. Not the important things, no, sir.

Q. You have never forgotten any important thing in your life?

A. I haven't forgotten the most important things.

Q. I will ask you whether you had ever forgotten any important thing.

The COURT. Just a moment. I think that is argumentative. He is a human being just like lawyers and judges.

2297 By Mr. KALLIS:

Q. Do you think that there might have been something there which you might have forgotten as far as what occurred and what was said?

A. No, sir.

Q. You didn't give this matter any particular thought for several years, did you?

A. I paid particular attention at the time of the meeting because I was cautioned to do so.

Mr. KALLIS. Will you read the question?

(Last question read by the reporter.)

A. Yes, I did, before that.

Q. Before when?

A. Before several years. Your question involved the period of several years; I said yes.

Q. When was the last time you stopped giving it particular thought?

A. Your question again?

Mr. KALLIS. Read it.

(Last question read by the reporter.)

A. In Lubbock, it was discussed immediately after the meeting, and discussed for sometime afterward. After that, naturally, I dismissed it from my mind.

2298 Q. You talked about giving publicity in this matter. Do you know whether or not during the time you were connected with the Griffith Theaters interest there was a publicity department?

A. Yes.

Q. One or several?

A. One publicity department.

Q. And where was its headquarters?

A. The publicity department for Lindsey Theaters, Inc.?

Q. No, for the Griffith Theaters?

A. They had no centralized publicity department. I thought you were speaking of Lindsey Theaters, Inc.

Q. At this meeting, Mr. Crites, do you remember whether Mr. Akers said to Mr. Bearden. in your presence, "Well, we have intended to have a theater out here for a long time." Do you remember?

Q. Mr. Akers didn't say that.

Q. Did he make any statement about being in the business a long time?

A. No.

Q. Do you know whether or not Mr. Bearden said that this was a free country?

A. I don't remember that comment being made.

Q. Do you remember whether Mr. Akers asked Mr. Bearden whether he would be interested in selling?

2299 A. Yes.

Q. What did Mr. Akers say?

A. Mr. Akers asked, stated, he explained to him that he had heard that they were interested in selling, and if so, that Lindsey Theaters, Inc. might be interested in purchasing the properties.

Q. Do you remember whether Mr. Bearden said, "We can't accept $10,000"?

A. Yes, sir, he did; he said that would not be enough.

Q. Did he say that they had more money than $10,000 in this theater project, do you remember his making that remark?

A. Yes, sir, I believe he did.

Q. As you left the Tech Theater and concluded the meeting, what arrangements did you have with regard to communicating with each other?

A. There was nothing definite about the future.

Q. What was indefinite about it?

A. The fact is, there was nothing indefinite. Mr. Bearden declined any further comment after stating he couldn't accept the figure that was quoted, ten or twelve thousand dollars.

Q. What did you say then?

A. Upon leaving?

Q. Yes.

A. I made no statement at all.

2300 Q. What did Mr. Akers say?

A. Mr. Akers thanked him for his time in interviewing us and talking with us, and we left the office, and a very friendly meeting.

Q. There was no resolution of any kind made, one way or another, is that your idea, or was something said about somebody letting somebody know what was going to happen?

A. There was nothing said about anything further.

Q. Did Mr. Akers make any remark then as to what the Griffith organization or the Lindsey Theaters, Inc. were going to do?

A. No.

Q. What did Mr. Akers say as to the amount of money he had in mind with reference to the purchase of the Tech Theater?

A. A figure of ten or twelve thousand dollars.

Mr. KALLIS. I think that is all.

Mr. DUDLEY. That's all.

(Witness excused.)

CLAUDE LEACHMAN, called as a witness on behalf of the defendants, and being duly sworn, was examined and testified as follows:

2301 Direct examination by Mr. DUDLEY:

Q. State your name, please.

A. Claude Leachman.

Q. Where do you live?

A. Stillwater, Oklahoma.

Q. How long have you lived at Stillwater?

A. Since June 21st, 1926.
Q. What business, if any, are you engaged in now?
A. In the theater business, with the Griffith Amusement Company.
Q. How long have you been engaged in the theater business with the Griffith Amusement Company?
A. Since July, I mean since June 27th, 1926.
Q. 1926?
A. Yes, sir.
Q. Where did you live before you moved to Stillwater?
A. Woodward, Oklahoma.
Q. Were you in the theater business at Woodward?
A. Yes, sir.
Q. When did you first become interested in the theater business at Woodward?
A. On November 19th, 1919.
Q. How old were you at that time?
A. About 19.
Q. Were you associated with anyone when you first went into the theater business in Woodward?
2302 A. With my father.
Q. What is your father's name or initials?
A. Dr. T. C. Leachman.
Q. Is he living now?
A. Yes, sir.
Q. Did he own and operate a theater that you became interested in when you were about 19 years old?
A. Yes, sir.
Q. What happened to that theater?
A. I sold it and delivered the theater properties and lease on February 15th, 1926, to Terry Brothers of that city.
Q. What is the name of this theater?
A. The Pastime Theater.
Q. And you sold it to whom, now?
A. Terry Brothers.
Q. In 1926?
A. Yes, sir.
Q. After you sold that theater, what did you do?
A. I went to Stillwater, Oklahoma.
Q. While you were going to school at Stillwater, did you have any theater connections?
A. No, sir.
Q. Now, while you were attending school at Stillwater, did you make any plans to go back into the theater business?
A. I did; I made some plans myself over, oh, quite
2303 a period of time, because I thought there was room there for a theater.

Q. What did you do with reference to going back into the theater business?

A. In 1926, early in 1926, I made an arrangement to draw up a contract with Dr. Duncan H. Self of Stillwater to erect a theater building in Stillwater, and at that particular time I was just out of school, I didn't have proper finances, as I saw it, to complete the arrangement I had made, and I came to Oklahoma City and talked with Mr. L. C., and R. E. Griffith to go into the town with me.

Q. As a result of that conversation with those gentlemen, just state whether or not you later on made some arrangement with the Griffith interests to go into this theater with you?

A. I did, sir.

Q. What were the arrangements you made?

A. I made arrangements with Mr. L. C. and Mr. R. E. Griffith to become their partner in the theater operation in Stillwater and to take over the lease that I had arranged for from Dr. Self.

Q. Who was to manage this theater?

A. I was.

Q. And what was the name of this theater?

A. The Aggie Theater.

2304 Q. About when was that theater opened, if you recall?

A. On September 8th, 1926.

Q. And what was the ownership now of that theater when it opened?

A. Then it was a Griffith Brothers and Leachman Brothers at that time, when it opened, I believe, sir; I believe that is right.

Q. And you operated that?

A. Yes, sir.

Q. Did you acquire another theater in Stillwater?

A. Yes, sir.

Q. From whom did you purchase the other theater?

A. From Mr. A. M. Abbott, who owned and operated the Abbott Theater.

Q. When was that transaction closed for the purchase of this Abbott Theater?

A. I believe it was in May, 1926.

Q. Well then, that was before you opened this Aggie Theater?

A. Yes, sir.

Q. Now, at the time you acquired the Abbott Theater, were there any other theaters in there at that time?

A. Yes, sir, the Camera Theater, which is located across the street from what was the Abbott Theater then, and is the Mecca Theater at this time.

2305 Q. Who owned this other theater, this Camera Theater you are talking about?

A. When we went to Stillwater?

Q. Yes, sir.

A. Mr. F. M. Tull.

Q. Do you know Mr. Ray Russ, (Spelling) R-u-s-s?

A. Yes, sir.

Q. How long have you known him?

A. Since the fall of 1928.

Q. I will ask you whether or not he became interested in the theater business in Stillwater?

A. He did.

Q. About when, and what was the name of the theater that he acquired, as you recall?

A. As near as I can remember, it was either September or October of 1928 that he acquired the Camera Theater from Mr. F. M. Tull.

Q. At the time he acquired the Camera Theater, what other theaters were you interested in at that time?

A. The Aggie and Mecca Theaters.

Q. Then, at that time, how many theaters were there in Stillwater?

A. Three.

Q. Three?

A. Yes, sir.

2306 By the COURT:

Q. Did you change the name of the Abbott to the Mecca?

A. Yes, sir, Judge.

By Mr. DUDLEY:

Q. Are you familiar with the theaters in Stillwater at the present time, and have you been for many years last past?

A. Yes, sir.

Q. I wish you would please briefly describe the Aggie Theater?

A. The Aggie Theater is a building 50 in width, by 140 feet in length; it seats 710; it is equipped with modern theater equipment; the chairs are upholstered backs and cushioned seats, in fact, the chairs are all steel with the exception of the upholstering and the arms; the projection and sound is the very latest type; it has a good screen and quite an extensive stage. The theater was built to take care of legitimate road shows when it was built. It is

equipped with summer and winter air-conditioning.

Q. How did you classify that theater, as being first class, deluxe or otherwise?

A. It is the "A" theater in Stillwater.

Q. "A" theater?

A. Yes, sir.

Q. I wish you would briefly describe the Mecca Theater now.

2307 A. The Mecca Theater is a house 25 feet in width, by 140 feet in length; it is equipped with modern projection and sound equipment; it has 432 chairs, and will accommodate 432 people; the seats are cushioned bottoms, and the backs are veneered backs. The theater has ample conveniences, that is, such as comfort rooms, carpet on the floor, just as our "A" house has, and a good screen; and it is steam heated for winter months, and air-conditioned or cooled for summer months.

Q. How do you classify that theater?

A. It is a "B" theater, or a "B" run, "B" and "C", I suppose would be the classification.

Q. Briefly describe the Camera Theater.

A. The Camera Theater is 25 feet in width by approximately 110 or 120 feet; it seats about 360, according to my recollection, and is equipped with six "B" Powers Machines and some off-brand sound system. It has a rather unique front, but the interior appearances are not in keeping with the outward appearances.

Q. How do you classify the Camera Theater?

A. I just classify it——

2308 Q. How do you classify the Camera Theater?

A. The Camera Theater?

Q. Yes.

A. It is about the fourth in place in the city. It is a subsequent run house.

Q. I wish you would briefly describe the Campus Theater and tell us when it was built and describe that briefly.

A. The Campus Theater was erected in 1939. It was designed by one of the leading theater architects, Mr. Jack Corrigan of Dallas, Texas. It is 25 feet in width by 140 feet in length. It has sufficient height to give good ceiling room. In fact, it is a de luxe house. It seats 432. The chairs are upholstered, cushion bottoms. They are all steel chairs, with the exception of the arms, and upholstered. It is equipped with modern sound projection equipment; has winter and summer air conditioning, and at the time we opened this house the Better Theaters Magazine classified it as one of the nine best theater buildings in

the United States in 1939. The Better Theaters Magazine is a publication published by the Exhibitors Herald.

By the COURT:

Q. Who operates the Campus?

A. I do, with the Griffith Amusement Company.

Q. You have three there?

A. Yes, sir.

2309 Q. What interest do you have in those theaters?

A. I have a third interest.

Q. All three of them?

A. Yes, sir, all three houses.

By Mr. DUDLEY:

Q. Who owns the other two-thirds interest?

A. The Griffith Amusement Company.

Q. And you have been connected with the Griffith Amusement Company in the theater business since what time?

A. In Stillwater, since June 27, 1926.

Q. I hand you Defendants' Exhibits 90 to 97, inclusive, I wish you would examine those and state what they are. Take each one, giving the number.

A. Exhibit No. 90 is the front of the Aggie Theater in Stillwater. No. 91 is the interior view of the Aggie Theater, the view being taken from the stage or somewhere toward the front part of the auditorium. No. 92 is a photographic view of the interior of the Aggie Theater looking toward the stage. No. 93 is a front view of the Mecca Theater.

Q. I hand you Defendants' Exhibit 93–A. Tell us what that is.

A. Exhibit 93–A is an interior view of the Mecca Theater looking toward the stage. Exhibit No. 94 is an interior view of the Mecca Theater looking toward the back of the auditorium. No. 95 is a front and side view of the

2310 Campus Theater. No. 96 is an interior view of the Campus Theater looking toward the back of the auditorium. No. 97 is an interior view looking toward the stage of the Campus Theater.

Q. Do these various photographic views correctly represent the situation as depicted by them?

A. They do.

Mr. DUDLEY. We offer in evidence Defendants' Exhibits Nos. 90, 91, 92, 93, 93–A, 94, 95, 96 and 97.

Mr. KALLIS. No objection.

The COURT. They will be admitted.

By Mr. DUDLEY:

Q. I hand you Defendants' Exhibits 98 and 99, and I will ask you to examine them and state what they represent

and whether they are true and correct representations of the object shown.

A. No. 98 is a front view of the Camera Theater and No. 99 is an interior view of the Camera Theater looking toward the stage or the screen.

Mr. DUDLEY. We offer these exhibits in evidence.

Mr. KALLIS. There is no objection.

By Mr. DUDLEY:

Q. Are you familiar with the policy of the Aggie Theater with reference to the pictures played?

A. Yes, sir.

Q. What is the policy in this regard?

2311 A. To play the A, or better pictures released by the various distributing companies through whom we buy and book productions, motion picture productions.

Q. What is the policy of the Mecca Theater?

A. To play the B pictures and action type, western or action type pictures on Friday and Saturday.

Q. What is the policy of the Camera Theater?

A. To play A and B pictures and subsequent runs.

Q. What is the policy of the Campus Theater?

A. It is a de luxe subsequent run house.

By the COURT:

Q. What do you mean by that?

A. Playing second run A pictures.

Q. High class pictures?

A. High type productions.

By Mr. DUDLEY:

Q. You say that is a de luxe house?

A. Yes, sir.

By the COURT:

Q. What kind of pictures are shown in the Camera Theater, or do you know?

A. Only from the billing, Judge. He plays some first run or second run or subsequent run. I suppose you would class them as some A pictures and B pictures.

Q. He has some first class pictures also?

A. Yes, sir, he has.

By Mr. DUDLEY:

Q. In September, 1931, do you recall having some contractual arrangements with Mr. Russ?

A. Yes, sir.

2312 Q. Was there a contract entered into?

A. Yes, sir.

Q. In September, 1931; what was the occasion for entering into that contract?

A. Well, Mr. Russ came to us, since this was about the beginning, or maybe the depth of the depression, and wanted to make some sort of buying and booking arrangement through us and combine the theater operations in Stillwater.

Q. Did you enter into an agreement with him?

A. Yes, sir.

Q. Were your theaters making any money at that time?

A. No, sir.

Q. That was on account of the depression primarily?

A. Yes, sir, it surely was. It was right at the depth of it then.

Mr. KALLIS. If the Court pleases, I object to Mr. Dudley's question and move the answer be stricken as calling for a conclusion of this witness about a matter concerning which he is not qualified to pass judgment according to the state of the record at the present time.

The COURT. To determine whether there was a depression in 1939, a man living in Oklahoma in 1939, wouldn't he know we had a depression?

Mr. KALLIS. I seem to have a faint recollection of it myself.

2313 The COURT. It is merely his opinion. It is not binding.

Mr. KALLIS. But whether or not the theaters in Stillwater, say in 1931, were failing to make a profit because of a depression and only that, involves a variety of details of an economic character and in all due deference to Mr. Leachman, whom I gather has attended the state college at Stillwater, is not qualified to pass upon.

The COURT. Overruled. Exception allowed. It is not binding. It is merely his statement as to what occurred along in 1931. It would be a matter of opinion, so far as anyone is concerned. I don't know how you would determine it.

By Mr. DUDLEY:

Q. As a result of this operating agreement, I will ask you whether or not your expenses of operations were lessened or increased?

A. They were lessened because we discontinued operating the Mecca Theater and operated the Aggie and Camera Theaters. This cut down film rental and general operating costs of operating the business.

Q. What was the policy as to the operation of these theaters now under this arrangement?

A. What do you mean by "policy"? Do you mean policy of the houses?

Q. No, this operating contract, under this operat-
2314 ing contract what was the policy with reference to the operation of these theaters?

A. As to these theaters?

Q. Yes.

A. The Aggie Theater was to play all of the A pictures, better pictures as it had already played prior to this arrangement. The Camera Theater was to play the B pictures, action pictures, westerns, and some A pictures.

Mr. KALLIS. Are you through, Mr. Leachman?

A. Yes, sir.

Mr. KALLIS. If the Court pleases, I object at this time. I think the contract which has already been received in evidence would be the best evidence of the agreement between these parties.

The COURT. Overruled. I don't know of anybody that would know more about it than the man who handled it. He didn't ask what contract he had but what pictures were played. I think it is entirely competent. Proceed.

By Mr. DUDLEY:

Q. Is there anything further now you care to say with reference to the policy?

By the COURT:

Q. You just finished with two of the theaters. What about the third?

A. The Mecca Theater was to remain closed and the theater was closed and was kept in that state until the contract or our agreement closed with Mr. Russ.

2315 Q. What about the Campus?

A. The Campus Theater had not been built then.

Q. For how long a period did this agreement last?

A. About 20 months.

By Mr. DUDLEY:

Q. Mr. Russ owned the Camera Theater, as I understand?

A. Yes, sir.

Q. And that theater was kept open, wasn't it?

A. Yes, sir.

Q. During this operating period?

A. Yes, sir.

Q. About how long now did this operating arrangement continue?

A. About 20 months.

Q. Was it a successful operation or not?

A. No.

Mr. KALLIS. If the Court pleases, that question calls for a conclusion of the witness. I should think Judge Dudley would delimit the pictures he has in mind with respect to success.

By Mr. DUDLEY:

Q. All right. Was it a profitable operation?

A. No, sir.

Q. Well, what happened with reference to the agreement? What was the attitude of Mr. Russ with reference to

2316 a continuation of it?

A. Mr. Russ became dissatisfied, mainly as I saw it, because he could not make any money or was not making any money——

Mr. KALLIS. If the Court pleases, I move the remark be stricken, that he was not making any money be stricken.

The COURT. That would be hearsay. Do you know of your own knowledge whether or not the theater was making any money?

A. I think so. They were not making any money.

By Mr. DUDLEY:

Q. What statements or complaints, if any, did Mr. Russ make to you with reference to the operating situation?

A. Well, he stated he was very much dissatisfied since he was not able to make any money and he wanted to talk further about it.

Q. Now did you then have a conversation with Mr. Russ and anyone else with reference to this situation?

A. Yes, sir.

Q. Where did that conversation take place?

A. In my office in the Aggie Theater Building.

Q. Name the parties present.

A. The parties present were Mr. R. H. Russ and Mr. R. M. Clark and myself.

2317 Q. Do you remember the substance of the conversation which you had on this occasion?

A. Yes, sir.

Q. I wish you would state what it was.

Mr. KALLIS. May we have the time? I don't believe any was mentioned.

By Mr. DUDLEY:

Q. Can you fix the time of this conversation?

A. That was after the contract had been in operation, for, oh, a good many months, Judge. It was maybe along—I can't fix it exactly but it had been operating anyway over a year at that time.

Q. Give us the substance of the conversation you are talking about.

A. Mr. Russ, to begin with, asked for an appointment and I made an appointment with Mr. R. F. Clark and myself for him. We met in my office to discus the problems. We listened very carefully to what Mr. Russ had to say——

Q. State what was said by Russ.

The COURT. Just state what was said by each one of you.

A. Well, Mr. Russ said he was not satisfied because he was not able to make any money, and he was wanting to devise some scheme or another, just a general operation whereby his theater could be brought out of its pres-
2318 ent condition of not making any money. In fact, at that time he brought up the question of wanting to buy some United Artists pictures. He stated he thought by buying United Artists pictures he would be able to make some money. Then various other problems, just general operation problems, if we could cut down expenses maybe further, and all that sort of thing, were discussed.

Q. What did you and Mr. Clark say to him with reference to United Artists pictures he wanted to buy?

A. We told him to go ahead and buy United Artists and if he could make any money with them we would be very happy about it; that we were his partners in the operation and very anxious to make money out of the agreement too.

Q. Did he buy these pictures?

A. He did, sir.

Q. Was anything else said or discussed that you remember on this occasion that you have not already mentioned?

A. Nothing else that I recall, only maybe just general operating policies with reference to maybe some bookings, but that was just a routine matter.

Q. At any time during this conference did Mr. Clark tell Mr. Russ that he ought to consider himself lucky to be affiliated with you?

A. No, sir.

2319 Q. Did he say at that time he was going to make it tough on independent exhibitors and close them out?

A. He certainly did not.

Q. Did he say at any time that Griffith was going to accomplish this by controlling the film product?

A. No, sir, he did not.

Q. Mr. Russ has testified in this case, and I will read his testimony: "Calling your attention to the year 1931, and approximately Thanksgiving time, did you have a conversation with Mr. R. M. Clark?

"A. Yes, sir.

"Q. Where was that?

"A. In Mr. Leachman's office at the Aggie Theater.

"Q. Will you state the substance of that conversation?

"A. Mr. Clark was in town and we were talking over the situation, talking about pictures and business, and he had been down to the Camera and I followed him up to the Aggie; we were in the office, and I was so dissatisfied with the way things were working out, and I had been talking it over with Mr. Clark and Mr. Clark said, 'Russ, you ought to consider yourself lucky you are affiliated with us.' I said, 'Why?' He said, 'We are going to make it rough on all independent exhibitors and close them out.' I said, 'How are you going to do that?' He said, 'We will just control the product and they won't have anything to
2320 show.' I said, 'Well that is fine if you think it will work that way.'

"Q. During the life of this partnership between you and the Griffith Amusement Company was the Aggie Theater being operated by the Griffiths?

"A. Yes, sir."

Now, did the conversation I read to you from Mr. Russ' testimony take place as he states it?

A. No, sir. That conversation did not take place.

Q. Is Mr. Clark living or dead?

A. He is dead.

Q. What was his position at that time?

A. He was the general manager for the Griffith Theaters, of the Griffith Amusement Company.

Q. Do you know how long he has been dead?

A. Since 1933.

Q. Do you know whether or not there was ever any other conference held by you, Mr. Clark and Mr. Russ in your office besides the one you have testified about?

A. No, sir, that was the only conference.

Q. Were you and Mr. Clark together during the entire conversation which you had with Mr. Russ on this occasion?

A. Yes, sir.

Q. Were you present when the contract was made and entered into between Mr. Russ and the Griffiths?

2321 A. Yes, sir.

Q. Where did that conversation take place?

A. The conversation took place in the Griffith Amusement Company's office here in Oklahoma City.

Q. Was there a meeting in Mr. D. I. Johnston's office at any time?

A. After that conference we went to Mr. D. I. Johnston's office.

Q. For what purpose?

A. To draw up a contract pertaining to that agreement.
Q. Were you present?
A. Yes, sir.
Q. Who were present in Mr. Johnston's office when this contract was prepared and in the conference before the contract was prepared?
A. Mr. L. C. Griffith, Mr. R. M. Clark, my brother, Mr. Ralph Leachman, and myself. There might have been some others there but I don't recall who they were.
Q. Mr. Russ was there?
A. Yes, sir, Mr. Russ was there.
Q. Was he present at both meetings?
A. He was present both at the meeting in the Griffith Amusement Company's office and Mr. D. I. Johnston's office.
Q. During this conversation was anything said about the Griffiths being able to buy pictures than Mr. Russ?
2322 A. No, sir.
Q. Was that ever discussed?
A. It never was discussed, sir.
Q. Now, what was the discussion that took place, that you had there at that meeting?
A. In the Griffith Amusement Company's office?
Q. Yes, sir.
A. The discussion that took place was about the contract, how we would participate in the agreement, and we were to make available to Mr. Russ our buying and booking arrangements, our methods of exploitation, and in general all of the various methods and procedure of our systematic operation.
2323 Q. And after that meeting, now, you went over to Mr. Johnston's office and the contract was prepared?
A. Yes, sir.
Q. Over at Mr. Johnston's office,—during the discussion in the office, Mr. Griffith's office, and while you were over at D. I. Johnston's office, when the contract was being prepared, did anyone on behalf of the Griffiths promise or say to Mr. Russ that he would be able to buy pictures cheaper than he otherwise would be able to buy them by going into this contract?
A. No, sir.
Q. Was there any effort made by anyone representing the Griffith interests to induce Mr. Russ to go into this contract?
Mr. KALLIS. If the Court please——
A. No, sir.
Mr. KALLIS. Just a moment. I object to the question.
Mr. DUDLEY. I will withdraw it.

The COURT. It calls for a conclusion.

By Mr. DUDLEY:

Q. When was the first notice you had that this contract was terminated?

A. In May, 1933.

Q. From whom did you get that information?

A. Mr. R. M. Clark.

2324 Q. Did Mr. Russ ever tell you that he was terminating the contract?

A. No, sir.

Q. During this time, prior to the termination of the contract, had Mr. Russ made any statement to you or in your presence that he desired to buy Paramount Pictures, or had bought Paramount Pictures?

A. No, sir, he didn't.

Q. Was there any request made at any conference which you attended, or to you, that Mr. Russ buy Paramount Pictures?

A. No, sir.

Q. After the contract was terminated, did Mr. Russ continue the operation of the Camera Theater?

A. He did.

Q. Is he operating it now?

A. Yes, sir.

Q. Did he do his own booking and buying?

A. I suppose so. As far as I know, sir.

Q. After the contract was terminated, he operated his interest, and the Griffith interests operated theirs?

A. Yes, sir.

Mr. DUDLEY. That's all.

Mr. KIME. Now, if the Court please, it is almost noon. May we adjourn?

Mr. DUDLEY. Wait just a moment. That's all.

2325 The COURT. We will recess until 2:00 o'clock.

(Whereupon, Court recessed until 2:00 o'clock p. m. of this same date.)

2326 PROCEEDINGS

2 o'clock p. m.

Mr. KALLIS. If the Court pleases, I may want to ask Mr. Crites one or two questions and he is in the courtroom now and I understand he will remain here the remainder of the afternoon.

The COURT. You can call him when they get through with this witness. Is there anything further with this witness?

Mr. DUDLEY. I turn him over for cross-examination.

CLAUDE LEACHMAN, recalled, being duly sworn, further testified as follows:

Cross-examination by Mr. KALLIS:

Q. Mr. Leachman, you have been in Stillwater since 1926?
A. Yes, sir.
Q. And ever since June of that year you have operated the Cactus and the Aggie Theaters as partners with Griffith?
A. Yes, sir.
Q. Then after the Campus was built you have operated that theater also as partners with Griffith?
A. Yes, sir.

2327 Q. Prior to the time that you made this partnership agreement with Mr. Russ involving your Mecca and his Camera Theater, you were acquainted with him, weren't you?
A. Yes, sir.
Q. And were then on friendly terms?
A. Yes, sir.
Q. And had visited back and forth?
A. Yes, sir.
Q. Never had any trouble with him?
A. No, sir.
Q. And then the proposition of a pooling arrangement between your two theaters, the Aggie and Mecca and his Camera was suggested?
A. He suggested it, yes, sir.
Q. And prior to making the agreement did you have any discussions with him on the subject?
A. I did not.
Q. Mr. R. M. Clark did?
A. Yes, sir, it is my understanding he did.
Q. Mr. Clark at that time held what position with the Griffith organization?
A. General manager.

2328 Q. Then, you met at Mr. Griffith's office the day the contract for this pooling arrangement was signed?
A. Yes, sir.
Q. And who do you say was present?
A. Mr. L. C. Griffith, Mr. R. M. Clark, Mr. Ralph Leachman, Mr. Russ, and myself.
Q. Mr. Ralph Leachman is your brother, is he?
A. My brother, yes, sir.
Q. And at one time he was connected with the operation of some of the Griffith Theaters in Blackwell, Oklahoma?
A. Yes, sir.
Q. And how long did you remain—withdraw that question. You said you had a discussion up at Mr. Griffith's office relative to the terms of this agreement?

A. Yes, sir.
Q. Then you went over to Mr. D. I. Johnston's office?
A. Yes, sir.
Q. He was at that time a member of the firm of Keaton, Wells, Johnston, and Barnes, is that right?
A. I think so.
Q. And he had offices in the same suite in that firm, in the Federal Commerce Exchange Building, is that right?
A. Yes, sir; I don't remember whether Mr. Barnes was connected with them at that time, but I know Judge Keaton and Judge Wells were.
2329 Q. If you know, did this law firm of Keaton, Wells, & Johnston represent the Griffith organization before that?
A. It is my understanding that they were employed by the Griffith Amusement Company as their attorney.
Q. Regular counsel?
A. Yes, sir.
Q. And did all of you gentlemen whom you have mentioned go over to Mr. Johnston's office?
A. We did.
Q. And did you tell Mr. Johnston about the arrangement you were making?
A. Yes, sir.
Q. And had a discussion concerning that, is that right?
A. The discussion was had in the Griffith office, and we merely told Mr. Johnston what our agreement was, and told Mr. Johnston to prepare a contract.
Q. Well, did he prepare a contract in accordance with your discussion?
A. He did.
Q. I show you what has been marked as Plaintiff's Exhibit No. 341 in evidence, and ask you whether that is a photostatic copy of the contract which you gentlemen made?
The Court. Has that been introduced in evidence?
2330 Mr. Kallis. Yes, your Honor.
Q. See whether it bears your signature?
A. Yes, sir.
Q. And does this Exhibit No. 341 bear your signature?
A. That's right, yes, sir.
Q. And that of your brother?
A. Yes, sir.
Q. Ralph P. Leachman?
A. Yes, sir.
Q. And that of L. C. Griffith?
A. Yes, sir.
Q. And that of Ray Russ?
A. Yes, sir; R. H. Russ.

Q. And this agreement was signed on or about the date it bears, is that right?

A. I didn't notice the date.

2331 Q. September 12, 1931?

A. Yes, that is about the date as I remember it.

By the COURT:

Q. Was there any misunderstanding or argument or lack of agreement between you at the time you went to Mr. Johnston's office?

A. There was no misunderstanding at all, Judge. It was all very clear and everyone understood the contract and the contract was signed in Mr. D. I. Johnston's office and everybody departed.

Q. Was there any argument or discussion after you got to Mr. Johnston's office as to what the terms would be, other than what you had already agreed on?

A. I don't remember of any; not that I recall.

Q. Proceed.

By Mr. KALLIS:

Q. Now this morning, Mr. Leachman, you said something about some equipment in the Aggie Theater. When was that installed?

A. The new equipment?

Q. Yes.

A. It was new sound and new chairs installed in the Aggie Theater in April, 1939.

Q. By the way, these pictures which were received in evidence showing the exterior and interior of the Aggie, the Mecca, the Campus and the Camera were taken when, do you know?

2332 A. I don't recall the exact date.

Q. Can you tell us whether or not——

A. If I may see one of those pictures maybe I can give you some idea.

Q. Please examine them.

A. The interior of the Aggie was taken before the new chairs were installed. This was prior to April, 1939. This is an older photograph here. This is a recent picture of the Mecca.

Q. What is the number on the back?

A. The number is 93–A.

By the COURT:

Q. Exhibit 93–A is an interior view of the Mecca?

A. Yes, sir.

By Mr. KALLIS:

Q. I didn't catch what your comment was on that.

A. I said it is a recent picture.

Q. Let me have the dates with respect to those as nearly as you can tell us them.

A. The new pictures of the Aggie Theater interior, these pictures were made prior to April, 1939. That was before some equipment had been installed in that particular theater.

Q. All right, proceed.

A. Both of the Mecca Theater interiors, Exhibit
2333 93–A and 94 are both recent pictures.

Q. Would you say it was in the last year?

A. Possibly. Well, it is within the last few years; maybe two or three years.

Q. No more than that you think?

A. No, sir. The pictures of both interiors of the Campus Theater are both recent pictures and were made sometime after the theater was placed in operation.

Q. And the Campus was opened when?

A. It was opened on May 5, 1939.

Q. You may proceed.

A. And both pictures, according to my best knowledge, are recent pictures, that is, the exterior and interior of the Camera and these pictures have been made within at least the last three or four years.

2334 By Mr. KALLIS:

Q. The partnership arrangement continued then for about 20 months.

A. Yes, sir.

Q. It went into effect, didn't it, about the 28th of September, 1931?

A. Approximately, sir.

Q. Mr. Russ was manager of the Mecca and the Camera during that period?

A. Yes, he was manager of the Camera Theater, his theater.

Q. And your Mecca was closed during all that period?

A. The Mecca remained closed during the arrangement.

Q. I didn't understand what you said about payment of the rent on the Mecca?

A. I made no testimony about the payment of rent.

Q. That is perhaps the reason I didn't understand what I thought you might have said. Do you know whether the rent was paid on the Mecca during that period of the pooling arrangement?

A. It was.

Q. Now, since the pooling arrangement ended, the Camera has played a great deal of first run major product, isn't that right?

A. I beg pardon, sir?

Mr. KALLIS. Will you repeat that question?

(The question and answer read by the reporter.)

A. It has.

2335 By Mr. KALLIS:

Q. Calling your attention, Mr. Leachman, to the motion picture season of 1931–'32, you remember, don't you, that Mr. Russ had an RKO first run contract?

A. I don't remember, sir.

Q. And you don't remember then if he did——

A. No, sir.

Q. Have it, whether any of those pictures were played in the Aggie Theater?

A. No, sir.

Q. Do you remember that he had a Universal first run contract for the 1932–'33 season?

A. No, sir, I don't know anything about that, sir.

Q. Do you remember playing Universal first run for the 1933–1934, and the 1934–'35 seasons in your theater?

A. No, sir, I don't because I don't have the records here to substantiate any answer that I might give.

The COURT. Will you read that question?

(The question and answer read by the reporter.)

By Mr. KALLIS:

Q. Your theaters didn't play Paramount product for the 1932–'33, and the 1933–'34 seasons, did it?

A. I couldn't recall that, sir.

Q. Do you remember whether your theaters played the Paramount product for the 1934–'35 season and the two succeeding seasons?

A. No, sir, I couldn't do that, sir.

2336 Q. Do you remember whether Mr. Russ played United Artists first run at the Camera Theater for the 1933–'34 season?

A. No, sir, I don't.

Q. Do you remember whether your theaters played the United Artists' product first run for the 1934–'35 season?

A. I couldn't, without my records, sir.

Q. Your testimony this morning with reference to the conversation that took place in your office in 1931 or '32 is based entirely on your memory, is that right?

A. Yes, sir.

Q. You didn't make any record at that time of the conversation, did you?

A. No, sir, but I remember what took place.

2337 Mr. KALLIS. If the Court pleases, that is purely a voluntary statement and I move it be stricken.

The COURT. Very well, let it be stricken.

Mr. KALLIS. Now, referring back to the motion picture season of 1932–33, do you remember whether Mr. Russ had Columbia, first run?

A. No, sir. I didn't pay any attention to what Mr. Russ had under contract.

Q. You did pay attention to what you had under contract, didn't you?

A. Yes, sir, at the time.

Q. Do you remember whether you played Columbia, first run, for the 1933–34 season?

A. No, sir, I don't.

Q. Do you know what product Mr. Russ is playing now?

A. No, sir, I don't. He is playing some—well, I couldn't say and be accurate about it.

Q. Your office is in the Aggie Theater, isn't it?

A. Yes, sir.

Q. And the Camera is directly across the street, isn't it?

A. No, sir, the Camera is directly across the street from the Mecca.

Q. And are the Mecca and Aggie in the same block?

A. No, sir.

2338 Q. You have occasion to pass by the Mecca Theater quite often, don't you?

A. Yes, sir.

Q. You never paid any attention—is that your story—to what Mr. Russ plays at his Camera?

A. Not particularly.

Q. He advertises in the newspapers, doesn't he?

A. Yes.

Q. Do you read his advertisements?

A. Yes, sir, I read them.

Q. And you don't recall from reading those advertisements what product he plays?

A. Just remember at the time and that is all.

Q. I am asking you whether you know now what he is playing now at the Camera?

A. You mean now?

Q. Yes.

A. No, sir, I don't.

Q. Do you remember whether he played any Metro product during the moving picture season of 1944–45?

A. I think he does. I think he has some Metro, but I don't know.

Q. What else do you recall that he played?

A. Oh, he must play some pictures from various other companies that he buys; maybe third run or some-
2339 thing like that. I don't know particularly.

Q. A great many independent pictures. Is that right?

A. Yes, he plays some A pictures from maybe independent companies.

Q. Some what?

A. Some A pictures, or whatever you might term them.

Q. Let's hear how you term an A picture from an independent company.

A. Lots of independent companies make good A pictures occasionally.

Q. Have you ever tried to buy any in the last five years?

A. I don't take care of the buying.

Q. Have you played any independent pictures in your theaters in Stillwater?

A. Yes, sir.

Q. A pictures?

A. Yes, sir.

Q. What kind are they, action pictures?

A. No, you don't consider an action picture an A picture necessarily.

Q. How many have you played in your theater in the last couple of years?

A. I can't recall now, sir.

Q. What is your playing policy at the Campus?
2340 A. Three pictures a week.

Q. Double or single feature?

A. Single features.

Q. And what run?

A. Second run.

Q. Major or independent product?

A. Oh, some of it is major and independent product.

Q. What major companies have you been playing?

A. Paramount, RKO, Universal.

Q. What else?

A. Some Warner Brothers.

Q. What else?

A. Oh, I can't recall right now what other product.

Q. You played Fox, didn't you?

A. Yes, sir.

Q. But you didn't remember that.

A. Well, I just hadn't got to it I suppose.

Q. Any United Artists?
A. Yes, we play some United Artists.
Q. Columbia?
A. Yes, sir.
Q. Do you play any Metro, second run?
A. No, sir.
Q. Where was that played?
2341 A. It is my understanding it was played in the Camera.
Q. You stated this morning that the Camera was a second run theater and was the fourth theater in town.
Mr. DUDLEY. We don't agree with counsel on that.
Mr. KIME. We can soon find out.
2342 Q. Do you remember what you said this morning, Mr. Leachman, as to what run the Camera was playing?
A. I said it played "A", "B", and subsequent run pictures.
Q. "A", "B", and subsequent run?
A. Yes, sir.
Q. Do you mean subsequent run "A" and "B"?
A. Yes, sir, it played some subsequent "A" and "B" pictures; it played some "A" and "B" pictures first run.
Q. Can you recall any first run product that the Camera played since 1932?
A. No, sir, that would be impossible without having some record.
Q. You didn't play Universal first run in 1935–'36. did you?
A. I said that I didn't remember.
Q. All right. Before the Campus opened, do you remember what the playing policy of the Mecca was?
A. Yes, sir.
Q. Was it first or second run?
A. It is first run and we played some second, or maybe third runs in that house now.
Q. But your regular playing policy was first run, wasn't it?
A. Yes, sir, it still, our regular policy is still first
2343 run.
Q. Of the "B" pictures?
A. Yes, sir.
Q. And do you remember what your admission prices were at the Mecca prior to the time the Camera opened?
A. The Camera?
Q. Did I say Camera? I meant the Campus. I am sorry.

A. No, not exactly, but there wasn't any change in price. The only changes we have made in price was due to taxation, that is, the defense tax.

Q. I didn't ask you that question about changes, did I, Mr. Leachman?

A. About what?

Q. About any changes.

The COURT. Read the question.

(The question as corrected was then read by the reporter.)

The COURT. That is the question. You may answer that.

A. No, sir.

By Mr. KALLIS:

Q. Do you remember what the prices were that were being charged for admission at the Camera Theater prior to the opening of the Campus?

A. No, sir; I don't.

2344 Q. There have been times, haven't there, Mr. Leachman, since 1932, when the Camera did a good business?

Mr. GRIFFING. Read the question.

The COURT. If you know.

(The question read by the reporter.)

A. I don't know anything about the business he did. I couldn't testify to his business.

Mr. GRIFFING. You said Camera, did you, Mr. Kallis?

Mr. KALLIS. I said Camera, I think.

Mr. GRIFFING. I was asking you; I didn't know whether you meant the Camera or the Campus.

By Mr. KALLIS:

Q. Did I understand that you testified that this pooling arrangement between your two theaters and Mr. Russ' or your Mecca—pardon me, and I will withdraw that. This pooling arrangement which you say lasted about 20 months wasn't profitable, was it?

A. No, sir, it wasn't.

Q. You felt that way, didn't you?

A. Yes, sir.

Q. During the time the pooling arrangement was in existence?

A. Yes, sir.

Q. And Mr. Russ felt that way?

A. Yes, sir.

Q. And on several occasions you discussed the
2345 matter, didn't you?

A. The only time that was discussed was at this meeting that Mr. Clark and Mr. Russ and I had in my office.

Q. Will you repeat please what that conversation was?

A. Mr. Russ stated that he was dissatisfied, that he wasn't making any money, and that at that particular time he wanted to buy some United Artists' product. He thought possibly by buying United Artists' product, according to his statement, he would be able to make some money. We told Mr. Russ to buy the United Artists' product and if he could make any money with it, that it was perfectly all right with us, that we were his partners, and we were interested in his making money as well as ourselves.

Q. Do you recall anything else that was said?

A. No, sir.

Q. As you sit there, you cannot recall anything else that was said there in that conversation?

A. Not anything of grievances, other than just general routine and operating problems and policies that were discussed, that will be had normally in any business.

Q. No disagreement was mentioned or dispute of any kind?

A. No, sir.

Q. Do you recall playing a picture called "Frankenstein" at the Aggie?

2346 A. Yes, sir.

Q. You did a very fine business on that picture, didn't you?

A. We did a nice business with it.

2347 Q. And that was a Universal picture release in December, 1931?

A. About that time, as I recall.

Q. Did that picture play at the Camera Theater after it played at the Aggie?

A. I don't remember now.

Q. You don't have any recollection at all?

A. No, I don't.

Q. Do you recall having any discussion with Mr. Russ at the time you and Mr. Clark and Mr. Russ were together in your office at the Aggie Theater with reference to his playing this picture Frankenstein at the Mecca Theater as a result of the overflow business you did at the Aggie, and his running it for a few days and a discussion as to what took place with reference to the proceeds?

A. No, sir, I don't.

Q. As you sit there, there is absolutely nothing in your memory with reference to that subject. Is that right?

A. No, sir, I don't remember it.

Q. You do not remember that the picture played at the Camera after it played at the Aggie?

A. No, sir, I don't.

Q. You do not remember there was any discussion or dispute as to what should be done with the proceeds
2348 taken in by the Camera Theater on this picture Frankenstein?

A. No, sir.

Mr. DUDLEY. We object to that question in that form as argumentative and assuming a state of facts. The witness doesn't know.

The COURT. He has answered "No."

Mr. KALLIS. If the Court pleases—

Mr. DUDLEY. I withdraw the objection.

Mr. KALLIS. I understand your Honor is permitting me to put the question; is that right?

The COURT. Yes. He has answered it.

By Mr. KALLIS:

Q. I am assuming in putting this question to you that there was a discussion. I don't understand there was.

A. I don't recollect any discussion about it.

Q. And is there any way that you could possibly ascertain whether such a discussion took place?

A. No, sir.

Q. Are there any records anywhere in the world, so far as you know——

A. Not to my knowledge.

Q. Let me finish the question.

A. I beg your pardon.

Q. That might possibly refresh your recollection?

A. Will you read the question?

2349 (Question read.)

A. Not to my knowledge.

Q. You felt yourself fortunate in having this partnership arrangement with the Griffith organization, didn't you?

A. Yes, sir.

Q. Did you ever say that to Mr. Clark?

A. Mr. R. M. Clark?

Q. Yes.

A. Yes. Mr. Clark and I discussed my relationship and his relationship with the company many times.

Q. And you told him you were happy to have such an arrangement with the Griffith organization?

A. Yes, sir.
Q. He agreed with you, didn't he?
A. Mr. Clark?
Q. Yes.
A. Yes, he agreed with me.
Q. And as far as you know he was in favor of this pooling arrangement between your theaters and Mr. Russ' Camera Theater, is that right?
A. He was in favor of it?
Q. Yes.
A. Yes, he was in favor of it.
2350 Q. And you heard him say that?
A. Yes.
Q. Now as you sit there, do you have any recollection of Mr. Clark making a statement to Mr. Russ in your presence, in your office at the Aggie Theater in 1931 or '32, to the effect that Mr. Russ should consider himself fortunate to be connected with the Griffith organization?
A. No, I don't remember that particular question arising and I don't remember of it being discussed.
Q. Would you say positively and unqualifiedly now that Mr. Clark did not make that statement?
A. No.
Q. He might have made the statement but you do not recall it after 15 years, is that right?
A. No, I don't remember it. That isn't the way it came up, in my opinion, at all.
Q. You say you don't remember some RKO pictures which Mr. Russ had under contract for the Camera, which were played at either the Aggie or Mecca during the time of the pooling arrangement between Mr. Russ and yourself?
A. I testified the Mecca was closed all during the time of this arrangement.
Q. I am sorry. You are right. I meant the Aggie.
A. No, sir, I don't recall the bookings at that time.
2351 By the COURT:
Q. Who determined what pictures would be played in your theater?
A. We did, the Griffith organization and myself and Mr. Russ agreed to it.
Q. Did you all agree to what pictures would be played in the three theaters during this pooling arrangement?
A. Yes, sir.
Q. Was there ever any misunderstanding or disagreement on their part?
A. No, sir.

Q. Was your business profitable under this pooling arrangement, so far as your theaters were concerned?

A. No, sir, it wasn't.

Q. Did any of the theaters make any money during that time?

A. No, sir.

Q. To what did you attribute that?

A. It was some of the very worst times we had ever experienced in the theater business, and when our relationship began with Mr. Russ times got worse. In fact, they continued and continued for some little time after this agreement was closed. The times were very bad.

By Mr. KALLIS:

Q. Do you remember any discussion with Mr. Russ at all relative to the quality of product he was playing
2352 at the Camera Theater during this pooling arrangement?

A. No, sir, I don't remember any dissatisfaction with reference to booking the pictures played.

Q. You don't remember whether he made any complaints at all?

A. No, sir.

Q. Of course, if he made any to Mr. Clark outside of your presence you would not know anything about that?

A. No, sir.

2353 Q. Now, you have found that during the time this pooling arrangement was in effect that it was more profitable to operate by a pooling arrangement than by competition, is that right?

A. Yes sir, because we closed one house.

Q. Now, just a moment. I didn't ask you for any reason, Mr. Leachman.

The COURT. Well, he had a right to give it, that's all right; let's go ahead.

A. Shall I give it again, sir?

The COURT. There is nothing wrong with the answer. We are getting entirely too technical about little things that are immaterial. Let's go ahead with this case.

Mr. COCHRAN. What happened to the answer?

The COURT. Read the question and answer.

(The question and answer read by the reporter.)

Mr. KALLIS. That's all.

Mr. DUDLEY. That's all.

By the COURT:

Q. Just a moment. Now, in regard to your contracts for film, for product, who made those contracts?

A. The Griffith buying and booking department made the contracts.

Q. Did you have anything to do with it all?

A. No sir; my contract with the Griffith Amuse-
2354 ment Company is that I operate the theaters and they buy and book the films.

Q. Did you know anything about these contracts until after they were made?

A. No, sir.

Q. Did you ever have any discussion with any other theater owners in Stillwater with reference to your contract?

A. No, sir.

The COURT. That's all.

By Mr. KALLIS:

Q. Just one question. Before the Griffiths did any of the buying for your theaters, they consulted you, didn't they?

A. They——

Q. (Interrupting.) Yes, I know.

A. Yes.

Q. And they certainly—withdraw that. Did they consult you with reference to booking; "Yes" or "No", if you can answer it "Yes" or "No"?

A. I can't answer that question and answer it correctly by saying "Yes" or "No".

The COURT. Well, just answer it your way.

A. I will say yes, we discussed those problems, and I discussed them with them and they asked me about various problems. Our relationship is mutual and very happy.

Mr. KALLIS. That's all.

2355 Mr. DUDLEY. That's all.

(Witness excused.)

ARLIE CRITES, a witness on behalf of the defendants, was recalled, and was examined and testified as follows:

Further Cross-examination by Mr. KALLIS:

Q. You are the same Mr. Arlie Crites who testified this morning?

A. Yes, sir.

Q. What was the period of time during which you operated the theaters for the Lindsey Theaters, Inc. in Lubbock?

A. The period that I was city manager of Lindsey Theaters, Inc. in Lubbock was from June, 1937 through May, 1942.

Q. '37 through '42?

A. Yes sir, through May.

Q. All right. Now, during that period the Lindsey and the Palace were the first run theaters, is that right?

A. They were first run theaters.

Q. And they continued to be first run theaters during all of the period during which you were the city manager, is that right?

A. No sir, not all of that time. We tore down the
2356 Lindsey Theater in 1939 or '40, and at that time we didn't use it as a first run theater, because there was no theater building there.

Q. I see; and then you played the first runs in the Palace until the Lindsey was remodeled?

A. That's right.

Q. Is that right?

A. That's correct.

Q. And the Cactus was opened by Mr. Marvin A. Sanders, who is commonly known in Lubbock as Tate Sanders?

A. Yes, sir.

Q. Do you remember what product he played?

A. I don't know, I don't remember exactly, no, sir.

Q. Do you remember the runs that he played?

A. Not exactly; I couldn't testify accurately on that.

Q. See of I can't refresh your recollection on that. Mr. W. A. Mauldin at the time was operating the Lyric and the Broadway in the downtown section of Lubbock, is that right?

A. Exactly what time are you speaking of?

Q. Prior to the time that Mr. Mauldin sold the Lyric and the Broadway to the Griffith organization?

A. That's correct.

Q. He was playing some third runs, and some fourth runs, wasn't he?

2357 A. That's correct.

Q. He had been in business in Lubbock for several years prior to the time that Mr. Sanders opened the Cactus, had he?

A. That's right.

Q. He didn't lose any runs to the Cactus at all, did he, as nearly as you recall?

A. I don't believe that he did.

Q. And then, when the Griffith organization bought the Cactus from Mr. Sanders, the Griffiths began playing second run product at the Cactus Theater, is that correct?

A. No sir, I don't remember of any second run product being shown at the Cactus Theater while I was there in Lubbock.

Q. What run were you playing?

A. They were all subsequent runs that were further down the line, I believe third or fourth run, and some as far as sixth run.

Q. During the time that you were there?

A. Yes, sir.

Q. And you don't recall any second runs at all being played at the Cactus?

A. I don't recall any second runs at the Cactus, no sir.

Q. Where were second runs being played by the
2358 Griffith organization?

A. In 1940?

Q. No, I mean in 1939?

A. '39?

Q. When Mr. Sanders sold the Cactus to the Griffith organization?

A. The Texan Theater.

Q. Then, correct me if I am wrong on this, Mr. Crites; the Texan was closed, wasn't it?

A. No sir, the Texan Theater wasn't closed at any time while I was in Lubbock.

Q. It was playing and operating on a second run policy, as nearly as you recall?

A. Yes sir, it was.

Q. Were any subsequent runs being played there?

A. Some few, yes sir.

Q. And since the Tower was opened, it has been operating on a second run policy, has it?

A. Second and third.

Mr. KALLIS. That's all.

Mr. DUDLEY. That's all.

2359 By Mr. COCHRAN:

Q. Do you recall before Mr. Mauldin sold his theaters to the Lindsey Theaters Company that he was also playing some second run?

A. Yes, sir, that is correct.

Q. And he said he was playing third and also some fourth run?

A. He also played some second run.

Q. And some first run?

A. Some first run, yes, sir.

Re-cross-examination by Mr. KALLIS:

Q. Were you acquainted with Mr. Mauldin?

A. Yes, sir.

Q. What is your opinion of him as a motion picture operator?

A. Very fine.
Q. That is all.
(Witness excused.)
Mr. GRIFFING. At this time we would like to have permission to open and publish the deposition of C. O. Fulgham.
The COURT. Very well.
Mr. GRIFFING. We offer the deposition of C. O.
2360 Fulgham.
(Thereupon the deposition of C. O. Fulgham, taken at Oklahoma City, Oklahoma, on June 2, 1945, in which Mr. Dierker appeared for the plaintiff and Mr. Henry S. Griffing for the defendant, is received in evidence and is as follows, being read by Mr. Griffing:)

"C. O. FULGHAM, of lawful age, being first duly sworn, deposes and says in reply to the interrogatories propounded, to wit:

Direct-examination by Mr. GRIFFING:
Q. State your name please.
A. C. O. Fulgham.
Q. You are a Lieutenant Commander in the United States Navy?
A. Yes, sir.
Q. When did you enlist in the Navy?
A. In May of '42.
Q. You have served as the commanding officer of a ship on the Atlantic Ocean?
A. I have.
Q. You are now the commanding officer of a ship in the Pacific?
A. That is correct.
Q. And you are on a short leave for the purpose of coming here to give your deposition?
2361 A. Yes.
Q. Are you about to depart on a trip in the Pacific and will not be here in September?
A. That is correct.
Q. What was your occupation prior to enlistment in the Navy?
A. I was division manager for Griffith Amusement Company.
Q. How long had you been with the Griffith Amusement Company?
A. Since 1926; since the organization of the company. I believe it was in 1926.
Q. Do you know John Gray, former theater operator in Enid, Oklahoma?

A. Yes.

Q. Did you have a conversation with John Gray in Enid in the year 1938 with reference to buying his theater, the Rivoli?

A. No.

Q. Did you ever negotiate or have a conversation with John Gray with reference to buying the Rivola theater?

A. I never have.

Q. John Gray in his testimony in this case testified as follows: I am reading from Page 938 of the record.

'Q. Are you acquainted with a man by the name
2362 of Claud Fulgham?

'A. Yes, sir, I am.

'Q. Did you have a conversation with him in Enid?

'A. Yes, sir, I did. He came over to the theater in April, as nearly as I can recall.

'Q. Of what year?

'A. Of '39; no, of '38; I beg pardon.

Mr. GRIFFING. Continuing the reading at Page 940.

'Q. What conversation did you have with Mr. Fulgham at the time mentioned?

'A. Oh, 'How's business', and this and that, and then he said something to me about wondering if I would be interested in selling, and I told him I wouldn't, and that was about all.

'Q. Was anything said at that time by him with reference to the purchase of your equipment?

'A. No, sir.' (End of reading.)

Q. Did you have any such conversation as that with Mr. John Gran in 1938 with reference to buying his theater?

A. No.

Q. Did you later in May of 1939 have a conversation with this same John Gran is a coffee shop underneath the Griffith offices in Oklahoma City?

A. Yes, I wouldn't swear to the exact month.

Q. But you do remember having a conversation
2363 with him in that coffee shop?

A. Yes.

Q. About that time?

A. Yes.

Q. Will you please state the conversation you had.

A. Gray approached me on the matter of getting me to agree to an adjustment of our admission prices of the theaters in Enid. We were operating four or five theaters, I believe four at the time and he wanted to get us to agree to adjust the admission prices of our theaters. That is, to raise our prices.

Q. What did you say to him?

A. I would not entertain his proposition and told him that we would run our business and for him to run his business.

Q. Did you have any further conversation at that time?

A. The conversation ended with that remark.

Q. John Gray testified as follows at pages 941 and 942 of the record (reading):

'Q. Did you later have a conversation with Mr. Fulgham?

'A. I did.

'Q. When was that?

'A. I approached him myself. That was in May, as nearly as I can recall, in May in a coffee shop located underneath the Griffith offices.

'Q. Here in Oklahoma City?

2364 'A. Yes.

'Q. May of what year?

'A. '39.

'Q. Will you please state the conversation, in substance?

'A. I approached him myself. I said: 'Claud, is there anything we can do about these free tickets, double bills, and the price war in Enid.' He said he didn't have nothing to do with it, that he wasn't interested; that is, he refused to discuss it. And I said, 'Well, I have stopped all of mine and went back to single bills, and I am going to try it that way awhile, and maybe the others can come about.' And he never answered me, he wouldn't discuss it. Then he did say this, he says, 'Well, would you be interested in selling now?' I said, 'Well, I might at my figure.' And he said, 'What figure is that?' So I quoted him a figure and he says, no, we—he used the word 'we', he said, 'We will give you open market price for your equipment.' And during the conversation evidently I irked him a little on the free tickets or something, and I got back to that subject again, sir, about eliminating all of them, and he made the remark to me, he says, 'We are out to get all of you boys; you are trouble makers.' And that was about all the conversation, sir.'

(End of reading.)

2365 Q. Did you have any such conversation as that with John Gray?

A. I did not.

Q. Did you ever make that remark, 'We are out to get all of you boys; you are trouble makers'?

A. Not to John Gray or any other theater man.

Q. Did you ever threaten John Gray in any way as to the operation of his theater in Enid, Oklahoma?

A. Absolutely not.

Q. Mr. Gray stated in his testimony that you refused to discuss the matter with him. Did you refuse to enter into any discussion with him at that time?

A. As to the purchase of this theater?

Q. Well, in regard to fixing the prices in Enid?

A. No. I told John Gray, 'You go ahead and run your business and we will run ours.' There was no discussion.

Q. Do you know Joe Love, a theater operator in Seminole, Oklahoma?

A. Yes, I know Mr. Love.

Q. Did you have a conversation in late 1937 or early 1938 in regard to his intention to open a theater in Henryetta, Oklahoma?

A. Yes.

Q. Where was this conversation?

A. It was in Seminole.

2366 Q. Do you know what place in Seminole?

A. In front of one of the theaters. I believe it was in front of Mr. Love's theater.

Q. State what was said in that conversation.

A. Mr. Love mentioned to me that he was negotiating for or had negotiated for a lease on a building in Henryetta, Oklahoma, for the purpose of putting in a theater, and he seemed to be trying to pry out of me information as to what the business conditions were in Henryetta, and I told him that Henryetta was one of the poorest towns we operated theaters in at that time, and that we were operating two theaters there and were not doing any good in either of them, and I told him I thought he had made a poor selection in Henryetta as a place to put in another theater. I think Mr. Love——

Q. Not what you think. Just what was said. What did he say when you expressed your opinion about Henryetta?

A. I could tell from his conversation that he was getting cold feet about the town and that he wanted to confirm conditions with me because he knew I would have a pretty good knowledge of conditions in Henryetta.

Q. Did he approach you with reference to this matter or did you approach him?

A. He approached me.

Q. Was anything else said at that time with ref-

2367 erence to his entrance into Henryetta, Oklahoma?

A. That was the extent of the conversation.

Q. Do you know whether or not at that time he had obtained a lease in Henryetta, Oklahoma?

A. I had heard that he was negotiating for a lease. I am not certain whether he had actually made the lease at the time.

Q. Did he tell you he had a lease in Henryetta, Oklahoma?

A. He didn't tell me that he actually had a lease. He had told me he was contemplating putting in a theater in Henryetta.

Q. Did he say anything to you at that time with reference to you buying the lease or paying him money that he had been out or did you say anything to him with reference to that matter?

A. That wasn't mentioned.

Q. Was anything else said at that time with reference to his going into Henryetta, Oklahoma?

A. Nothing more.

Q. Joe Love testified in this case as follows: I am reading from the record of the testimony at page 1469.

'Q. Calling your attention to the year 1937, did you do anything about going into the motion picture business over at Henryetta?

2368 'A. Well, I went to Henryetta and I acquired a lease on a building over there and put in a show.

'Q. When was that?

'A. That was either the last part of '37 or the first part of '38. All my records were burned. I know it was at that time, however.

'Q. Was there a theater operating there then?

'A. There was two there.

'Q. Who was operating those?

'A. That was by Griffith.

'Q. When you made this lease did you have any conversation with anybody from any of the Griffith companies?

'A. I had some conversation with Mr. Fulgham at that time.

'Q. Where did this conversation occur?

'A. At Seminole, in front of the show there one day.

'Q. What was said then?

'A. He came by and was asking me something about it, and I told him I had acquired a lease, or he had heard I had one over there, so he said, well, they had two shows over there and at that time they were not making too much money and they had a big investment and he didn't see why I wanted to go in there. I told him it looked like another show would be all right and he said if I did go in they would break me out, and he went on to state if I did

2369 change my mind he would be glad to pay what expenses I had been out in acquiring this lease, and that was as far as the conversation went.

'Q. What did you tell him about that?

'A. Well, I didn't say too much.

'Q. Did you go ahead with your theater at Henryetta?
'A. No, I cancelled the lease.' (End of reading.)
Q. Did you have that conversation as testified by Joe Love?
A. I did not. The conversation I had with him I previously related.
Q. Did you tell him in that conversation that if he put in another show in Henryetta that you would break him out?
A. Absolutely not.
Q. Was anything said in that conversation with reference to paying his expenses that he had been out in acquiring the lease if he abandoned his project in Henryetta?
A. There was not.
Q. Do you recall in the latter part of 1937 and the early part of 1938 what the business conditions were in Henryetta, Oklahoma?
A. Yes.
Q. What were those conditions?
A. Conditions were pretty bad in comparison with other towns in the State of Oklahoma. Henryetta is one
2370 of those towns that is up and down with the coal mining industry, and the spasmodic operation of the glass plants in the area. It is a poor industrial town.
Q. Do you recall anything that happened with reference to the Eagle Picher Company and glass companies in Henryetta, Oklahoma, in the early part of 1938?
Mr. DIERKER. I object to that as not being cross examination."
The COURT. Is this your witness?
Mr. GRIFFING. Yes, sir.
The COURT. Overruled. Exception allowed. It isn't cross examination.
(Deposition resumed as follows:)
"A. The Eagle Picher Company and Pittsburgh Plate Glass Company at that time were operating at about 25 per cent of their capacity and the coal mining business was at a very low ebb also, making business conditions in the town very poor.

By Mr. GRIFFING:

Q. Is that the only conversation you had with Joe Love at any time you can recall in regard to his projected building of a theater in Henryetta, Oklahoma?
A. That is right.
Q. Do you know Alexander Moulder commonly
2371 known as Speedy Moulder, operator of the Criterion Theater in Sapulpa, Oklahoma?

A. Yes, I know Mr. Moulder.

Q. Did you ever have a conversation with Mr. Moulder or Mrs. Moulder in regard to the purchase of their Criterion Theater in Sapulpa, Oklahoma?

A. I have visited with Mr. and Mrs. Moulder often but never discussed buying or entering into any agreement with reference to the operation of their theater.

Q. Did you ever accompany any one from the Griffith Theaters on a visit to Mr. and Mrs. Moulder, or either of them, where the purchase or sale of the Criterion Theater was discussed?

A. No, sir.

2372 Q. Mr. Moulder testified as follows: I am reading from the record, pages 984, 985, 986 and 987:

"Q. Later on that year"—It is indicated that year was 1937—"did you hear from anyone else in the Griffith organization?

"A. Well, H. J. came in.

"Q. When did he come over?

"A. He was there two different times.

"Q. When was the first time?

"A. Well, just a little bit after that. I would say in June, maybe, one time, or maybe July or August the second time.

"Q. Was there anybody with him the first time?

"A. Yes. I think Folger was with him maybe one time and Mr. McKenna the next time.

"Q. You think Folger was with him the first time?

"A. And McKenna the second time or it might have been vice versa; I don't know.

"Q. Where did they see you the first time?

"A. In my office.

"Q. In Sapulpa?

"A. Yes, sir.

"Q. What was said then?

"A. I believe the first time Mr. H. J. was there we did talk about a partnership maybe; that we would go

2373 one-third around; a third to Mr. Zartaludes; a third to the Griffiths and a third to myself and pool the two theaters and I couldn't see it. I asked him why it should not be a fifty-fifty-proposition inasmuch as I had the largest house. We could not agree. I don't know of any other conversation that I can remember that first time.

"Q. Then you saw him again?

"A. Later.

"Q. How much later was that?

"A. It must have been 30 days later.

"Q. That would be about when in 1937?

"A. I would say July or August of 1937.

"Q. Then on the second occasion was that at the same place?

"A. Yes. That happened on a Saturday, whatever day that was.

"Q. Was there anybody else present?

"A. I believe Mr. McKenna was along at the time.

"Q. You think Mr. McKenna, Mr. J. H. Griffith and anyone else?

"A. My wife was there.

"Q. What was said then?

"A. Well, there was quite a bit of conversation went on. At that time he wanted to buy us out. He offered me $25,000 and I wanted $75,000.

2374 "Q. When you say "he," whom are you referring to?

"A. How is that?

"Q. Whom are you referring to by "he"?

"A. Mr. Griffith, H. J., and we could not come to terms. Then I suggested to him, "How about a partnership" and he said: "Well, we don't want two partners in the same town; but we are satisfied with the one we have," and later he says, "Well, Speedy, we will lower the admission price in the Yale Theater and build another theater in the town and buy your pictures out from under you," and he says, "Where will you be then?" I said, "Well, that is for me to worry about." I believe he told me at the same time that I didn't have a good lease, and I told him that I did." (End of reading.)

Q. Did you ever accompany Mr. McKenna or Mr. H. J. Griffith on any visit when that conversation took place?

A. I did not.

Q. The name appears in this record as "Folger." Do you know anyone by the name of Folger employed by Griffith Theaters?

A. No, sir. Some people seem to think that my name is difficult to spell or pronounce and I have been called "Folger" numerous times.

Cross-examination by Mr. DIERKER:

Q. How long have you been connected with the

2375 Griffith organization?

A. Since its inception.

Q. When was that?

A. In 1926.

Q. Are you a stockholder?

A. I am—wait a minute—I am not a stockholder in the Griffith Amusement Company.

Q. In what part of the organization?

A. I am a stockholder in the Associated Investment Company and Consolidated Theaters Incorporated.

Q. Are you a director in the Griffith organization or any part of it?

A. I have been absent for about three years, but prior to my entry into the Navy I was director in the Consolidated Theaters and Associated Investment Company.

Q. Have you ever been a stockholder or a director in the Griffith Amusement Corporation?

A. No, sir.

Q. You were employed by the Griffith Amusement Company, weren't you?

A. Yes, sir.

Q. Is that the company that owns and operates the theaters in this area?

A. The Griffith Amusement Company owns and operates a number of theaters in the state and the Consoli-
2376 dated Theaters Incorporated also operates theaters in the state. The Griffith Brothers own the majority of the stock in both corporations.

Q. Well, was there any difference in your duties as to the two different corporations? Were you employed by both of them?

A. I was employed by the Griffith Amusement Company. They looked after the interests of the theaters owned by the Consolidated Theaters also.

Q. So your duties pertained to the activities of both companies?

A. That is right.

Q. Now the theaters which you had any connection with at Enid, by which corporation were they owned?

A. They were Griffith Amusement Company theaters.

Q. During the year 1939 the Griffith Amusement Company was operating theaters at Enid?

A. Yes, sir.

Q. Do you know how many?

A. Four or five.

Q. At that time was John Gray operating the Rivoli?

A. I believe he had a part of the Rivoli at that time.

Q. Were you in general control of the business of the Griffith Amusement Company at Enid at that time?

A. No, sir.

2377 Q. What connection did you have with the operations at Enid at that time, if any?

A. I was the division manager of the theaters in northern and eastern Oklahoma, and my duties were concerned with the exploitation, advertising, theater policy, the personnel, upkeep and maintenance of the theater properties.

Q. Did that embrace Enid?

A. Yes, sir.

Q. Then you were somewhat in control of the situation at Enid concerning the activities of the company?

A. Well, yes.

Q. Along about May, 1929 or '39, were you having any difficulty at Enid about giving two tickets for one admission price and penny days and so forth?

A. We were not having any difficulties, no sir.

Q. Well, was that practice being indulged in by your company and others that were operating theaters there?

A. Yes, sir.

Q. Well, had you taken any notice or cognizance of that situation?

A. Naturally I would. I was the division manager in charge of the operations. I would know what was going on.

Q. Do you remember now that situation was existing at Enid about that time?

A. Yes, sir.

2378 Q. Was that a matter of any concern to you?

A. Not particularly because we had used similar business stimulants in, I will say, every town in which we operated theaters.

Q. Were you using those business stimulants in Enid at that time?

A. Yes, sir.

Q. What was the nature of the business stimulants, as you refer to them, which you were indulging in at Enid at that time?

A. We had bargain days; that is, admissions at reduced prices on the dull days of the week, which I believe were Wednesdays and Thursdays, and with a ticket bought at one of the higher priced theaters we would give a ticket to one of the cheaper theaters.

Q. Do you know what practices the other theaters were engaging in there at that time with reference to business stimulants?

A. As I recall the stimulant they were using, was two people admitted for the price of one and perhaps a five cent admission price on occasion.

Q. Then if Mr. Gray came to you at Oklahoma City in May of 1939 and discussed the situation at Enid that would not be unusual would it?

2379 A. It would be, yes.

Q. Well, he was operating a theater there and so were you. Would you say it would be unusual for him to come and talk to you about difficulties being encountered there?

A. It wouldn't be unusual for John Gray to discuss anything or any policy, but we have always made it a practice of running our business and letting the other fellow run his.

Q. If you were operating theaters though in a community like Enid and you had competition, it would be a matter of concern to you and you would take cognizance of any practices that were indulged in by other theaters that might affect your interests, wouldn't you?

A. Well, yes.

Q. So now you say that you did not have any conversation with John Gray here at Oklahoma City in May, 1937, in which the so-called price war at Enid was discussed?

A. That is correct.

Q. You did not have any such conversation?

A. That is correct.

Q. Didn't you testify on your direct examination that Mr. Gray came to you and wanted to discuss the matter with you and you told him you didn't care to discuss it?

A. He mentioned, as related in the testimony, about the admission prices and policy of the theaters, and I
2380 would not continue the discussion with him. I told him we would run our business and he could run his. Gray is the type of person I wouldn't want to have any business dealings with.

Q. Is that because he was competing with you in Enid?

A. No, sir. That is because of his background in the theater business in the State of Oklahoma. I know of——

Mr. DIERKER. I move that be stricken as not responsive.

Mr. KALLIS. Just a moment at that point. I would like to have your Honor rule on that.

The COURT. It will be sustained; it may be stricken, that part that wasn't responsive.

By Mr. DIERKER:

"Q. In his testimony at Page 940, Volume 14, Mr. Gray said in answer to a question by Mr. Kallis: "Q. What conversation did you have with Mr. Fulgham at the time mentioned? A. Oh, how's business, and this and that, and then he said something to me about wondering if I would be interested in selling, and I told him I wouldn't, and that was about all." Did you have any such conversation with Mr. Gray at that time, which apparently was in 1938, with reference to buying him out?

A. I did not.

Q. Counsel asked you on your direct examination whether you made the statement to Mr. Gray at the time he
2381 undertook to speak to you about conditions in Enid in May, 1939, here in Oklahoma City, that "We are out to get all of you boys. You are trouble makers." Did

you make any statement substantially to that effect to Mr. Gray?

A. I made no such statement.

Q. Did you make any statement to him along that line?

A. No, sir.

Q. Did you say anything to Mr. Gray about intending to eliminate competition in Enid?

A. No, sir.

Q. Then he undertook to discuss the situation with you and you told him you didn't care to discuss it and that you would run your business and he could run his?

A. That is correct.

Q. Did your territory embrace also the City of Sapulpa?

A. Yes, sir.

Q. You stated you were acquainted with Mr. Moulder at Sapulpa?

A. Yes, sir.

Q. Did you ever make any effort to purchase Mr. Moulder's business at Sapulpa?

A. No, sir.

Q. Were you ever a party to any arrangements that H. J. Griffith might have had with him looking to the purchase of his theater?

2382 A. No, sir.

Q. Did you ever have any conversation with Mr. Moulder with reference to the picture show situation in Sapulpa, and the interests of your company and pertaining to the purchase of his theater or the working out of any arrangements of joint operation of the various theaters there?

A. No, sir.

Q. Now, with reference to the testimony of Joe Love. You said you heard that Mr. Love was planning on putting in a theater at Henryetta?

A. Yes, sir.

Q. That was a matter of concern to you, wasn't it?

A. Yes, sir.

Q. So you went to Seminole to see him?

A. No, sir.

Q. How did you happen to see him?

A. We operated three theaters in Seminole, and Mr. Love has a theater there also, and his theater is two or three doors removed from our motion theater there, and I would make periodic visits to the town of Seminole in the interests of our three theaters there.

Q. You say you just happened to meet Mr. Love in front of his theater?

A. I would often pass him.

Q. Well, on this particular occasion?

2383 A. Yes, sir.

Q. You just happened to meet him there?

A. Yes, sir.

Q. You had not intended to discuss the situation at Henryetta with him?

A. No, sir.

Q. What did you say to him with reference to the situation at Henryetta?

A. I told him I had heard that he had been negotiating for a lease on a piece of property in Henryetta. In fact, he had stopped me and told me he was thinking about it. I told him I had already heard it and I told him we had a couple of theaters over there which were not doing very well and never had. Then I told him I thought he had picked a poor town to put in a third theater. Mr. Love seemed very interested in trying to find out from me what the business conditions were and the situation was in Henryetta at the time.

Q. Did he tell you he already had a lease?

A. I don't recall whether he said he had a lease or was figuring on a lease.

Q. If he testified he had a lease at that time would you say that was true or not?

A. I would say it was true.

Q. You undertook to discourage him from going

2384 ahead and putting in a theater.

A. I told Mr. Love——

Q. Is that the effect of what you said?

A. No, sir.

Q. Go ahead and state what you told him?

A. I told him the true facts as to the business conditions in Henryetta, and I did tell him I thought he had picked a poor town to put in a third theater as we were not doing well with the two we had.

Q. Did he say anything about having made any investigation there before he took the lease?

A. I don't recall that he did.

Q. In other words, you assumed all the information he had about conditions in Henryetta was what you gave him?

A. Oh, I would assume if he had leased a theater that he would have made some investigation in the town.

Q. You would assume he would have done that, wouldn't you?

A. Yes, sir.

Q. After you talked to him he did cancel his lease and he did not put in a theater there?

A. I presume he did cancel his lease.

Q. You say you didn't say anything to him that could be construed as a threat?

A. That is correct.

2385 Q. You didn't tell him if he put it in you would "run him out" and "break him out"?

A. No, sir, I made no such statement to Mr. Love or any other person in the theater business.

Q. Then or any other time?

A. That is correct.

Q. Did you say anything to Mr. Love about paying the expenses he had been out in acquiring the lease in the event he decided to abandon the venture?

A. I did not.

Q. You say he opened the subject to you first and that you had not mentioned it to him until he did?

A. That is correct.

Q. Had you been talking some prior to that time or was that the beginning of the conversation?

A. State that again?

(Question read.)

A. As I recall, we passed the felicitations of the day, and then he opened up with the comment about his proposed location for a theater in Henryetta.

Q. Had you intended to mention it to him if he had not mentioned the subject?

A. No, sir.

Q. You had not intended to say anything about it to him?

A. No, sir.

2386 Q. I believe that is all.

Re-direct examination by Mr. GRIFFING:

Q. Commander Fulgham, you were discussing on cross-examination certain business stimulants. These business stimulants, have they been a practice in the theater industry for some time?

A. Ever since I have been in it, and that is about twenty years.

Q. Are they operated in most all localities?

A. In all localities at sometime or another depending on business conditions. In the bad seasons of the year when theater attendance is at a low ebb, it is the policy of most theaters to institute some bargain prices or inducement to get people into the theaters.

Q. Do you consider bank night, double features, give aways, pal days, penny days and two for one admissions as all falling in that class of business stimulants?

A. Yes.

Q. In the operation of the Griffith theaters, while you were connected with them, did they follow this practice only in competitive towns?

A. No. It is a policy we used in non-competitive as well as competitive towns.

Q. In your cross examination with reference to John Gray, you mentioned that John Gray was not the
2387 type of person you would have a business dealing with. You were about to explain what you meant by John Gray's reputation in the theater industry. Will you please explain that?

Mr. DIERKER. We object to that as incompetent, irrelevant and immaterial.

The COURT. Overruled and exception allowed.

"A. Well, I can recall six or seven towns in which John Gray put in theaters and would operate for a short time, and I know that his motive was not to make money out of the operation of the particular theaters but to go in and set up a business establishment with the thought of selling out at a profit.

Q. Selling out to whom?

A. To his competitor or any other person.

Q. In the theater business would you say his reputation was good or bad?

A. His reputation is bad as a theater operator.

Re-cross examination by Mr. DIERKER:

Q. What is wrong about a man going in and putting in a picture show with a view of selling it out at a profit?

A. If he puts in a business, he should go into that enterprise with the thought of making a profit from its operations and not to put it in and make a profit out of the real estate. He either ought to be in the real estate
2388 business or picture show business.

Q. Would you say it would be legitimate or improper or wrong for a man to put in a picture show with a view of selling it at a profit?

A. I am certain his motive in putting in these theaters was to go in because it was a competitive town and to cause his competitor as much trouble as possible and force him to buy him out at a nice profit. In other words, he was going to make money off of the other operator in the town and not the place of amusement.

Q. Do you know where the Griffith Amusement Company has gone into a town with a view of freezing out competition?

A. No, sir.

Q. You don't know of a place where they have put in another theater with a view of freezing out competition?

A. They have never put in any theater in a location except for the purpose of making a profit from the theater; not to harass or bring about competition.

Q. You don't know of any instance where they have told people if they didn't sell out to them they would put in a theater in the area and freeze them out?

A. With my long association with the company I am certain that didn't happen.

Q. That is all.

(Deposition concluded.)

2389 (It is stipulated by the parties hereto that the signature of the witness, C. O. Fulgham, to his deposition above, is waived.)"

Mr. GRIFFING. We offer the deposition of Mr. Fulgham in evidence.

The COURT. It will be admitted.

2390 E. R. SLOCUM, was thereupon called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. DUDLEY:

Q. State your name.

A. E. R. Slocum.

Q. Where do you live?

A. El Reno, Oklahoma.

Q. What is your business?

A. Theater owner and manager.

Q. How long have you lived in El Reno?

A. Since the early part of 1938.

Q. With whom, if anyone, do you operate theaters?

A. Griffith Consolidated Theaters, Incorporated.

Q. How long has your association with that concern been in effect?

A. Since 1939, July 1.

Q. Prior to July 1, 1939, were you a theater operator?

A. Yes, sir.

Q. Where?

A. El Reno.

Q. What did you do prior to operating the theater in El Reno?

A. I worked for Griffith Consolidated Theaters in Oklahoma City.

2391 Q. In what capacity?

A. I was a field man.

Q. That is, you were a field man with the Griffith Consolidated Theaters. Is that correct?

A. Yes, sir.

Q. What were your duties as field man or representative of that concern?

A. I submitted leases, propositions on buildings, propositions for independent theaters and made my recommendations to the home office.

Q. What was the extent of your authority in acquiring real estate and leases?

Mr. KIME. That could be shown by the officials of the corporation.

The COURT. Overruled and exception allowed.

Mr. KIME. He doesn't know what the extent of his authority was.

The COURT. Overruled.

A. To submit propositions and making my recommendations on them.

By Mr. DUDLEY:

Q. Did you have authority to close transactions without the approval of the company?

A. No, sir.

Q. How long were you employed by the Griffith Consolidated Theaters in that capacity?

2392 A. About a year and four or five months I believe.

Q. Immediately prior to your taking this position what position did you have; what were you doing?

A. I was a moving picture salesman for Warner Brothers Pictures.

Q. How long were you salesman for Warner Brothers?

A. Approximately four years.

Q. Were you a salesman for any other concern besides Warner Brothers?

A. I was with Columbia Pictures Corporation prior to being with Warner Brothers.

Q. You say you were salesman for Warner Brothers, as I understand. Is that right?

A. From 1932 to 1936.

Q. Well, prior to your becoming a salesman for Warner Brothers, were you a salesman for any other picture concern, and if so, name the concern.

A. Columbia Pictures Corporation.

Q. How long were you salesman for that concern?

A. Approximately seven and a half years.

By the COURT:

Q. That is for Columbia?

A. Columbia Picture Corporation, yes, sir.

By Mr. DUDLEY:

Q. Prior to your becoming a salesman for the Columbia Pictures Corporation were you engaged in the theater business at all?

2393 A. No, sir.

Q. In your association in the theater business, state whether or not you became acquainted with theater operators and exhibitors throughout the state and in this section of the country?

A. Yes, sir.

Q. Did you know a man by the name of John Gray, who was a former theater operator at Enid, Oklahoma?

A. Yes, sir.

Q. On what date did you commence your employment with the Griffith Consolidated and what date did it end, or approximately?

A. Either the last of April or the first of May, 1936. I went to work for Griffith Consolidated Theaters and I resigned after Christmas of 1937 or the first and second week of January, 1938.

Q. Now during that period of time I believe you said you had occasion to talk to Mr. John Gray of Enid?

A. I talked to John Gray at Enid one time.

2394 Q. Did you ever try to buy Mr. Gray's theater in Enid for the Griffith Consolidated Theaters?

A. No, sir.

Q. Did you ever have a conversation with Mr. Gray during that period in regard to the selling, to the sale of his theater to Griffith Consolidated Theaters?

A. No, sir.

Q. Did you have occasion to be in Enid, Oklahoma at various times while you were employed by Griffith Associated Theaters?

A. Yes, sir.

Q. What was your business in Enid?

A. I was sent to Enid to call on Mr. Walt Billings relative to adjusting the lease in the Criterion Theater, and also to call on Mr. Gillespie, I believe his name was, the owner of the Mecca Theater, for the same reason, the same purpose.

Q. Who owned this Criterion Theater, who owned and operated that?

A. Walt Billings, and possibly an estate.

Q. Let's see if we understand each other. I may be asking you about who owns and operates the theater, and you may be confining your answer to the real estate?

A. I beg pardon?

Q. How?

2395 A. What was the question?

Q. I say I may be directing your attention to the owner and operator of the theaters, and you may be referring to the owner of the real estate?

A. I was referring to the real estate, on adjusting the lease.

By the COURT:

Q. Who owned the theater?

A. Who owned the building?

Q. No, who operated the show?

A. Griffith Theaters.

Q. You had a lease then with Billings, is that right?

A. Yes, sir.

By Mr. DUDLEY:

Q. Were you ever in Enid during that period for the purpose of buying additional theaters for the Griffith interests?

A. No, sir.

Q. Mr. Gray, in his testimony, commencing at page 934 of this record, testified as follows:

"Q. Well, Mr. Gray, were you personally acquainted with Mr. Slocum at the time?

"A. Yes, sir.

"Q. How long had you known him?

"A. Three or four years, sir.

"Q. Where had you seen him?

"A. When I first got acquainted with him he was

2396 connected with Warner Bros. as a salesman.

"Q. Did you later see him at any of the Griffith theaters?

"A. Yes, sir.

"Q. When?

"A. At various times.

"Q. Where?

"A. At Enid.

"Q. What was he doing at these theaters?

"A. I don't know, sir. That I can't answer. He was always with their manager.

"Q. Well, now, did you have occasion to see Mr. Slocum in the fall of '37?

"A. I did, sir, in September of 1938.

"Q. What is that?

"A. In September of 1938.

"Q. And where did you see him?

"A. At Enid, in front of my theater, the Rivoli.

"Q. Did you have a conversation with him?

"A. I did.

"Q. Will you repeat the substance of it?

"A. Everything, sir?

"Q. Well, limiting your testimony now to the conversations, if any, that related to the purchase of, or the purchase by Griffith of the equipment in your theater, will you please state whether or not you had a conversation
2397 dealing with that subject?

"A. I did, sir.

"Q. What did Mr. Slocum say?

"A. He just inquired if I would be interested in selling. I said that I wasn't. And that's about all there was to the conversation.

"Q. Was anything said by Mr. Slocum with reference to what intentions, if any, Griffith had with respect to this equipment?

"A. Yes, sir.

"Q. That was discussed?

"A. He said: 'John, would you be interested in selling your theater at the open market equipment price?' I said, 'No, sir, I wouldn't', and that's about all there was, sir.

"Q. Was there anything else said about the theater business?

"A. No, sir. We went and had a cup of coffee, sir.

"Q. Well, now, directing your attention to any conversation with respect to what might be done——

"By the Court:

"Q. Did he say anything else about the Griffiths or the theater business in any way?

"A. No, sir, he didn't.

"By Mr. Kallis:

"Q. Well, did you later see Mr. Slocum?

"A. At various times, but no further conversa-
2398 tions on that subject."

Q. Now, Mr. Slocum, were you employed by the Griffith Consolidated in September, 1938?

A. No, sir.

Q. What was your occupation at that time?

A. I was running my own theater in El Reno, Oklahoma.

Q. Was anyone else associated with you in running your El Reno Theater at that time?

A. No, sir.

Q. You were an independent operator?

A. That's right, sir.

Q. Did you have any connection with Griffith representatives as representative, agent, or otherwise, during the fall of 1938?

A. No, sir.

Q. When did you leave the employment of Griffith Theaters?

A. The very last week of '37, after Christmas, or very early part of January, 1938.

Q. How long was it before you were again associated, employed by, or connected with the Griffith Theaters in any capacity?

A. July, 1939.

Q. During that period stated here, did you have a conversation with Mr. Gray as he relates it?

2399 A. No, sir.

Q. Did you ever have any conversation with Mr. Gray in regard to the sale of his theater to the Griffiths?

A. I did not.

Q. Did you ever attempt to buy or offer to buy Mr. Gray's theater equipment at an open market price, as he stated?

A. No, sir.

Q. Did you ever attempt to buy his theater at any price?

A. I did not.

Q. Did you have a conversation with him in regard to buying his theater equipment?

A. No, sir.

Q. Do you know a Mr. Alexander A. Moulder, commonly known as Speedy Moulder?

A. Yes, sir.

Q. A theater operator at Sapulpa, Oklahoma?

A. Yes, sir.

Q. How long have you known him?

A. I don't know the exact number of years; I would say it was many.

Q. Many years?

A. Yes, sir.

Q. Did you know his wife also?

A. Yes, sir.

2400 Q. What was your relation with Mr. and Mrs. Moulder?

A. What do you mean, what was my relation?

Q. Well, were you friendly, have any social relations, or anything of that kind?

A. That's about the only kind of relationship I had with him. I never called on him in a business way until I went to work for the Griffiths.

Q. Were you ever in their home socially?

A. Yes, sir.

2401 Q. During the time you were employed by Griffith Consolidated Theaters, did you have occasion to call on Mr. Moulder?

A. Yes, sir.

Q. What was the purpose of your visiting him?

A. To ask Mr. Moulder if he would be interested in selling his theater, and would he allow me to submit a proposition to the office of the Griffith Theaters to purchase it.

Q. What theater were you talking about when you say you called on him to see if he was interested in selling it?

A. The Criterion Theater in Sapulpa.

Q. Do you remember the date you made this call on him?

A. I don't remember the date. It was in 1936. I don't remember the month. I could only make a guess at it.

Q. Now, while you were a salesman did you have occasion to call on Mr. Moulder occasionally?

A. Did I have occasion to call on him?

Q. Did you call on him occasionally while you were a salesman?

A. I called on Mr. Moulder both in Sapulpa and I met him many times in Oklahoma City.

Q. At the time you had this conversation with him with reference to selling his theater did you or not tell
2402 him that you and the Griffith Consolidated Theaters Incorporated were going to eliminate competition in Sapulpa?

A. I didn't tell him anything like that, no, sir.

Q. Did you make any threats or attempt to coerce him to make him sell that theater?

A. No, sir.

Q. Did you have another visit with him after that?

By the COURT:

Q. What did you say to him at that time?

A. I asked Mr. Moulder if he would be interested in selling his theater; that that was my job to get propositions and submit them.

Q. What did he say?

A. He said he wouldn't. He said further, would I be interested in submitting a partnership proposition and I told him I would submit it, that I didn't think they would be interested in it; that we had one partnership in the town and I didn't think that two would work out.

Q. What else did you say and what else did he say?

A. He said he wouldn't be interested in selling it and I told him I would submit the proposition; that I would be back and see him later.

Q. That is as to the partnership proposition?

A. Yes, sir.

Q. Proceed.

2403 By Mr. DUDLEY:

Q. When that conversation ended, did you later see Mr. Moulder?

A. Yes.

Q. When and about how long after you had this first conversation?

A. I saw him on the Criterion Theater in Sapulpa about four weeks later.

Q. Was anyone else with you on that occasion?

A. Not with me, no, sir.

Q. Well, did you have a later conversation with him over there in Sapulpa?

A. One time after that, yes, sir.

Q. Was there anyone with you at the time you had that conversation?

A. Yes. H. J. Griffith was with me.

Q. H. J. Griffith?

A. Yes, sir.

Q. What was the occasion of him being along with you on this occasion?

A. We had been on a trip, and he suggested we come back through Tulsa and Sapulpa; that he wanted to stop in and visit with Speedy Moulder on the way back.

Q. Did you and Mr. H. J. Griffith visit Mr. Moulder in Sapulpa and have a conversation with him about buying his theater?

2404 A. I did not enter into the conversation myself. We were not there long. Mr. Moulder asked Mr. Griffith——

Q. I will get to that later. Was there a conversation had either by Mr. H. J. Griffith or yourself with Mr. Moulder on this occasion we are now talking about?

A. Yes, sir.

Q. I wish you would state the conversation as you recall it.

A. Mr. Moulder asked Mr. Griffith if he had taken the price up and given it further consideration. He said that he had and he thought it was too high.

Q. Was there anything else that you recall said there?

A. That was about all.

Q. So there was no deal made on this second occasion?

A. No, sir.

Q. Were you with Mr. Moulder and Mr. Griffith during all the time they were engaged in conversation about this matter?

A. Yes, sir.

Q. During this conversation, I will ask you whether or not you or Mr. H. J. Griffith said to Mr. Moulder: "Well, Speedy, we will lower the admission price in the Yale Theater and build another theater in the town and buy your

pictures out from under you, and where will you be then?"

Was that statement made either by you or Mr. H. J.
2405 Griffith?

A. That conversation did not take place in my presence.

Q. Well, was there any cash offer made for his theater by you or anyone else?

A. No, sir.

Q. And the deal was not closed?

A. No, sir.

Q. Did you have any further conversation with Mr. Moulder with reference to the purchase of his theater?

A. No, sir.

By the COURT:

Q. When Mr. Moulder said to Mr. Griffith: "Have you given any further consideration to the price?" Did you know what the price was?

A. No, I didn't. That was the first I knew of it.

Q. Was there any price mentioned in your presence?

A. There was not. I had been there twice previously prior to the time I went with Mr. Griffith to ask him if he wanted to sell his theater but that was my first knowledge a price had been submitted.

Q. He told you he didn't want to sell?

A. Yes, sir. The only conversation he had with me was a partnership.

Q. Was anything said by him or Mr. Griffith about the partnership in your presence?

2406 A. No, sir.

Q. Proceed.

By Mr. DUDLEY:

Q. You never had any further discussion after this one we are talking about now?

A. No, sir.

Q. Do you know Mr. Pat Duffy, the former theater owner at Mangum, Oklahoma?

A. Yes, sir.

Q. How long have you known him?

A. I will say eight or ten years; maybe a little longer.

Q. While you were working for the Consolidated Theaters, Incorporated as field representative, did you have occasion to call on Mr. Duffy with regard to purchasing his theaters in Mangum?

A. Yes, sir.

Q. When was the first time you called on him?

A. Two or three months after I went to work for Griffith Consolidated Theaters.

Q. When would that be?
A. It would either be July or August.
Q. What year?
A. 1936,
Q. Where did this conversation take place?
A. In Mangum, Oklahoma.
2407 Q. Who was present?
A. I don't remember anybody being present.
Q. Just you and Mr. Duffy?
A. Yes, sir.
Q. Can you state now the substance of the conversation that you had with Mr. Duffy on this occasion?
Mr. KIMB. First let him ask, as he has the others, what each person said.
The COURT. He is asking him if he can state the substance of the conversation.

By Mr. DUDLEY:

Q. Giving what you said and what Duffy said as near as you can recall.
A. I asked Pat if he wanted to sell his theater in Mangum; if he did I would like to have a proposition to submit it to the Griffith Consolidated Theaters. He said he didn't want to sell it. That was the substance of the conversation.
Q. Did he mention the price, as you recall?
A. No, sir.
Q. Did he submit a price of any kind that you remember?
A. No, sir.
Q. Did he later submit a price?
A. Yes, sir.
Q. What was the price that he later submitted, if you know?
2408 A. Around $20,000.
Q. Did you submit that to your company?
A. Yes, sir.
Q. Well, after you submitted the proposition, in submitting the proposition, what did you recommend to your company?
A. I recommended that they purchase his theaters in Mangum.
Q. What was the result of your recommendations?
A. Sometime later an option was drawn with Mr. Duffy.
Q. Now what did you know about the theater situation in Mangum at that time, and what had been your experience in connection with the theater business there? What was your general knowledge?
A. I was very familiar with the Mangum theaters and had been back before 1918. I had sold pictures there from

about 1921 on continuously. My father had run a theater in Mangum and I had lived there. I had operated a theater with my brother that he owned for one year when his health failed. I had known, I guess, all the theater operators of the town. I was familiar with the surrounding area.

Q. So you had a pretty good opinion of Mangum as a theater town?

A. I thought Mangum would make a little money over a period of time.

2409 By the COURT:

Q. How many theaters were in Mangum at the time you are speaking about?

A. At the time I made the purchase you mean?

Q. Yes.

A. There were two theaters.

Q. Only two theaters there?

A. Yes, sir.

Q. What were those?

A. The Temple and Rialto.

Q. Who owned them?

A. Mr. Duffy.

Q. He owned them both?

A. Yes, sir.

Q. Was this proposition of $20,000 for both theaters?

A. Yes, sir.

By Mr. DUDLEY:

Q. You said that an option was taken later on for the purchase of these theaters.

A. Yes, sir.

Q. Was the option ever exercised?

A. No, sir.

Q. What happened?

A. Well, Mr. H. J. Griffith and Mr. Griffing and myself drove to Mangum to exercise the option but we didn't exercise it.

Q. About when was that, if you remember?

2410 A. Well, I think we had a 30 day option. I believe it was within 30 days after the option was taken. I don't know the date the option was taken.

Q. All right, tell us what happened at Mangum. You say you and who else went down there?

A. H. J. Griffith and Henry Griffing.

Q. When you got down there did you see Mr. Duffy?

A. Yes, sir. We came in from the north and came by the Temple Theater and stopped the car, and I went up to see if Mr. Duffy was in his office. As I entered the theater

there were three gentlemen leaving. One of them was Mr. Head, a personal friend of mine. I spoke to him and went on upstairs, and I asked Mr. Duffy if those gentlemen were the ones that had to do with the Masonic Lodge, the Temple Theater and the board of trustees. He said they were. I asked him if he was discussing the lease and rental terms in our behalf. He said that is what they were doing up there, so I told Pat we had just gotten in town; that we wanted to go up to the hotel and clean up and would see him later.

2411 Q. All right, well, what connection did this Masonic Lodge property have to do with this transaction?

A. The lease that Mr. Duffy had, he had told us, I believe, that it was $150, and he was to try, he was to get us the same lease. That was part of the proposition of buying the theaters at the price that was established by him.

By the COURT:

Q. Do you mean that the Masonic Lodge owned the theater itself, the building?

A. Yes, sir, the Temple.

Q. The Temple Theater?

A. Yes, sir, and they had their hall up above the theater, I believe.

By Mr. DUDLEY:

Q. That is, it owned the real estate?

A. Yes, sir.

Q. And Mr. Duffy was to secure a lease of this Masonic Lodge for a certain monthly rental?

A. Yes, sir; and it was to be a ten year lease.

Q. It was to be a ten year lease. What was the monthly rental or the annual rental?

A. $150, or a maximum of $175 a month, for ten years.

Q. And you found out that the gentlemen who were in his office there were the directors of this Masonic Board, the Board of Directors?

A. That's right.

2412 Q. Well, what else happened over there on that occasion?

A. I went down to see Mr. Head in his cleaning and pressing establishment, and told him that we were out there to exercise our option with Mr. Duffy, and that before doing that we would like to have a meeting with the Board of Directors of the Masonic Lodge, and could that be arranged that evening in the hotel, the Franklin Hotel. He said it could. And it was arranged, and we held a meeting in a room in the hotel.

Q. Who is this Mr. Head that you speak about?

A. He is one of the Board of Directors of the Masonic Lodge, he was at that time, in Mangum.

Q. And through him you arranged a meeting with the Board that evening, is that right?

A. Yes, sir.

Q. What was the purpose of meeting with this Board that evening?

A. To see if we could make a lease on the Temple Theater Building.

Q. What information, if any, had you received from Mr. Duffy as to whether he was going to be able to secure this lease or not?

A. Originally, when I submitted the proposition, he told me he could secure a lease.

Q. For a certain rental?

2413 A. Yes, sir.

Q. Had he been able to do so when you got over there to exercise the option?

A. No, sir.

Q. And then this meeting was had with the Board of Directors for the purpose of ironing that matter out, is that correct?

A. That's right.

Q. What happened that evening at that meeting?

A. The Board of Directors met us in one of the rooms, three of us, and Mr. Griffith got right down to business, and told them we wanted to make a lease on the building and exercise our option and close up the deal so we could take it over, and asked them what the lease would be; we understood Pat Duffy's lease was $150, and it was our understanding that Mr. Duffy was to get us that same lease before we came back, and were they willing to lease it to us for $150. They said they wanted $250 per month.

Q. That's the price they wanted?

A. Yes, sir.

By the COURT:

Q. Was Mr. Duffy present at that time?

A. No, sir.

By Mr. DUDLEY:

Q. Well, did you then report to Mr. Duffy that you couldn't get this lease for $150 per month?

2414 A. I don't know when it was reported. We didn't see Mr. Duffy before we left town. It was reported by Mr. Griffith, I imagine, from the office.

Q. Well, as a result of this meeting with the Board of Directors of the Masonic Lodge, what was said, and what was done; that is, was the deal, was the option exercised?

A. We told, Mr. Griffith, rather, told the Board of Directors that the price that the company was paying for the theaters, that the lease was contingent, and that they couldn't pay that much rent per month over ten years and pay that much money for the theaters, so that we would just leave town and Mr. Duffy would continue to operate his theaters.

The COURT. At this time, gentlemen, we will recess until 10:00 o'clock Monday morning.

(Whereupon, the proceedings in this case were recessed until Monday, September 17th, 1945, at 10:00 o'clock a. m.)

2415 PROCEEDINGS

September 17, 1945, 10 o'clock a. m.

Mr. KIME: If your Honor pleases, at page 1909 of the record it appears that the Grenada Theater in Plainview, Texas—it says here "purchased from O. K. Theaters Corporation in 1933"; it should be '35, and by agreement of the parties it is so stipulated.

In the next sentence it says: "Palace closed house; purchased from O. K. Theaters Corporation in 1933." That should be 1935 and it is so stipulated by the parties.

Mr. COCHRAN. There is a correction I want to make in Mr. Slocum's testimony at page 2222, about the middle of the page. The answer now reads: "The Board of Directors met us in one of the rooms, three of us, and Mr. Griffith got right down to business, and told them we wanted to make a lease on the building and exercise our option and close up the town so we could take it over—" That "close up the town" should be "close up the deal." Is that satisfactory?

Mr. KIME. I don't know about that. I think what he said was "the town."

Mr. COCHRAN. There was no matter of closing up the town at that time.

Mr. KIME. That is exactly what they did.

2416 Mr. COCHRAN. There was no competition in the town at that time. There was no competition in Mangum at the time they went in there.

Mr. KIME. What he says, "they close up the town"——

The COURT. Is the witness available?

Mr. COCHRAN. Yes.

2417 E. R. SLOCUM, recalled to the witness stand, and having been previously duly sworn, in answer to questions propounded to him, testified as follows:

Direct examination (resumed) by Mr. COCHRAN:

Q. Mr. Slocum, you heard that part of the answer, on page 2222, read to you, didn't you?

A. Yes, sir.

Q. You will notice that in the transcript it is written "Exercise our option and close up the town so we could take it over," you will notice the statement where you say, "close up the town"?

A. Yes, sir.

Q. What should that statement be?

A. It would be two deals——

Q. No, just what should it be?

A. It should be "close up the deal".

By the COURT:

Q. Is that what you meant to say, "close up the deal"?

A. Yes, sir.

By Mr. COCHRAN:

Q. Instead of "close up the town"?

A. Yes, sir.

The COURT. The correction will be noted.

Mr. KIMM. In that same record, I am informed and believe that on page 2143, the last question was answered, "It has." The question, "Now, since the pooling
2418 arrangement ended, the Camera has played a great deal of first run major product, isn't that right?" And the question was repeated, and I am informed the witness answered, "It has," and I suggest that correction be made.

The COURT. Very well, the correction will be noted.

Mr. COCHRAN. That's all.

By Mr. DUDLEY:

Q. Mr. Slocum, when the Court adjourned last Friday evening, you had related the trip which you and Mr. Henry Griffing made to Mangum and had a discussion with Mr. Duffy while there; you recall that, do you?

A. Yes, sir.

Q. At that time, how long had you known Mr. Duffy?

A. Possibly ten years or longer.

Q. Where had you known him during that period of time?

A. At Mangum, Oklahoma.

Q. What was the nature of your relationship with him during that period of time?

A. It was friendly.

Q. You had never had any difficulties with him at all?

A. No, sir.

Q. Had you ever visited him socially or he visited you socially?

A. Yes, sir.

Q. Now, in connection with this trip which you tes-
2419 tified about, or on any other occasion, I will ask you whether or not you made any threats, or any efforts to coerce Mr. Duffy into selling his theater?

A. No, sir; I did not.

Q. Now, after this option was not exercised on account of the rental controversy, did the Griffith Amusement Company or the Consolidated Theaters later acquire a theater in Mangum?

A. Yes, sir.

Q. What, if anything, did you have to do with the acquisition and establishment of that theater; did you have something to do with it?

A. Yes, sir.

Q. I wish you would relate briefly what negotiations you had, or what you did, with reference to the acquisition of that theater, and tell about when you begun your efforts to acquire the theater?

A. Some weeks or months later, I don't know the date, I was in Mangum, and there was a building on the north side of the square. The building had been occupied as a theater for years. At the time I was in Mangum on this trip it was a pool hall. It had been known as the Empress Theater. It had been operated under the ownership of a man named George Slaton, and later by a Mr. A. B. Sum-
mers, and by I believe three different members of the
2420 Hines family, Noman Hines, Calvin Hines, and I believe Leo Hines had all operated this theater. It was a very good location for a theater, and I went out to see the man that owned the building, a Mr. Townsend. Mr. Townsend lived possibly a mile and a half north of Mangum outside the City Limits. I introduced myself to Mr. Townsend and he invited me into his home, and I stated my business, that I would like to submit a proposition to the company that I worked for, Griffith Consolidated Theaters, Inc., for a theater that used to be occupied by the Empress, and that now had been a pool hall, and asked him if he was in a position to make a lease on it. During the discussion about the building, he asked me if the company could get any pictures; if our company leased the building, could they get any pictures to operate. I told Mr. Townsend that I imagined that what he should consider more than anything

else would be would the company pay the rent, would he get his rent every month. He asked me what I thought the building was worth, what they could pay, and I told him as a rule I didn't like to make a price on a man's piece of property, I thought he should get, but being familiar with Mangum, having lived there and my father having lived there, I knew something about it.

Q. Just give the result of your interview with him.

A. I told him we would offer him $75 for the building, and asked him if that was comparable with other
2421 rents in that block.

Q. Well, did you rent this theater from him, did you rent this property?

A. Yes, sir.

Q. At what rental, do you know?

A. At $75 per month, a ten year lease.

Q. Now, while you were out there with Mr. Townsend, did you see Mr. Duffy anywhere?

A. Yes, sir.

Q. State the circumstances under which you saw him.

A. Mr. Duffy came out in a car, I believe it was a taxicab, and Mr. Townsend went to the door and went on the outside and shut the door. I went to the window and saw Mr. Duffy and Mr. Townsend talking, and in a little bit Mr. Townsend came back in.

Q. You didn't hear any conversation between Mr. Townsend and Mr. Duffy on the outside?

A. No, sir.

Q. When Mr. Townsend returned to the house, did he acquaint you with the subject of his conversation with Mr. Duffy?

A. Yes, sir; he did.

Q. Did he relate the conversation to you?

A. Yes, sir.

2422 Q. Now, in your discussion with Mr. Duffy previous to this had you ever suggested to him that he lease this particular site we are talking about?

A. I suggested he move his Rialto Theater over into the Empress location as it was a much better location for a B house.

Q. When did you do that with reference to the time you called on Mr. Townsend. Was it before?

A. Yes, sir.

Q. What was Mr. Duffy's attitude with reference to the suggestion you made him?

A. He didn't give it a lot of consideration.

Q. Did he make any statement about it at all?

A. No, sir, not that I can remember.

Q. Well, in your discussion with Mr. Townsend, after Mr. Duffy came out to the house, I will ask you if you made any statement to him concerning the desire of Duffy to acquire the same lease, and if so, what did you say to Townsend?

A. When Mr. Townsend came back in the house—I was packing up my portfolio—and when he came back in he asked me if I was getting ready to leave and I said I was. He said. "Why?" I said I didn't want to get mixed up in being with Mr. Duffy in a lease on a building; that if Mr. Duffy wanted the building to go ahead and let
2423 him have it. I surmise that is what he came out there for.

Q. That is about the substance of your conversation with Mr. Townsend in the making of this deal. Is that right?

A. Yes, sir.

Q. Mr. Duffy has testified, and I will read his testimony (reading):

"Q. When was the next meeting you had with anyone?

"A. It was '36, along about the first part of '36, E. R. Slocum, employed by Griffith Brothers in the expansion department, came to see me about buying a half interest in the theaters.

"Q. Came to Mangum to see you?

"A. Yes.

"Q. About the first part of '36?

"A. Yes, sir.

"Q. About buying an interest?

"A. Buying an interest, 51 per cent.

"Q. Is that the first meeting you had with Slocum in 1936?

"A. Yes, sir. He used to sell films for Warner Brothers and I had several meetings with him.

"Q. Then he wanted to buy 51 per cent?

"A. Yes, sir.

"Mr. COCHRAN. Objected to as leading.

2424 "Mr. KIMR. He just stated he wanted to buy 51 per cent.

"Mr. COCHRAN. Objected to as repetition then.

"By Mr. KIMR:

"Q. What else happened in that meeting of any consequence?

"A. I refused to sell 51 per cent but I told him I would if the film rental didn't exceed 25 per cent of the gross receipts.

"By the COURT:

"Q. Told him what?

"A. If the film rental didn't exceed 25 per cent of the gross receipts I would sell him 51 per cent.

"By Mr. KIME:

"Q. What was his reply to that, if anything?

"A. He said they wouldn't go for that; that I would have to have complete confidence in them.

"Q. Was that all of any consequence that was said at that meeting?

"A. Yes, sir.

"Q. Did he come back again?

"A. He made several trips to buy the theaters for almost a year.

"Q. Did he come back at some time and tell you anything about gas meters and telephones?

"A. Yes. He told me he checked up on all the telephones and gas meters and everything in town; that that
2425 was his job.

"Q. What else did he tell you at that meeting?

"A. Well, that is about all he told me at that meeting.

"Q. Did he say anything about a 'spot'?

"A. Yes.

"Mr. COCHRAN. Objected to as leading.

"The COURT. Sustained.

"A. Well, he made several trips during the year down there and he told me on one of those occasions that I was on the spot; that I was slated to go and better make the best deal I could.

"By Mr. KIME:

"Q. Can you place the time of that meeting?

"A. It was sometime in '36. I couldn't exactly place the time. He made several trips to Mangum.

"Q. Then were there any more meetings in 1936 that you recall?

"A. Yes. H. J. and C. R. Slocum came down to see me about buying theaters in '36.

"Q. What part of '36?

"A. The last part of '36.

"By Mr. KIME:

"Q. H. J. Griffith and Red Slocum then came to see you about the last part of '36?

"A. Yes, sir.

2426 "Q. What happened at that meeting?

"A. H. J. made me an offer for the theaters of $20,000.

"Q. What did you say to that offer?

"A. I said I couldn't accept it.

"Q. What happened then, if anything?

"A. He said they wanted a theater in the town and if they couldn't get, couldn't buy mine, they would have to put one in.

"Q. And you refused the $20,000?

"A. Yes, sir.

"Q. Was that all that happened at that meeting?

"A. That was all at that meeting.

"Q. Was there another meeting shortly after that?

"A. Well, I came to Oklahoma City shortly after that and met them in their office. They came down and got me and brought me up here, and offered me $22,000. That was on January 5, 1937.

"Q. Whose office was that?

"A. Griffith's office, here in Oklahoma City.

"Q. Here in Oklahoma City?

"A. Yes, sir.

"Q. And where were you when they came to get you?

"A. In the Film Exchange Cafe on the ground floor of that building.

2427 "Q. And when you got up to the office, who did you find there?

"A. H. J. and E. R. Slocum; I am not quite sure—Mr. McKenna was there.

"Q. You are sure he was there, are you?

"A. Well, I am pretty sure he was, yes.

"Q. To the best of your recollection he was there?

"A. Yes, sir.

"Q. What happened at that meeting in their office?

"A. I accepted—I gave them an option for $22,000. We went to Keaton, Johnston & Wells' office and drew up the option.

"Q. And that was on what date; do you have any record of that date?

"A. January 5, 1937.

"Q. Was that option ever exercised?

"A. No, it wasn't."

(End of reading.)

By Mr. DUDLEY:

Q. Now, I have read you from his testimony. Did you call on Mr. Duffy on behalf of the Griffith Theaters in the first part of 1936?

A. No, sir.

Q. Were you employed or associated with Griffith Theaters in the early part of 1936?

A. In '36?

2428 Q. In the early part of '36.

A. No, sir.

Q. When did you commence your employment with them? them?

A. Either the latter part of April or the first part of May, 1936.

Q. When do you place the first date of your visit to Mr. Duffy in regard to the purchase of his theater?

A. Two or three months after I went to work for Griffith Consolidated Theaters.

Q. What month would that be, in your judgment, of 1936?

A. Either July or August.

Q. On the occasion of that visit did you attempt to buy 51 per cent of the interest in his theater?

A. No, sir.

Q. Did you make any attempt to make a partnership of any kind with him?

A. No, sir.

Q. What did you attempt to buy, if anything, when you called on him?

A. A 100 percent of his two theaters.

Q. Was any conversation had with reference to selling 51 per cent, that you would guarantee that the film rental would not exceed 25 percent?

A. No, sir.

2429 Q. That conversation did not take place as outlined by Mr. Duffy?

A. No, sir, it did not.

Q. Mr. Duffy stated you made several trips to buy the theaters for almost a year before this option was given. How many trips would you say you made before you had agreed on the option with Mr. Duffy?

A. Two or three trips.

Q. Was the option figure of $22,000 Mr. Duffy's offer? Was that his offer in the first place?

A. Yes, sir.

Q. Did you ever lower that offer any?

A. No. sir.

Q. Did you ever try to?

A. I asked him if he would take less, yes.

Q. And he would not do it?

A. No, sir.

Q. Then the option was exercised on the price he fixed himself?

A. That is right.

Q. I mean the option was made on the price he fixed himself?

A. That is right.

Q. Mr. Duffy, in his testimony as I read a moment ago, stated you told him that he was on the spot and
2430 slated to go. Did that conversation take place?

A. No, sir, it did not.

Q. Did you make that statement in substance or anything similar to that?

A. No, sir.

Q. Now in your discussion with him did you inform him that your company was intending to open a theater in Mangum?

A. No, sir.

Q. Now, at the time you had early discussions with Mr. Duffy, did your company contemplate opening a theater in Mangum?

Mr. KIMB. To which we object——

A. No, sir.

Mr. KIMB. All right.

By Mr. DUDLEY:

Q. As far as you know?

A. No, sir.

Q. What was your main reason in endeavoring to purchase the theater of Mr. Duffy?

A. I thought it would be a good buy for the company and would pay out in due course of time and make some money.

Q. You believed that in good faith, did you?

A. Yes, sir.

Q. You so advised your superiors?

A. I did.

Q. Did H. J. Griffith come with you to Mangum
2431 to see Mr. Duffy in regard to the purchase of his theater prior to the obtaining of the option?

A. No, sir.

Q. You say he did not?

A. He did not.

Q. Now, at the time Mr. Griffith, Mr. Henry Griffing and you went down there to confer with Mr. Duffy, the option had previously been made, as I understand it?

A. Yes, sir.

Q. And you went down there for the purpose of closing it up. Is that right.

A. Yes, sir.

Q. Did H. J. Griffith ever have anything to do with negotiating the price with Mr. Duffy prior to obtaining this option from Mr. Duffy?

A. No, sir.

Q. Did anyone besides yourself have anything to do with the negotiations with Mr. Duffy leading up to this option?

A. No, sir.

Q. Do you know a Mr. James G. Bennett?
A. Yes, sir.
Q. He formerly operated a theater at Drumright, did he not?
A. Yes, sir.
2432 Q. Sometime in the first part of the year 1936, did you have a conversation with Mr. James G. Bennett with reference to buying his theater at Drumright?
A. No, sir.
Q. Well, when was the first time you discussed the matter with him, if you did at all?
A. I would place the date in July or August of 1936.
2433 Q. Where did the conversation take place?
A. In Drumright, Oklahoma.
Q. Where?
A. In one of his theaters, I believe it was the Midwest.
Q. The Midwest?
A. Yes, sir.
Q. Who were present?
A. Just Mr. Bennett and myself.
Q. Was it in the forenoon or afternoon, or about when was it?
A. The early evening, around 7:00 o'clock.
Q. How long had you known Mr. Bennett at that time?
A. Possibly two or three years.
Q. What was your relation with him, friendly or otherwise?
A. It was friendly.
Q. What was the object of your calling on Mr. Bennett in Drumright on this occasion?
A. To ask Mr. Bennett if he would be interested in selling his theaters, and would he allow me an opportunity to present a proposition.
Q. Did you know his theaters at that time?
A. Did I what?
Q. Did you know the theaters that he operated there at that time?
2434 A. Did I know the theaters?
Q. Yes.
A. Yes, sir.
Q. Did you know or have any information to the effect that these theaters were for sale?
A. No, sir.
Q. Had anything occurred prior to your making this trip which led you to believe that they were for sale or might be for sale?

A. The burning, the destroying by fire of his largest theater, the Strand, led me to believe that he might sell them.

Q. And this fire had occurred before you went over on this occasion, had it?

A. Yes, sir.

Q. What theaters did he have there, now, that you were dealing with him on?

A. He was operating two theaters, the Midwest, and I believe the name of the other one was the Rex.

Q. And the Strand had burned shortly before this, had it?

A. Yes, sir.

Q. Now, on the occasion of this visit with Mr. Bennett, on the occasion you are referring to, did you have a conversation with him with reference to the purchase of
2435 his theaters?

A. Yes, sir.

Q. I wish you would briefly state that conversation, telling what he said and what you said.

A. We met in front of the theater and he asked me into his office, in the Midwest Theater. I went in. He sat on the desk and put his feet in a chair and I sat on a seasoning can, or lard can, or some metal container. I asked him if he would sell his theaters, would he be interested in it, that that was my job with Griffith, trying to buy theaters, and I would like to submit a proposition if he would sell them, and make my recommendation as I saw it. He said he wasn't interested in selling.

Q. He wasn't interested in making a sale?

A. That's right.

Q. And during that conversation he didn't make you any price, I assume?

A. No, sir.

Q. Do you know a Claude Motley?

A. I do, sir.

Q. Was he with you on this occasion that I am inquiring about?

A. He was not.

Q. I will ask you whether or not you later saw Mr. Bennett about this same subject matter?

2436 A. Yes, sir.

Q. About when, with reference to the first occasion, or after the first visit?

A. Possibly three or four weeks, within that time.

Q. Did you have a conversation at the second time, on the second occasion?

A. Yes, sir.

Q. And where was that conversation?
A. In his office in the Midwest Theater.
Q. Please state the substance of the conversation, giving what you said, and what he said, as you now recall?
A. I told him I had come back to Drumright to talk to him again, and see if he wanted to sell his theaters. A few statements possibly were made back and forth which I don't remember, and he said he had decided that he would sell if he could get the price he wanted. I asked him what the price was, and he said, $16,000. I told him if he would let me, if I could go get my portable typewriter, I would draw up an option at that figure, which I did.
Q. You drew up an option there in his presence, did you?
A. Yes, sir.
Q. For $16,000?
A. That's right.
Q. Well, what happened, did he sign it or not?
2437 A. Yes, sir; he signed it, and excused himself. He said he had to go to dinner, and I left town.
Q. Now, during that conversation with him in which the option was prepared and signed, what was his attitude towards you, friendly or otherwise?
A. It was entirely friendly.
Q. Was anyone with you, now, on this occasion?
A. No, sir.
Q. Did you later have occasion to talk further with Mr. Bennett about this sale?
A. About the sale?
Q. Yes, sir.
A. Only when we went back to Drumright to exercise the option.
Q. Do you remember what the option was, how many days?
A. 30, as I remember it.
Q. 30 days?
A. Yes, sir.
Q. Do you know whether or not within the 30 day period your superior exercised the option and notified Mr. Bennett to that effect?
A. I suppose so.
Q. That is your understanding, is it?
A. Yes, sir.
Q. All right. Now, then did you go over to Drum-
2438 right for the purpose of closing up this deal?
A. Yes, sir.
Q. Who accompanied you, if anyone?
A. Mr. Akers and Mr. Griffing.

Q. The Mr. Akers you refer to is the same Mr. Akers who has testified heretofore in this case, is that right?

A. That's right.

Q. In referring to Mr. Griffing, whom do you have in mind?

A. Mr. Henry Griffing.

Q. Is he one of the attorneys of record for the defendants in this case?

A. Yes, sir.

Q. Do you remember about when you got there to Drum-right?

A. Yes, it was in the evening.

Q. After you got there, did you see Mr. Bennett, and if so, when and where?

A. We stopped first to check in at the Roberts Hotel, and checked in and went direct to the theater and saw Mr. Bennett in front of the theater.

Q. All right. At the time you met Mr. Bennett there in front of the theater, I will ask you whether or not—who else was with you?

A. Mr. Akers and Mr. Griffing.

2439 Q. Well, what did you do, if anything, by way of introducing Mr. Griffing to Mr. Bennett?

A. I introduced both Mr. Akers and Mr. Griffing to Mr. Bennett on the sidewalk in front of the theater.

Q. All right. Well, upon Mr. Bennett there, what did you say to him with reference to the purpose of the visit?

A. I told Mr. Bennett that we had come up to exercise the option that I had taken from him.

Q. Now, relate briefly what conversation took place there on this occasion with reference to exercising the option and closing up the deal?

A. I told him Mr. Akers was along to take the inventory on the theaters, and that Mr. Griffing was to handle the legal end of it, the closing of the deal itself. Mr. Bennett asked when he wanted, when Mr. Akers wanted to make the inventory. I believe that Brownie, Brownie Akers told him that he could take part of it that evening. Mr. Bennett had make the remark that he didn't have a prepared inventory.

Q. Is that about the substance of the evening conversation you had there?

A. Yes, sir.

Q. After that conversation what was done, if anything, by Mr. Bennett and Mr. Akers with reference to the inventory?

2440 Q. Mr. Akers and Mr. Bennett started to taking the inventory. I believe they started in the Midwest

first. And then they went to the other theater, which was about two or three doors from there.

Q. Did you and Mr. Griffing go with Mr. Bennett and Mr. Akers in taking the inventory?

A. No, sir.

Q. Where, if any place, did you and Mr. Griffing go?

A. We went into the Midwest Theater and sat down and watched the show.

Q. At any time that evening were you and Mr. Griffing with Mr. Bennett and Mr. Akers in the taking of the inventory?

A. No, sir.

Q. Do you know whether or not the inventory was completed that evening?

A. No, it was not completed.

Q. Now, on the next morning, I will ask you whether you saw Mr. Bennett again, the following morning?

A. No, sir.

Q. Do you know whether or not Mr. Akers continued the taking of the inventory the following morning?

A. I only——

Q. Do you know personally?

A. No, I don't know personally.

Q. All right. On the following morning, after you
2441 had this evening conversation, where, if any place, did you and Mr. Griffing go?

A. I didn't understand the question.

Q. On the next morning after this evening conversation, which you have been telling us about, where did Mr. Griffing go?

A. To Sapulpa, the County seat.

Q. Did anyone accompany him, to your knowledge?

A. Mr. Griffing and myself.

Q. You two went down to the County seat, is that correct?

A. Yes, sir.

Q. For what purpose?

A. Mr. Griffing wanted to check the various records that would have to do with the purchase of the theater, the tax records and other records.

Q. Did he do that, to your knowledge, while there?

A. Yes, sir.

Q. After he finished, where did you and Mr. Griffing go, if anywhere?

A. We drove back to Drumright.

Q. On getting back to Drumright, I will ask you whether or not you saw Mr. Bennett and Mr. Akers anywhere?

A. Yes, sir, I saw both of them.

Q. At that time, I believe—I will ask you if the taking of the inventory had been finished?

2442 A. It had.

Q. Then, what did you gentlemen do that afternoon?

A. Mr. Bennett wanted to close the deal that afternoon, and he didn't want to close it in Drumright. He wanted to close it in Cushing, and he called the bank in Cushing. He asked if it was all right to close it over there, and Mr. Griffing said it was, and he called the bank and made arrangements to meet at the bank. It was after banking hours when we drove to Cushing.

Q. All right. Now, after this arrangement was made by Mr. Bennett with the bank at Cushing for meeting over there to close the deal, what did you and Mr. Griffing and Mr. Akers do?

A. Do you mean before we went to Cushing?

Q. Yes.

A. We drove to Cushing from Drumright.

Q. Did you three parties go with Mr. Bennett or did he go alone?

A. Mr. Bennett drove his own car.

Q. Did you attend the meeting over at the bank where this deal was closed?

A. No, sir.

Q. You were not present at the Cushing Bank when the deal was closed?

A. I was in the Cushing Bank, but not with them.

2443 They were at the back of the bank. I didn't sit in on the deal at all.

Q. Now, after the deal was closed, I will ask you whether or not Mr. Bennett made any request or suggestions about some accommodations to the members of his family?

A. Yes, sir, out on the sidewalk he asked Mr. Akers if he could get admissions to the theaters in Drumright.

Q. Well, what was Mr. Bennett's attitude as to being friendly or otherwise during the closing season of this transaction?

A. It was friendly.

Q. Now, from the time that you and Mr. Griffing got over there on the evening you are referring to, and up until the time that the deal was closed, and during the closing of the deal, do you know of Mr. Henry Griffing having any personal private conversation with Mr. Bennett about anything?

A. I do not.

Q. Did you on the evening, during the evening's discussion, or the following day, on up to the closing, and includ-

ing the closing of the deal at the bank, hear Mr. Henry Griffing at any time make any statement to Mr. Bennett that the Griffiths were contemplating building a theater in Drumright?

A. No, sir.

2444 Q. How long had you known Mr. Griffing prior to his going over there on this occasion?

A. I had not known him at all.

Q. Do you know who the regular attorneys for the Griffith Amusement Company and Consolidated Theaters, Inc. were at that time?

A. Yes, sir.

Q. Who, what firm?

A. Keaton, Wells, Johnston, & Barnes.

Q. Do you know what connection, if any, Mr. Henry Griffing had with that firm?

A. I believe he was an employee.

Q. Do you know whether or not at that time Mr. Henry Griffing regularly handled the business for these two concerns, or was it handled by other members of the Keaton firm?

A. I don't know.

Mr. KIMB. If the Court please, I don't believe this witness would be competent to know what went on on the inside of the firm.

The COURT. He said he didn't know.

Mr. DUDLEY. He said he didn't know.

Mr. KIMB. All right.

By Mr. DUDLEY:

Q. Mr. Slocum, Mr. Bennett testified in this case as follows, beginning on page 1309 of the record, and

2445 I will read the questions and answers:

"Q. Shortly after the theater burned, were you approached by any representatives of any of the Griffith corporations?

"A. Yes, I was.

"Q. When?

"A. About six weeks after the theater burned.

"Q. Who approached you?

"A. Well, a fellow named Slocum, as I recall.

"Q. Commonly known as 'Red'?

"A. Yes.

"Q. Who was he?

"A. He worked for Griffiths. I don't know who he was or what he did.

"Q. Who was with him, if anyone?

"A. There was a fellow named Claude Motley with him.

"Q. Who was Claude Motley?

"A. He was the Griffith manager in Cushing.

"Q. Where is Cushing in relation to Drumright?

"A. Ten miles west.

"Q. Had you known him for some time?

"A. Yes, I had known him for several years.

"Q. Had you known Slocum for some time?

"A. Slocum used to be a film salesman. I had met him in that way.

2446 "Q. What was the date of their visit to you?

"A. Well, they said they wanted to buy the theaters.

"Q. Is that all they said?

"A. Well, they asked me if I wanted to sell the theaters.

"Q. What did you tell them?

"A. I told them 'No'.

"Q. Did they say anything further?

"A. Well, they wanted to know why I wouldn't sell. I told them we were going along all right and making a little money and satisfied with things as they were, and didn't want to sell.

"Q. Did they offer any comment to that?

"A. Yes. Slocum said, 'You might be making a little money today and getting along all right, but you won't be six months from now if we come in here.'

"Q. Did he say whether they would come in or not?

"A. He said, yes, they were coming in; they were going to build a deluxe theater in the town; that the town warranted a deluxe house, he said.

"Q. How large was that town then?

"A. About 4500 people.

"Q. That was in 1936?

"A. Yes, sir.

"Q. Was there anything else of any importance in that conversation on that occasion?

2447 "A. No. As I recall, he went away then. I don't believe we had much more to say."

I have read you the questions and answers, and I will ask you if you on that visit and in that conversation with Mr. Bennett, did you say to Mr. Bennett, "You might be making a little money today and getting along all right, but you won't be six months from now, if we come in"?

A. I did not.

2448 Q. Did you tell him that Griffith was contemplating coming in there?

A. No, sir.

Q. Did you tell him that your company was going to build a de luxe house in Drumright?

A. No, sir.

Q. Mr. Bennett also testified as follows, at page 1311 of the record:

"Q. Did he return shortly?

"A. Yes, he came back a day or two later.

"Q. Who was with him on that, if anyone?

"A. Oh, I don't remember who was with him on that trip but he came back and made his proposition to buy again.

"Q. Did he make a visit to you in company with C. B. Akers, commonly known as 'Brownie'?

"A. Well, I believe that was later.

"Q. That was later?

"A. Yes.

"Q. Did Slocum come back alone on one occasion?

"A. I believe he came back alone.

"Q. About when was that?

"A. It seems to me there were always three or four fellows with him but they usually hung around outside.

"Q. What do you mean by 'outside'?

2449 "A. Outside of the theater.

"Q. Not where they could hear the conversation?

"A. No, and this second time when he came I gave him a thirty day option on the theater."

Now on your visit to Drumright did anyone accompany you?

A. No, sir.

Q. I am speaking about the second visit.

A. Yes, I understand.

Q. No one accompanied you on that visit?

A. They did not.

Q. Did you have any friends or employees who accompanied you and hung around outside the theater while you were transacting business with Bennett?

A. No, sir.

Q. And his statement in that regard is not correct as applied to you, as far as this transaction is concerned?

A. No, it isn't.

Q. Now in traveling around over the territory in the performance of your duties for your superiors, were you usually accompanied by someone or not?

A. I was not.

Q. Now on this second visit, to Mr. Bennett's place, I will ask you whether or not there were any threats or statements made to Mr. Bennett to get him to make a deal.

2450 Mr. KIMB. To which we object. That calls for a conclusion. Let him state what was said by him and the Court will determine whether or not it is a threat.

By the COURT:

Q. Well, was anything said other than what you have related?

A. No, sir, there wasn't.

Q. Was anything said about his ability to buy pictures?

A. No, sir, that was not discussed at all.

Q. Was anything said about building another theater?

A. No, sir.

Q. Did you set a price or did he make a price himself?

A. Mr. Bennett set his price.

Q. And you prepared the option?

A. That is right, sir.

By Mr. DUDLEY:

Q. Mr. Bennett also testified at the beginning of page 1313 of the record (reading):

By Mr. KIMB:

Q. Did Slocum come back in company with any other representative immediately prior to the time you received the registered letter.

"A. About the same time he came back and he had Mr. Griffing with him.

"Q. Henry Griffing sitting here?

"A. Yes, sir.

"Q. What happened at that time? What was the object of their visit?

2451 "A. Well, the object was to see if we were going through with this option. That is what they wanted to know.

"Q. What did they learn?

"A. I told them no; we were not.

"Q. Did you assign any reason?

"A. I said Mrs. Tessin objected and would not sell.

"Q. What was the comment, if any, of either Mr. Griffing or Mr. Slocum?

"A. I think my conversation that time was entirely with Mr. Griffing.

"Q. What did Mr. Griffing say?

"A. Griffing said, 'Well, whether you sell to us or not, we are coming into Drumright and when we come in you will know what will happen to you.'"

Now I have finished reading from his testimony. Did you hear Mr. Griffing make any statement as outlined by Mr. Bennett?

A. No, sir, I did not.

Q. On every occasion when Henry Griffing was with Mr. Bennett, I will ask you whether or not you were present.

A. I was with him all the time.

Q. Did you on any occasion during that visit hear Mr. Griffing say to Bennett, "Well, whether you sell to us or not we are coming into Drumright and when we come in you will know what will happen to you"?

A. No, sir.

2452 Q. Did he make any similar statement to Bennett in your presence at any time?

A. No, sir.

Q. Was there any discussion between Bennett and Griffing with reference to your transaction at all, so far as you know?

A. No, sir.

Q. Now in this conversation did Mr. Bennett say to you that Mrs. Tessen objected to the sale and would not go through with it?

A. No, sir.

Q. Now at the time Mr. Henry Griffing was over there for the purpose of closing this deal, I understand an option agreement had been entered into and notice given of the exercise of the option, and he went over merely to close the deal. Is that right?

A. Yes, sir.

Q. Now, had the price been fixed in this option?

A. Had the price been fixed?

Q. Yes.

A. Yes, sir.

Q. Mr. Slocum, Mr. Bennett also testified in this case at page 1324 of the record (reading):

"Q. Well, give us all you can recall of this con-

2453 versation and the substance of the balance.

"A. The substance of it was that they wanted to buy the theater and I said no, I didn't want to sell.

"Q. Was there anything else?

"A. Well, he made some talk about they were going to build a de luxe house.

"Q. What was said about that?

"A. Well, I think he said he thought the town merited a better theater than it had, and they were going to build a de luxe house there.

"Q. What else?

"A. I don't know that he said anything more; he probably said a lot more.

"Q. That's all you can recall?

"A. Oh, I can recall very well what he said when I told him I wouldn't sell.

"Q. All right, tell us.

"A. All right. He said, 'Why don't you sell?' I said, 'Because we have a little business here that is making us a living and making a little money, and we don't care to sell; we are satisfied as we are.' He said, 'You may have a business that is making you a little money now, but it might not be doing so well six months from now when we get in here.'

2454 "Q. What else was said?

"A. That is about all."

I have read you from his testimony. Did that conversation take place as related by Mr. Bennett?

A. No, sir.

Q. Did you tell him that Griffith intended to build a de luxe house in Drumright?

A. I did not.

Q. Did you tell him that "You might have a business that is making a little money now but it might not be six months from now when we go in there?"

A. No, sir.

The COURT. That is repetition.

Mr. DUDLEY. Yes, sir, it is. I will withdraw the last question.

By Mr. DUDLEY:

Q. Do you know Nona Kyser, of Ada, Oklahoma?

A. Yes, sir.

Q. About when did you first become acquainted with her?

A. I don't know. It was in 1936 sometime.

Q. When you became acquainted with her what was she doing; what was her business?

A. She was operating two theaters in Ada, Oklahoma.

Q. What were the names of those theaters?

A. I don't know. I believe they call one of them

2455 the "Ada."

Q. The Ada and the Strand?

A. I don't know the name of the other.

Q. In line with your duties, did you call on her about a theater down there?

A. Yes, sir.

Q. For the purpose of buying them?

A. Yes, sir.

Q. When did you make your first trip?

A. Sometime in 1936; maybe August; maybe September.

Q. What conversation did you have with her at that time?

A. I asked her if she would be interested in selling her theaters. That was my job, to buy theaters for Griffith Consolidated Theaters, and if she would give me a proposition I would be glad to submit it with my recommendations.

Q. What did she say?

A. She said she was not interested in selling them.

Q. Was there any discussion as to price?

A. No, sir.

Q. Did you see her on another occasion shortly after that?

A. Yes, sir.

Q. If so, state about when and where.

A. In Ada, in her theater, possibly three or four weeks later.

2456 Q. Did you have a conversation with her about buying the theater?

A. Yes, sir.

Q. State what that was on that occasion.

A. She said she was not interested in selling it.

Q. What information did you have, if any, which led you to believe these theaters might be for sale at the time you first went down there?

A. Some months before her brother, Ernest Kyser, who operated these theaters, had operated a theater, I believe in Alva, before he died, and I thought that might have something to do with her selling the theaters.

Q. Then you called on her?

A. Yes, sir.

Q. You made this second visit, and then did you call again after that?

A. I don't believe so. I might have made three trips but I don't think so.

Q. At any rate you made no deal with her?

A. No, sir, no deal.

Q. Miss Kyser testified in this case as follows at page 1579 of the record, which I will read to you.

"A. Mr. Slocum told me who he was and he said he was from the expansion department of the Griffith Amusement Company in Oklahoma City.

2457 "Q. What was the substance of the conversation as near as you can recall?

"A. Well, of course, he stated his business; that he would like to buy—he wanted to know if we were interested in selling.

"Q. What was said about buying or selling?

"A. Well, we didn't talk too much. I think he asked me several times—there was no price made as to what the theaters were worth. I think that he quoted two or three prices, if I thought the theaters were worth $12,00 or $15,000 or some price like that. I don't just recall it word for word, and I told him we had been offered $30,000, and he said 'Well, they are not worth it', and he said that the Griffiths didn't want competition in Ada.

"Q. Was anything else said as to why he wanted to buy?

"A. No, not that I can recall.

"Q. Nothing more you can recall?

"A. Well, in five or six weeks he came back. I told him when he was there the first time that if he decided to sell I would call him or come into Oklahima City to see them. I didn't call them or didn't come in and he came back in about five or six weeks and the conversation——

"Q. Was this at your theater again?

"A. Yes, sir, this was at my theater.

"Q. Which one?

2458 "A. The Ada Theater.

"Q. What was said on the second occasion?

"A. Well, the conversation was very similar to the first. He said they didn't want competition in Ada, and I told him he would have to see my sister-in-law, Mrs. Kyser, and he called at Mrs. Kyser's house and Mrs. Kyser can come in and submit her testimony when you need her.

"Q. Your sistr-in-law told you he had also talked to her?

"A. Yes, sir, and she is ready to come in when you need her on this.

"Q. Since that time have there been any other conversations between you and any of the Griffith representatives about a sale or pooling of your theaters?

"A. No, sir, not that I know of. I have had an awful lot of buyers. I don't know who they were or where they were from, but to the best of my knowledge I have not been contacted by any of the Griffith representatives since then in regard to selling."

Now I have read you her testimony. On the occasions when you called on her did you tell her on either or any of those occasions that the Griffiths didn't want competition in Ada?

A. No, sir.

Q. Did you ever discuss with her the price of her
2459 theaters?

A. I did not.

By the COURT:

Q. Did the Griffiths have theaters there at that time?

A. Yes, sir.

Q. How many?

A. Three, I believe

Mr. DUDLEY. There may be some other questions we will want to ask later, but for the time being you may cross examine.

Cross-examination by Mr. KIMB:

Q. You stated at page 2201 and 2202 of the record you had not been interested in the theater business prior to becoming a Columbia salesman and on page 2217 you said you had operated a theater in Mangum. Now, have you had other theater connections?

A. No, sir.

Q. Didn't you sell for Liberty Specialty?

A. Sold moving pictures, yes, sir.

Q. Did you sell for anyone besides Liberty Specialty and Columbia and Warner?

A. Yes, sir.

Q. Who?

A. Vitagraph and R. D. Lewis.

2460 Q. Any one else?

A. That is all I remember.

Q. Which was the first one?

A. R. D. Lewis Film Company.

Q. When was that?

A. 1920 or '21.

Q. Which was the next one?

A. I believe Vitagraph Film Company was the next one.

Q. When was that?

A. Sometime in the 20's, after I left R. D. Lewis.

Q. Did you do anything between the time you left R. D. Lewis and the time you went with Vitagraph?

A. I believe not.

Q. What was the next one?

A. I believe it was a film company I worked for for a short time by the name of "Progress."

Q. Progress?

A. I believe that was the name of it.

Q. When was that?

A. That was after I left Vitagraph.

Q. Can you fix it any more definitely?

A. No, sir.

Q. How long were you with this Progress Company?
A. I believe less than a year.
Q. Then where did you go?
2461 A. Liberty Specialty, which later became Columbia.
Q. So that was merged or acquired by Columbia and you then continued on with Columbia?
A. That is right.
Q. Do you remember when you went with Liberty Specialty?
A. Not the exact date.
Q. Well, about.
A. It would be about 1925 or '26.
Q. And do you know when you went to work for Columbia?
A. Isn't that what you just asked, Liberty Specialty?
Q. You worked for Liberty Specialty?
A. I don't know the year Columbia bought Liberty Specialty. Between the two of them I was with them approximately seven and a half years.
Q. When did you go with Warner Brothers?
A. 1932.
Q. When did you operate this theater in Mangum?
A. I believe it was in 1920.
Q. What theater was it?
A. The Woodrow Theater.
Q. And when did your father operate a theater in Mangum?
A. Before the first world war up until that time.
Q. Up until 1920?
A. Yes, sir.
Q. Is that the same theater, the Woodrow?
2462 A. And others.
Q. What others?
A. New Dime Theater at Elk City, the New Dime Theater at Mangum and the Airdrome at Mangum.
Q. When did you first go to Mangum?
A. I only went to Mangum before 1920 as a boy on trips. I was going to school in Kansas.
Q. Your parents moved there and you only went home to visit them. Is that right?
A. My father moved to Mangum and I would go down and visit him.
Q. In 1920, now, you went in there and operated the Woodrow Theater?
A. I still stayed on the road and helped my brother run the theater in Mangum in '20 or '21.

Q. You were representative for what company then?
A. R. D. Lewis.
Q. I believe you testified that Mangum was a good theater town in 1936 and could make a little money over a period of time. Is that right?
A. I thought it was a good theater town over a period of years and would make a little money, yes, sir.
Q. What county is Mangum in?
A. Greer.
Q. What part of the state?
2463 A. Southwest.
Q. That is out in the dust bowl country, isn't it?
A. No, sir.
Q. It is very dry out there, isn't it?
A. When it doesn't rain, yes, sir.
Q. It doesn't rain out there very often, does it?
A. I don't know. I don't have those records.
Q. What was the population of Mangum about that time?
A. Close to 5000; maybe a little under.
Q. Are there any oil wells around there?
A. I believe not.
Q. Not very close to there, is there?
A. I don't believe there are.
Q. That is in about the center of Greer County, isn't it?
A. I can't place it on the map that way. I can place the surrounding towns.
Q. I thought you were extremely familiar with this community?
A. I am sir.
Q. How far was that from Granite?
A. Thirteen miles.
2464 Q. How large was Granite about that time, in '36?
A. Oh, about 1,000 people, maybe a little more.
Q. Was a picture show there?
A. Yes, sir, the Cozy.
Q. One or more?
A. One.
Q. How far was that from Altus?
A. How far is Granite, or Mangum?
Q. Mangum.
A. About 30 miles.
Q. Consolidated owned some pictures shows there in Altus at that time, didn't they?
A. Yes, sir.
Q. How many?

A. Either two or three.

Q. You are not sure about that?

A. No sir. I think there have been some changes there since I have been in Altus.

Q. Just about that time, from June to August of '36, Consolidated acquired some theaters in Sayre, didn't they?

A. I don't know what date they acquired Mr. McAmis' theater.

Q. (Interrupting.) You didn't have anything to do with that?

A. No, sir.

2465 Q. That was one expansion you were not in on, is that right?

A. That was one of several, I imagine.

Q. How far is Sayre from Mangum?

A. I guess about 42 miles, maybe 36.

Q. Did Consolidated or Griffith own any theaters in Sayre then?

A. No, sir.

Q. 1935 was a very dry year in that part of the country around Mangum, wasn't it?

A. I don't know, sir.

Q. Didn't you make this territory as a film salesman?

A. Yes, sir.

Q. What do you know about the dry conditions in '36?

A. I don't know the weather conditions; I don't remember them in '35, '36, or '34 in that part of the country. I do remember them in the Panhandle.

Q. But you don't remember them in that part of the country, in Mangum, where your father lived and where you sold pictures regularly?

A. No, sir.

Q. You sold to Mr. Duffy, did you?

A. Yes, sir.

Q. Did you sell him in '35 and '36?

A. I sold him every year I called on him.

2466 Q. Including those two years?

A. Not in '36. I left Warners on April 12th, or 19th. I don't imagine I sold him that year, no.

Q. You sold him for that moving picture season, did you?

A. I sold him the year before I left, and if they were selling him pictures and I called on him, I imagine I sold him.

Q. You were proud of this job of yours as field man in the expansion department of this corporation, were you not?

Mr. Dudley. We object to that, your Honor please, in that form, as improper.

Mr. KIMB. Were you proud of your job?

Mr. DUDLEY. We still object.

The COURT. Sustained. I don't think it is material whether or not he was proud of his job; and it is rather argumentative.

By Mr. KIMB:

Q. Did you tell others that you were proud to be with this organization, or this great organization?

A. I have been proud of every job I have had.

Mr. DUDLEY. Just a minute; the same objection.

The COURT. Objection sustained. I don't think it is material.

2467 By Mr. KIMB:

Q. Now, do I understand that you were in charge of acquiring real estate and leases?

A. No, sir.

Q. How?

A. No, sir.

Q. Was it a part of your job to observe critically the conditions in the independent theater operation in the territory which you had?

A. Would you read that question again.

(Question read by the reporter.)

A. Not necessarily, no.

Q. What did you do?

A. I called on exhibitors, and asked them if they cared to sell their theater, if they wished to sell it, and if they did I would like for them to submit a proposition to Griffith Consolidated Theaters through me; that I thought we could pay as much for the theater as anybody; and I handled and submitted propositions on leases and real estate; then I went on any assignment that the company gave me.

Q. What was your territory?

A. Oklahoma.

Q. The whole State of Oklahoma?

A. Yes, sir.

Q. You knew whether a town was booming or not, didn't you?

2468 A. I think so.

Q. You knew whether a theater was making money or not, didn't you?

A. No, sir.

Q. Did you make any recommendations to your corporation without knowing whether it was making money or not?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. You say you went on the payroll of Consolidated in the spring of '36. Do you know how many theaters the Griffith Associated Theaters had in their circuit or circuits at that time?

A. No, sir.

Q. Still you traveled over Oklahoma, all over the state, trying to buying theaters?

A. Yes, sir.

Q. Well, you imagine that in '36, when you started with them in the spring, that they had about 112 theaters in 53 towns, is that right?

Mr. DUDLEY, We object to that as irrelevant, incompetent, and improper cross examination. He says he doesn't know.

Mr. RICE. For the further reason, your Honor, that he doesn't distinguish the ownerships involved.

2469 The COURT. I don't see how it would be material. He said he didn't know, though.

By Mr. Kime:

Q. Did you buy, or attempt to buy, theaters for all four of these defendant corporations, or only a portion of them?

A. Griffith Consolidated Theaters, Inc.

Q. You only bought for Griffith Consolidated Theaters, Inc.?

A. Yes, sir.

Q. Now, you went on the payroll in the spring of '36, as near as you can fix it, and you stayed on the payroll until the last day of January, January 29th, '39, is that right?

A. '39?

Q. Or '37?

A. Either the last week of 1937 or the first part of 1938.

Q. How many theaters did you have any part in acquiring?

A. Three or four, I guess.

Q. Three or four?

A. Yes, sir.

Q. What were they?

A. It was Drumright, Mangum, Kingfisher, Oklahoma.

Q. Is that all?

A. To the best of my recollection, it is.

Q. Did you have anything to do with the acquisi-

2470 tion of the Ritz in Altus in '37?

A. No, sir.

Q. Do you know how many of these three that you have named were closed while you were with the company, if any?

A. What do you mean, the theaters were closed?

Q. No, the deals were closed.

A. The Mangum deal didn't go through that we had with Mr. Duffy, and I put in a theater there. The deal at Drumright, that was closed while I was with them. The Kingfisher. Oklahoma deal was closed while I was with them.

Q. Do you know when the Kingfisher deal was closed?

A. I don't remember the dates.

Q. If it appears that the deal was closed on April 29th, '37, it wasn't closed while you were with them, was it?

A. Why, yes, I was with them.

Q. Didn't you leave their employ on the 29th of January that year?

A. I either left directly after December of '37, or the early part of January, 1938.

Q. Did you know anything about this Altus deal?

A. No, sir.

Q. Did they have other men in this expansion department doing the same kind of work you were doing?

A. Not to my knowledge.

Q. You had no part in any of the other acquisi-
2471 tions that were made during that time, only these that you have related?

A. I believe that's correct.

Q. Did you work on a percentage basis?

A. No, sir.

Q. Was your salary increased after you acquired these theaters from Mr. Bennett in Drumright?

A. No, sir.

Q. Did Consolidated own any theaters in Enid at that time?

A. I don't know; I don't think they did.

Q. You made Enid and sold film there shortly before that, and Enid was a part of your territory, is that right?

A. I didn't make Enid shortly before that and sell pictures there.

Q. How?

A. I didn't make Enid.

Q. You didn't make Enid?

A. No, sir, not shortly before that. I was in western Oklahoma.

Q. You only sold pictures in western Oklahoma?

A. At that time, yes, sir.

Q. That was for Warner?

A. Yes, sir.

Q. What was your territory for Columbia?

2472 A. It varied. It had been on the east side a very short time, but nearly all the time in western Oklahoma.

Q. Do you know whether or not Griffith Consolidated owned any theaters in Enid at that time?

A. I believe it was Griffith Amusement Company.

Q. Griffith Amusement Company?

A. I believe it was, yes, sir.

Q. How many did they own, if you know?

A. The Aztec, the Criterion—do you mean now?

Q. No, at that time, when you were there?

A. The Aztec, Criterion, Mecca, and Arcadia, I believe were the theaters that they owned.

Q. Did I understand you to say that your employer sent you to Enid to call on Walt Billings, the owner of the real estate on which the Criterion was built, and the owner of the real estate on which the Mecca was erected?

A. Yes, sir.

Q. You were only on the payroll of Consolidated and not of Griffith Amusement Company?

A. Yes, sir.

Q. Did I understand you to say correctly that you didn't see, you only saw John Gray once from the spring of '36 until the time you left the employ of this corporation in '38?

A. Probably, I probably saw John Gray more
2473 times than once while I was in Enid.

Q. About how many times did you talk to him about buying theaters?

A. I never did talk to him about buying his theater.

Q. How many times did you talk to him about asking him to give you a proposition?

A. I never did ask him that.

Q. Did you ever proposition him?

A. No, sir.

Q. Did you ever have a cup of coffee with him?

A. Yes, sir.

Q. Where?

A. Across the street from his theater, maybe other places.

Q. What did you talk to him about on that occasion?

A. General conversation.

Q. But buying theaters was not a part of the conversation?

A. No, sir.

Q. Now, you left the employ of this corporation, the defendant here, on January 29th, 1938——

Mr. COCHRAN (interrupting). We object to that question, if your Honor please. He has asked that question and substantially that question three different times, and the

witness has advised him that he left either the last
2474 week of 1937 or the first of 1938.

Mr. KIME. Well now, if the Court please, that is just a part of——

The COURT (interrupting). Can you fix the date? If you can fix the date, if that refreshes your memory, you can answer the question.

Mr. KIME. That's just a part of the question.

Mr. COCHRAN. My objection was reaching the type of statement to the question, as misleading, when the witness has refused to answer as counsel has attempted to place the matter to him.

By the COURT:

Q. Do you know, can you state now the exact time that you severed your connection with the Consolidated?

A. Your Honor, I cannot.

The COURT. You may answer the question with that in view.

Mr. KIME. Mr. Akers testified that he went off the payroll on January 29th, 1938. There is no dispute about that.

Q. What did you do from the time you went off the payroll, whenever it might have been, to the time you started operating a theater in El Reno?

A. What did I do? What individually did I do?

Q. Yes; were you employed?

2475 A. I was not employed by anybody.

Q. When did you start this theater operation at El Reno?

A. The actual construction of the building was started on March 16th, and the theater was opened May 20th.

By Mr. DUDLEY:

Q. What year; state the year?

A. 1938.

By Mr. KIME:

Q. Was that a new theater?

A. It was a remodeled storeroom.

Q. It was a remodeled storeroom. Who owned that real estate?

A. The Wewerke Estate.

Q. The Wewerke Estate?

A. Yes, sir.

Q. Did Harry Lowenstein have any interest in that estate?

A. No, sir.

Q. Had you ever tried to buy any of these theaters in El Reno for your former employer?

A. I don't believe I had.

Q. You traveled into that town while you were in their employ, did you?

A. I made El Reno for possibly 15 years; I made it while I was with Griffith; I stopped through there and visited with Mr. Enloe and Mr. Loomis.

Q. How large a place was El Reno at that time, about?

A. Slightly over 10,000, the 1940 census.

2476 Q. How many theaters were there?

A. Were there?

Q. Yes, at that time?

A. There were three.

Q. Who owned those?

A. Mr. Enloe and Mr. Loomis.

Q. Were they later acquired by your former employer?

A. Yes, sir.

Q. But you hadn't had anything to do with the promotion of that acquisition?

A. No, sir.

Q. Mr. Loomis and Mr. Enloe, had you ever heard them make any loud talk about what bad influences circuits were?

A. No, sir.

Q. You said you never called on them; did you ever see them anywhere else other than El Reno and ask them if they wanted to sell, and were told by them that they wouldn't sell to a circuit?

A. I did not.

Q. Did Harry Lowenstein ever buy the realty on which this theater of yours was erected?

A. Yes, sir.

Q. When, if you know?

A. I couldn't place the exact date.

Q. You owned the furniture and fixtures, did you?

2477 A. Yes, sir.

Q. And projection equipment?

A. That's right.

Q. And everything except the building?

A. Yes, sir.

Q. What product did you have then?

A. Universal, United Artists, and Republic, first run; some additional pictures, odds and ins, from other companies, maybe one or two; some pictures available that I didn't buy, that were not shown in the town.

Q. Was any major product available that you didn't buy, if you know?

A. I believe not.

Q. Do you know what Loomis and Enloe had?

A. Not exactly.

Q. And then, shortly after that, you sold Consolidated an 80 per cent interest in the lease you had on the El Caro and the equipment?

A. In 1939.

Q. And in that contract, it provided that you had a right to buy or pay for 20 per cent interest in the personal property of the Criterion, the Royal, the Empress, and a 20 per cent interest in the lease on the Royal and Empress out of profits to be made from the joint operation of these theaters, is that right.

2478 A. The transaction was that I sold Griffith Consolidated Theaters, Inc. a 20 per cent interest in my theater, and purchased 20 per cent of their theaters at that time, in July, 1939.

Q. And you were to receive a portion of the profits until your indebtedness to the Consolidated was paid?

A. Yes, sir.

Q. During the time you operated that theater in El Reno, and the theater in Mangum, were you ever sued for delinquent film rentals?

A. No, sir.

Q. On this Bennett deal at Drumright, can you fix the time you went down there to close this deal after the option, after you had decided to exercise the option?

A. It was in the evening.

Q. No, the date.

A. No, I don't remember the date.

Mr. COCHRAN. Judge Kime, before passing from that El Reno, I think there is a correction there. I believe the witness made a mistake in regard to the interest which he sold in his theater. I think the record reads 20 per cent.

Mr. KIME. He sold 80.

Mr. COCHRAN. I believe he sold 80, is that correct?

2479 A. That's correct.

Mr. COCHRAN. And retained 20 per cent?

A. That's correct.

By the COURT:

Q. And you bought a 20 per cent interest in the other theaters?

A. Yes, sir.

Q. Did you manage all the theaters?

A. Yes, sir.

By Mr. KIME:

Q. What happened to this building which you rented for Consolidated for $75 a month for ten years in Mangum, if you know?

A. They put——

Mr. DUDLEY (interrupting.) I didn't get that question. Read it, please.

(Question read by the reporter.)

A. Griffith Consolidated Theaters, Inc. put in a theater, the Greer, in this building.

By Mr. KIMB:

Q. Now then, when Mr. Duffy and you and several others were up in the Griffiths' office over the cafe, on January 5th, 1937, when he signed an option, was an electrical recording device used there at that time?

A. I don't remember being at such a meeting myself.

Q. You don't remember that?

A. No, sir; I don't remember being at a meeting with Mr. Duffy when the option was signed.

2480 Q. I thought you testified that you were.

A. I did not.

Q. I may be mistaken.

A. No, sir.

Q. You were not there then?

A. Not to my recollection, no, sir.

Q. When you had been a salesman for any of these various companies that you have outlined, had you called on Mr. Moulder at Sapulpa?

A. Yes, sir; on some occasions.

Q. Did you ever see Pat Duffy in front of the Rialto Theater and tell him that if he didn't sell, the Griffith organization, or some of them, would put in a theater there?

A. No, sir.

Q. There is nothing written in this option with Mr. Duffy about it being contingent on the rental of the Temple, was there?

A. I didn't see the option. I told the company when I submitted the proposition verbally to them what it was, but I have never seen the option. I had nothing to do with it. It was drawn when I wasn't present.

Q. But you told the company that that was part of the understanding that you had with Mr. Duffy, did you?

A. Yes, sir; I told them the rent that Mr. Duffy paid, and that he was going to get us a rent equivalent to that.

2481 Mr. KIMB. That's all.

Re-direct examination by Mr. COCHRAN:

Q. Since your original transaction with Consolidated Theaters, Inc. in acquiring an interest in their theaters in El Reno, and in selling 80 per cent of your interest in

the theater which you operated there, have you and your family increased the interests which you have in those theaters?

A. Yes, sir.

Q. What interest do you and your family now own in those theaters?

A. 30 per cent.

Q. 30 per cent?

A. Yes, sir.

Q. And the remaining 70 per cent is owned by Consolidated Theaters, Inc.?

A. That's right.

Mr. COCHRAN. That's all.

Re-cross-examination by Mr. KIMB:

Q. This option that you drew up that Mr. Bennett signed, did you have a blank form that you just filled in, or did you write a complete agreement?

A. I wrote an agreement. I had never written one,
2482 but I wrote one out the best I could.

Mr. KIMB. That's all.

(Witness excused.)

The COURT. You may recess Court at this time until 1:45 o'clock p. m.

(Whereupon, Court was recessed until the hour of 1:45 o'clock p. m. of this same date.)

2483 PROCEEDINGS

1:45 o'clock p. m.

WILLIAM J. KUPPER. was thereupon called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name.

A. William J. Kupper.

Q. Where do you live?

A. 36 Sutton Place, Long Island, Nassau County, New York.

Q. Are you at the present time connected with Twentieth Century Fox Film Corporation?

A. I am.

Q. In what capacity?

A. Sales manager.

Q. Will you please tell us when you first became acquainted with that corporation or its predecessor?

A. It was in the Fox Film Corporation. I believe the date was October 9, 1919.

Q. In what capacity?

A. As a clerk in the home office; contract department.

Q. Can you then detail subsequent positions which you have held for that corporation down to the present time?

A. I think I can refer to my notes and tell you.

2484 On January 12, 1920, I reported to the Dallas office, what was then the Box Office Attraction Company, agents for Fox Film Corporation, as assistant manager. On October 8, 1921 I became branch manager at Washington, D. C. In January, I haven't got the date, 1922, branch manager of Albany, New York, and January 10, that same year, branch manager at Charlotte. On January 7, 1923, branch manager at Pittsburgh, Pennsylvania. On January 19, 1924, I reported to New York as assistant to the General Sales Manager. On May 31, 1924, I went to Chicago as Branch Manager. November 29, 1924, I went to Pittsburgh as branch manager. On December 29, 1928, I reported to New York as home office special representative. On January 26, 1929, I became assistant to the general sales manager. On November 7, 1931, I became western division manager. On May 28, 1942, I became assistant to the vice-president in charge of distribution. On August 2, 1943, I became general sales manager.

2485 Q. Were you, for the period from November 7th, 1931 until May 28th, 1942, western division manager?

A. From November 7th, 1931 to May 28th, 1942, yes, sir, I was western division manager.

Q. And as such western division manager during that period, were you familiar with, did you become familiar with the distribution of Fox pictures throughout the territory that is involved in this lawsuit?

A. Yes, sir.

Q. I notice in detailing your connection with the Fox Corporation that you have stated you were branch manager at Washington, D. C., Albany, and several other places. In that connection, I wish you would state whether during the entire time you were connected with Fox Distributing Corporation, and later with Twentieth Century Fox Distributing Corporation, that distributing company was what is known as a National Distributor of Motion Pictures as distinguished from what is referred to here by some of the witnesses as States Rights Companies?

A. We were a national institution, a national distributing organization; as a matter of fact, we were a world-wide organization.

Q. Are you still a world-wide organization?

A. Yes, sir; I think in most of the countries now excepting Russia.

2486 Q. During the war I suppose your activities were greatly curtailed in foreign countries?

A. They were.

Q. During the entire time from 1919 down to the present time, did your company maintain exchanges in a number of cities of the United States?

A. They did; but they didn't always have a branch office here in Oklahoma. That came somewhere around, I believe 1920 or '21; I am not sure of the date.

Q. Prior to the time that your company maintained a branch in Oklahoma City, from what city were the Fox pictures distributed in the Oklahoma territory?

A. Well, a greater number was out of Dallas, a small part came out of Kansas City.

Q. Pictures were distributed, however, from exchanges operated by the distributing company even during that period, is that correct?

A. That is correct.

Q. As time went on and your business increased the number of exchanges were increased, and among the additional exchanges Oklahoma City came in?

A. That's correct.

Q. Sometime during that period?

A. Yes, sir.

2487 Q. The name of the distributing company with which you are connected at the present time is Twentieth Century Fox Film Distributing Company, is it?

A. Yes, sir.

Q. When was the name changed from Fox Distributing Corporation to Twentieth Century Fox?

A. I believe during the year 1935.

Q. Are the pictures of your corporation distributed, licensed and distributed differently today from the way they were distributed prior to the time of the Consent Decree?

A. Very much different.

2488 Q. Going back to the time you first became connected with Fox in 1919, were the pictures which were produced and distributed by your corporation so-called talking pictures?

A. No, they were silent.

Q. Silent pictures?

A. Silent motion pictures.

Q. At that time had your company developed the so-called star system of production and exploitation of its pictures?

A. Yes, we had.

Q. In 1920, when you became assistant manager at the Dallas office, what was the outstanding star which Fox had at that time?

A. I believe it was William Farnum, Tom Mix, William Russell and Shirley Mason; something like that.

Q. Had Will Rogers developed a box office attraction at that time?

A. No, sir.

Q. When did he come on?

A. Well, Will Rogers made a few silent pictures but not for us. He came into our company right after the transition from silent pictures to sound pictures. In other words, the second year of talking pictures.

2489 Q. But you did have stars who had been developed and whom you were using in trying to promote and expand the distribution of your pictures?

A. Yes, sir.

Q. And make them more popular. You have given us some of those stars?

A. Yes, sir.

Q. Were pictures produced and distributed by your company without any substantial change in the method during the entire period from 1920 to the advent of talking pictures?

A. They were, the same procedure all the way through.

Q. Just explain to the court the first steps that were taken by a distributor in getting these pictures ready to license and getting them on the market for exhibition during that period.

A. Well, our company would announce so many pictures and they would try to best illustrate them or publicize them by names or titles and giving the acts they could put in at the time and they would then go out and sell——

Q. Just at that point, do I understand that from the best information available, Fox would sometimes for each motion picture season announce that it would endeavor to produce and have for distribution during the coming motion picture season a certain number of pictures?

2490 A. That is correct.

Q. Say 40 or 50 pictures?

A. Generally 52.

Q. At that time had any of those pictures been produced?

A. There used to be with our company maybe half a dozen at the most, at the beginning of any one season, that were finished.

Q. I am talking about the time when you made these announcements as to what you were getting out. Were those

announcements made prior to the beginning of the season?

A. Our releasing started in August and we would generally hold a convention in July and we would announce our pictures for the coming season.

Q. At that time?

A. At that time and we might have had a few, two or three or maybe a half a dozen at the most.

Q. But for the most part the pictures had not been produced?

A. Had not been made.

Q. How about knowing at the time what would in fact be produced and released during the season? What was the fact as to that, at the time you made the announcement?

A. Well, we made our announcement and then we would go out and try to sell the exhibitors in the country our entire output for the season.

2491 Q. But, Mr. Kupper, I mean did you at the time that you made the announcement have any definite information as to what pictures you were going to actually produce, or was it simply an estimate which you made of pictures that you would produce?

A. Well, it depended. Some years we would get in and run quite a few titles, we didn't know much about the stories; as they were developed we would learn more about them. Then, in a case when we had certain star series, say maybe six or seven Tom Mix's, or six or seven William Farnum's, or six or seven Buck Jones', maybe we could give them the title of the first two, but we didn't know the titles of the others.

Q. Speaking of Buck Jones, Farnum and Mix, that series of pictures were all what is commonly referred to as Western Action Pictures, were they?

A. Yes, sir. Farnum's weren't all western, but they made quite a few that were the action type.

Q. They were all action type pictures?

A. Generally.

Q. All right, go ahead.

A. Then, we would solicit the trade and try to sell our entire out-put to the exhibitors who had theaters, and sell the product for the entire year.

Q. In attempting to license your product to exhibitors over the country, you endeavored to license your en-

2492 tire product for first-run exhibition to one exhibitor in a town, did you?

A. Yes, generally. There have been occasions here and there where a product might be split between two, but in the main it was always an individual transaction for the one

theater, or the first run account who may have had two theaters, and play them in both theaters, or either theater.

Q. Has there been an expression in the industry, "Blind selling"?

A. Yes, sir, I have heard of that.

Q. What does that refer to?

A. Well, buying the whole product when they didn't know what it was all about, and they didn't know the names of the stories, or whether or not the things that might be advertised would be delivered.

Q. Or how many would be made?

A. Or how many would be made.

Q. During that period did it frequently happen that you would announce more pictures, announce that you expected to release more pictures than were in fact released during that season?

A. Occasionally it has happened, but generally, I think, the history of the industry is that not only us but most companies probably were slightly short of what they announced.

Q. I meant to say "short". In other words, it was
2493 a fact that your company frequently announced more pictures?

A. Yes, sir.

Q. Announced that they would or expected to release a number which was not attained in the actual releasing of pictures?

A. That happened quite often.

Q. Did it also happen that when a certain picture was in fact produced and was ready for exhibition, that sometimes that picture would be a complete flop from the box office standpoint?

A. Yes, often.

Q. Was that true sometimes of pictures which advertised and carried one of the so-called outstanding stars?

A. Well, there are varying degrees of box office earnings on star pictures of the same star. They may not always be flops, but some lesser value at the box office than others.

Q. Now, after you were ready to go out and solicit the trade, how did you determine the exhibitor in a given town that you desired to offer your product to and attempt to license your entire season's product to, in case there happened to be competing theaters in that particular town?

A. Well, I think in the main you would try to gauge the man's ability to pay, and you would judge that by his operation and by the type of theater and how he conducted his theater in its operation, was one big factor; and
2494 whether or not he was the aggressive type showman,

would he advertise your pictures to the fullest to get the most out of them; you would have to judge that by his operation.

Q. Did your previous experience with the operator have anything to do with it?

A. I don't quite understand.

Q. Did your previous experience and acquaintance with the operator have anything to do with it?

A. Oh, yes, you would carry it right on as a rule for the same customer during the years, if he proved himself satisfactory and kept abreast of the times and tried to progress with the development of the business.

Q. Was the financial responsibility of the exhibitors in the town taken into consideration?

A. Yes, sir.

Q. How about the general type and character of operation of his theater, did you consider that also?

A. We did.

Q. Did the character and reputation of the exhibitors also play a part?

Mr. KIME. Now, if your Honor please, this has gone far enough with all this leading stuff. Why not let the man tell what he did.

The COURT. Well, I think——

Mr. KIME (interrupting.) I don't want to be
2495 jumping up on every question and saying it is leading.

The COURT. Don't lead the witness.

Mr. COCHRAN. Kill that question.

2496 By Mr. COCHRAN:

Q. Just state any other matters which occur to you at this time that were given consideration in making a choice of a customer in a given locality.

A. Well, if we had an established account in a town we had a fair idea of his ability as a showman and as an operator of a theater. If you do business with a man and you have your contacts with him you get a pretty good idea of his character and ability as a business man to carry on his business, and I think those are the main points and the leading points as to why and how you would pick your customer if you had a choice.

Q. Did your company at that time make its selection of a customer on its individual account and exercise its own judgment in regard to the person, individual, or corporation that it would select and use as its customer in any particular place?

Mr. KIME. During what time?

Mr. COCHRAN. During the period 1933 to and including 1939, the period involved in this suit.

A. We selected our own customers as far back as I can recall in this industry.

By Mr. COCHRAN:

Q. And did that without regard to any other distributor or any agreement with another person or corporation?

2497 Mr. KIME. Now, if the Court pleases, let's not continue this leading.

The COURT. It is slightly leading.

A. We selected our own customer in every situation without any regard to anyone else. We did the choosing and we did the selling.

Mr. KIME. We move to strike the answer because it is purely a conclusion of the witness.

The COURT. Motion denied. Exception allowed.

By Mr. COCHRAN:

Q. Will you explain the reasons for the licensing of pictures in advance of the time the pictures were actually produced, so-called blind selling?

A. Well, it was the custom of the industry, I believe more than anything else, and we went out to sell our entire product so as to have a constant flow to the theaters. We knew about how many pictures we were releasing a month or week, or when they would come out, and we sold accordingly the whole year's product.

Q. Did the financing of the production of pictures have anything to do with the licensing of pictures in advance of production?

A. Well, it probably had some. It gave the producer some idea of how far he could go. If the sales were not fast enough, or good enough, in the years gone by when the product was cheaper, they might have done a little

2498 reducing of the costs to keep within their budgets or their expectancy.

Q. Tell us at this point what difference there is in your present method of distribution of pictures since the time of the consent decree.

A. Today we do not attempt to sell any pictures until they are completed and trade shown. That is, we have established branches throughout the country and we trade show each picture.

Q. Tell the Court what you mean by "trade show"?

A. We project it on the screen and we invite and advertise to the exhibitors in the immediate territory when the

showing will be, and invite them to come in and see the picture before we attempt or endeavor to sell the picture to any account.

Q. Tell us any other differences, so far as any distribution of the picture is concerned.

A. Of course, we do now and we sell them individually and maybe in a small block—our company has never sold more than five pictures in any one block since the consent decree, and we have always shown those five by hand-running, different days, of course, but give the exhibitors an opportunity to come in and see them, and we sold that block of five, but in the main it has been two and three pictures in a block, whereas before we would sell the whole ball of wax, 52 pictures at the beginning of one season. Now we are continuously selling each block of pictures and generally have two or three pictures in a month's release today, whereas we had one a week when we sold 52.

2499

Q. You had one a week when you sold 52. You have how many now?

A. Our present schedule, I believe, calls for 26 or 28 pictures this year.

Q. Just about half of what you were producing back in the period of 1933 to '39?

A. Yes.

Q. Is your method of selecting your customers different in any manner from the method which was in effect from the period 1933 to '39?

A. It hasn't changed.

By the Court:

Q. Well, if you made 26 pictures you couldn't sell the entire 26 pictures?

A. You could, but you sell them possibly individually, or just two at a time as they are completed or trade shown.

By Mr. Cochran:

Q. Back during that time, 1933 to '39, when you were attempting to sell all of your pictures to one exhibitor, sell them in a group, was there a complaint from a number of exhibitors about so-called block selling, selling in such large blocks?

A. Yes, there was and we worked out some trade practices that allowed cancellation privileges.

2500

Q. But when the consent decree came in, instead of continuing to attempt to sell all of your pictures in one block, the consent decree provided that you could not sell more than five pictures in one block?

A. That is right.

Q. So since that time your pictures have been sold in blocks of not more than five at a time?

A. That is correct.

Q. And licensed long after production?

A. Yes, sir.

By the COURT:

Q. You say you sell in blocks of five. How often could you sell a block of five to a single exhibitor?

A. As often as we would come out with them; we could offer it to that same exhibitor each time we got this new block. We would go to him and solicit his business for the new pictures.

By the COURT:

Q. But it would be at a different time?

A. Different month as a rule. The pictures that are sold in a block are generally released in the same month.

Q. Let us assume that there are three exhibitors in a single town, is there any limitation on your right to sell them any other production for the year in blocks of not more than five to a single exhibitor?

A. There is no limitation.

2501 By Mr. COCHRAN:

Q. How many blocks did you have last year?

A. I believe ten.

Q. Ten blocks of five?

A. Oh, no. They varied from two to five. Some sold individually. If we only released one that month it shows an individual picture for sale. Another block, I call them blocks, say there were two pictures, and we have had as high as five.

Q. We have continually used here "sold pictures" or "selling pictures." Just explain what you mean by that.

A. It is a license to show these pictures under copyright. It isn't to actually sell. We say "sold". It is the rental price established and agreed to for these pictures which are released for a definite showing of so many days in a situation in certain theaters.

Q. You say these pictures are all copyrighted?

A. Yes.

Q. Copyrighted all over the United States?

A. Yes.

Q. So instead of being a sale in the ordinary acceptance of the term it is a license.

A. It is a license to show.

By the COURT:

Q. Do you recognize the right of any single exhibitor to buy up all of your product for a year if he wants to in blocks of five or less?

2502

A. We recognize his right. That is the only way we can sell under the consent decree.

Q. What I mean is, it is not necessary that you sell part of your production to one exhibitor and part to another?

A. Not necessarily, no. We generally sell all of our product, generally, and we offer all our product to our established customers in each situation. We at least offer it to him first.

2503

By Mr. COCHRAN:

Q. Is that your practice regardless of whether the customer is a so-called independent exhibitor or a member of a circuit?

A. That's correct.

Q. Now, you mentioned the fact that you, that it is your general practice to solicit this customer of yours before attempting to do business with anybody else. Just explain that in more detail to the Court, what you do in regard to that solicitation, and what was your practice, both in the period of 1933 to '39, and at the present time, in the matter of soliciting an account before going to anyone else in that particular town?

A. Well, in 1933 to '39, we had our established accounts just the same as we do today, and we would try and endeavor to sell our merchandise, our entire merchandise to that account first, the same as we do now with the block of pictures.

Q. Was there during that time any practice on your part of going to one exxhibitor and getting the best offer you could from him, and then going to the other exhibitor in that town and getting his offer, and going back to the other, and so forth, to see from which exhibitor you could get the highest price?

A. Oh, no, that would be very unethical; in fact, we would never stoop to that kind of practice.

2504

Q. Well, that wasn't your practice during any part of that time?

A. No, sir.

Q. Your practice in that regard was the same, regardless of which exhibitor, regardless of who your exhibitor was in the town, providing it was a satisfactory account?

A. That practice goes back as far as I can recall, with the Fox Film Company, or the Twentieth Century Fox Company, whichever name you use.

By the COURT:

Q. The price was the same to any exhibitor, regardless of who it is?

A. No, it is not.

Q. What would determine the price?

A. Fixing the price on any picture is dependent on the ability of the picture's earning power in the theater, and the theater's ability to draw patronage. Some theaters can outdraw others, and that is by virtue of the ability of the operator. I don't mean the camera operator, I mean the operator of the business. He may be a better showman than somebody else, and he can go out and develop the trade, and bring in the customers to see the picture more than somebody else. All those circumstances blend themselves into the ability of the theater to draw patronage.

Q. How is that price fixed?

2505 A. It is a matter of negotiation between the buyer and the seller.

Q. Suppose there is a theater here that has 1,200 seats, and another theater that has 600 seats. Would that have anything to do with the prices of the pictures?

A. Well, I would imagine so, yes, generally, because the 1,200 seat house could be away out in the suburbs where it had very little drawing power, and the 600 seat house could be downtown.

Q. Well, assume that both are located in the best section, and there is no difference between the theaters excepting the seating capacity; how would that affect the price?

A. The number of seats wouldn't. Again, I would say it would be the ability of the theater to pay and whether or not he may have a run prior to this one. If they are the same run, it would all depend on the earning power of the theater.

By Mr. COCHRAN:

Q. Mr. Kupper, on some situations where you might have a 1,000 seat theater, does it frequently happen that there are more seats in that theater than can be profitably utilized in that situation?

A. That is quite often. It is like many towns have more theaters than they can support, therefore, they are overseated.

Q. Well, so far as the matter of price that is paid for the picture, please illustrate to the Court the method

2506 by which you say that price is fixed by negotiation between each individual exhibitor and the distributor or some representative of the distributor at the time

the deal is made. Explain to the Court in more detail how that is done.

A. Well, that's a hard one to explain. You learn things over a period of years, in an industry and business, that you just don't understand. Sometimes it is horse-trading, but in the main you know what the general amount of business is a theater can do on a certain picture. In a great many situations we play percentage pictures, and we check those pictures, and therefore we know. Sometimes we don't check, but we get the report as to what the earning power of that picture was, and on that structure and that basis we graduate our pictures. We have certain classifications where one picture has a greater power than another, and so forth, so we have a pretty fair idea of the business a theater can do.

Q. Mr. Kupper, do you customarily get just what you ask for a picture?

A. No, sir; we sometimes ask a little more than we get.

Q. And does the exhibitor customarily get the picture for what he offers to pay for them?

A. No, there is quite a difference of opinion sometimes.

Q. Do these negotiations usually extend over some time, and is there more or less horse-trading, as you express it, in those transactions?

2507 A. That's correct.

By the COURT:

Q. What I'm trying to get at, say that this 1,200 seat theater that I referred to is a successful run, and it usually has a full house, and the 600 seat theater is a successful theater and it has a full house, that there is practically no difference so far as the ability to operate the theater and advertising ability, and everything like that; now, which of those would you charge the greater price for your film?

A. The 1,200 seat house, because he would do a greater gross business.

Q. You try to base it then on the earning power of the business?

A. That's correct.

Q. On a percentage basis?

A. Yes, sir.

Q. A smaller theater then ordinarily would buy a picture for less than the other?

A. Yes, sir.

The COURT. Proceed.

By Mr. COCHRAN:

Q. Does the length of time that the picture is to be exhibited have anything to do with the rentals?

A. Yes, sir; the number of days.

Q. Is that also a matter of trading?

2508 A. A matter of trading and negotiation.

Q. Is it a fact that in each individual situation those rentals are worked out pursuant to negotiations at the time of each contract?

A. That's correct.

Q. Does it have any regard to the rentals that may be charged in some town of the same size or theater of the same size in some other town?

A. No, that has no bearing on it at all. It is that individual situation that is negotiated for.

Q. Are the other terms of the contract with a certain exhibitor, for a certain season or for a certain product, are those terms negotiated also with that particular exhibitor at that time?

A. No.

Q. I say, are they worked out at the time of each contract?

A. Each sale is worked out then and there as an individual sale.

Q. As a result of the bartering between the parties?

A. That's right.

Q. Did the consent decree make any change in your licensing of pictures for second run or subsequent run exhibition from that which had existed prior to the time of the consent decree?

2509 A. Just in the same way that it did the first run. We had to have the picture finished and sold it by individual blocks, the same as we did the first run.

Q. What I am trying to direct your attention to is the provision of the consent decree providing for the licensing of second run or subsequent runs in various situations, some runs, the licensing of some runs?

A. Yes, we were obligated to sell some runs where before that consent decree, we would not.

Q. Just explain to the Court what you mean by selling some run in a situation.

A. Well, for a time, for a long time, our company, in small towns particularly, there would grow up a small theater, there was a good theater there operating, maybe two theaters, then another theater would come along and they would want to buy a run, an additional run, following the, one of those other theaters, and we didn't think it was good business because we thought that it would probably take away and tear down from the run that we had developed in an account that paid a substantial film rental, we thought it would tear into that business and destroy the bigger

business instead of picking up this little business, but later on things changed, and we were obliged later under the consent decree, and we would not sell if we didn't think it was good in the first instance, sell that first run or
2510 second run or third run, whichever it might be, if we didn't think it was good business, we wouldn't sell it; our business judgment was that it was bad business, at least we thought so; but later on with the consent decree we were obligated to offer the pictures for some run irrespective of what the run might be, if they wanted to purchase the picture.

By the COURT:

Q. What do you mean by first run, second run, third run, and fourth run? Does that have regard to the showing in a certain town?

A. In the city or town. There is a first run generally in every town.

Q. Yes.

A. There may be a repeat run or second run following that, or a subsequent run, like a city of this kind.

Q. If it were shown in another town for the first time it would be a first run?

A. It would still be a first run in that town.

By Mr. COCHRAN:

Q. Can you illustrate to the Court by Oklahoma City what you mean by those various runs?

A. Oklahoma City has several first run theaters; it has the Criterion, the Midwest, the State, and the Liberty, I think they are all first runs.

Q. You don't mean by that that they were given pictures day and date.

2511 A. They won't play the same picture, but they play first run exhibition in this town on a certain picture.

Q. Explain to the Court how it is in a place like Oklahoma City there is enough product available to play several different houses first run, where as in smaller towns there isn't?

A. Because they play longer, they have a longer playing time. Very seldom a picture plays in Oklahoma City in one of these first run houses for less than a week, and sometimes they play two or three weeks. Whereas in a small town there is only seven days in a week and he has all the companies there are to select or buy from and he can make more changes.

Q. In the smaller towns it is also true that there isn't as many customers and in order to operate the theater to

the best advantage there must be a number of changes made, is that right?

A. That is correct, because there are just so many people who go to the picture show.

Q. Go ahead, they have so many first runs in Oklahoma City, and then what?

A. Oklahoma City is not a city that is zoned, but I think they have a generally established run here; this house will follow the next. I don't recall the second run houses of this town; you may have a first run showing on
2512 Reno, if I recall it, I haven't been in Oklahoma City for quite awhile, and I have to think the thing out.

Q. If you don't know the situation, you had better not attempt to state it.

A. There is a Tower Theater here that generally plays off of one of the other houses, it is almost a continuous run, it is a move over.

By the COURT:

Q. Would you call that a second run?

A. No, sir, that is not exactly a second run; that is a move over, it moves from the Criterion or the Midwest, it is a continuous first run showing, beginning the very next day.

Q. That is still called a first run?

A. That is, yes, sir: it is a move over of the first showing.

By Mr. COCHRAN:

Q. Do you know which ones have the next run after that?

A. There are some theaters, I think there are several theaters around that belong to the Standard Theaters, that follow, in various sections. I didn't check up to familiarize myself with it, but that is the general run.

Q. Do you know approximately how many runs there are in Oklahoma City now?

A. There must be close to 17; I am not sure of that, but there are quite a few runs.

2513 Q. Back in the early 1930's were there anything like that many runs in Oklahoma City?

A. 1930?

Q. Yes.

A. No; there have been a lot of theaters built between 1930 and today.

Q. Has there also since 1930 been a great development of second run and subsequent run operations throughout the country?

A. There was up until the war; a lot of subsequent runs.

Q. I mean a growth of second and subsequent run operations throughout the country?

A. I will say, "Yes."

Q. Getting back to this price, in New York City, what is the first run account in New York City from Fox?

A. We play the Roxy; that's really our first run.

Q. Can you tell the Court approximately the amount of rental received on your best box office picture last year at the Roxy, approximately?

A. Yes, sir.

Q. Approximately?

A. Yes, I think it was on "Heaven Can Wait," $180,000.

2514 Q. Now you say that is the largest amount of rentals received on first run exhibition by Fox of any theater in the United States?

A. On that picture I would say yes.

Q. Then throughout the remainder of the United States that same picture you have mentioned as producing $180,000 is licensed to exhibitors in towns of varying size in varying amounts down to comparatively small hamlets where it is licensed on first run for just a few dollars?

A. Yes, probably $15; as low as $15.

Q. The same picture?

A. The same picture.

Q. Discussing this matter of runs, approximately how many theaters were in operation in the United States during this period, 1933 to 1939?

A. 1933 to '39, oh, I would say around 17,000; possibly a little more or a little less, but around that, 17,000.

Q. How many of those theaters did Fox serve with its product?

A. Well, we have run pictures from about—you are talking now about——

Q. 17,000.

A. 1933——

Q. 1933 to '39?

A. Well, I think our top booking on any one pic-

2515 ture was around fifteen thousand, two hundred and some odd, and it has gone down on some lower caliber pictures to nine thousand and some lower than that; occasionally pictures come down as low as five thousand bookings.

Q. Which goes to illustrate the difference in pictures which are produced by the same company.

A. That is correct.

Q. Well, why can't you serve all of those theaters with pictures on the same day?

A. That would be a physical impossibility.

Q. Why so?

A. Because of the cost of the prints. For instance, a technicolor print will run from $300 to $800 a print. Now it always depends on the footage, a picture like "Wilson" would probably use, because a most expensive picture is almost twice the size of the average feature picture in technicolor. It took well over two hours to run those prints and they were very expensive.

Q. The same is true with "Gone With The Wind"?

A. "Gone With The Wind" would be another example.

Q. Your company didn't produce that?

A. Metro-Goldwyn-Mayer distributed that, that is right. Selznick, I understand, was the producer and he distributed it through Metro-Goldwyn-Mayer.

Q. When you say "Selznick was the producer and distributed it through Metro-Goldwyn-Mayer" you
2516 mean by that Selznick at that time was not a part of the Metro-Goldwyn-Mayer organization but he produced that picture independently of Metro and distributed it through the Metro organization?

A. I don't know what their business relations were as to the production or financing of any of that, but I know that Selznick owned the story, produced the picture, and it was distributed through Metro-Goldwyn-Mayer.

Q. During the period from 1933 to 1939 down to the present time, there are a number of pictures that are produced by individuals or corporations that are not connected with any of the so-called major producers and yet are distributed through the major producers?

A. Yes, definitely. We have a picture we are coming out with in November, a picture called "And Then There Were None," produced by the Principal Pictures Incorporated in Los Angeles, a very fine attraction, and we are distributing it.

Q. You call the Court's attention to the cost of these prints, positive prints you call them.

A. Positive prints.

Q. Why do you refer to the film from which the exhibition is made——

A. Projected on the screen.

Q. How many prints during this period of 1933 to
2517 1939, how many positive prints of the ordinary, say B pictures, did your company make?

A. I anticipated that question, Judge, so I made a check and brought a chart with me on that. Well, it ranges from 166 to about 200. Now that is what you call a B picture.

Q. How about your A pictures?

A. A pictures, we went as high as 330 until we got in the war and the government took charge of the stock and we

were forced to reduce the number of prints because the Army and Navy needed all the film they could get, and there was just a limited supply.

By the COURT:

Q. That is the number of films in a single picture?

A. Yes, it is the number of positive prints, copies.

By Mr. COCHRAN:

Q. Just give us any other information you can on that particular subject, the matter of selling these 15,000 you serve, or 17,000, in the United States, if you licensed all of them.

A. I didn't mean to give the impression that we sold 15,200 and some odd during the one year. I meant during the life of the picture. It probably ran for 104 weeks. It is generally the life of a picture.

Q. You have told us you have a certain number of positive prints of the A picture.

2518 A. That is right.

Q. And a certain number of B. Do you have any other information as to those you have on other pictures?

A. I have given you in the main about the number of prints we make.

Q. In other words, you only made two classifications for that information, the A and B?

A. That is right.

Q. Under the B you have placed all the pictures except those you consider to be outstanding box office attractions. Is that right?

A. In 1944, because of the reduction in the film stock that we could draw on, we are allowed under government regulations, we made three classifications and it ranged in one group from 166——

Mr. KIME. I can't see how that is going to help your Honor at all, what happened last year.

The COURT. No, I don't think it is material. I would like to know what happened during the time involved in this suit. That is the main thing.

By Mr. COCHRAN:

Q. Explain to the Court why it was impossible to serve all of these theaters day after day, why it was necessary in carrying on the picture business to make the pictures

2519 available at different times for different theaters.

A. Well, in the first instance, we have a tremendous investment in these pictures, and on top of making a picture we have the cost of the positive prints. In engaging in our business we have worked out what we think is

a practical method of selecting higher type or distinct type of theater that can throw off the greater revenue first, and then publicize the picture, and that gathers momentum and it is spread out throughout the United States in important situations and down through the various areas until it finally reaches down to the lowest type of theater in a community, and reaches the local level of the earning power of that area. You can see that a man earning $17 or $20 a week cannot be expected to go to the Roxy to see a picture for $1.65 when in time he can see that same picture for 15 or 20 cents in a local community.

Q. During the period involved in this case and the period from April, 1934, to April, 1939, tell the Court what percentage of the revenue of your company was received from its first run exhibition of pictures, as compared to the revenue received from all subsequent run revenue throughout the country.

A. You say "first run revenue." You are asking also about that first run showing in Ardmore or Muskogee or in towns you are talking about with first run. You are
2520 not talking about key situations first run, like Oklahoma City. You are taking first run showings in all situations?

Q. First runs revenue of your company as compared with all revenue from runs subsequent to first run during the period involved.

A. I would say at least 65 per cent.

Q. Came from what?

A. First run showings.

By the COURT:

Q. Well, a picture would be a first run showing in every town it is shown in unless it is shown in some town twice, wouldn't it?

A. That is correct. Some situations have a great number of runs following the first run.

By Mr. COCHRAN:

Q. I hope your Honor is clear on what I intended to develop and what I think the witness said because he inquired whether I was talking about the first run revenue in the United States as compared with the revenue they received from any and all subsequent runs, subsequent to the first run in the United States.

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A. That is what I answered. That is the question I thought I was answering.

The COURT. I understood you.

By Mr. COCHRAN:

Q. Now, going back to the development of the production of pictures and the distribution of pictures during this period, you have heretofore testified about the pro-
2521 duction of silent motion pictures and indicated that after that time, after a certain period the so-called talking pictures came in. Can you tell us when it was that Fox first commenced the production of talking pictures?

A. When it first commenced production?

Q. Yes.

A. The release or distribution?

Q. Well, let's take the release of the pictures, distribution.

A. I believe it was in 1928.

Q. The first motion picture which your company took in sound was Lindberg's return to the United States, wasn't it, a news reel?

A. Well, we took a lot of news reel subjects. I thought you were referring to feature motion pictures.

Q. I was referring to feature pictures, but I asked you then to turn back to this matter of development of news reels, but your answer referred to the feature motion picture.

A. Feature motion pictures.

Q. At that point just tell the Court what you mean by feature motion pictures.

A. Well, we call it a feature, a production of five reels in length or more. That is a feature and a short subject, like a news reel—I think everybody understands
2522 what a news reel is. It is a single reel running approximately from 750 to 1000 feet, and there are single reel short subjects of the same length. As a rule they are scenics; sometimes they are cartoons and travelogs and two reel subjects, comedies in the main, and such subjects as "March of Time" and "This is America" series and things of that nature. They are generally two reel subjects, and the feature goes beyond that, five to six thousand feet or more.

By the COURT:

Q. Mickey Mouse would not be a feature, would it?

A. I think it is a pretty good attraction.

By Mr. COCHRAN:

Q. Is that a Fox product?

A. No, it isn't.

Q. Just explain to the Court something about this period of transition from silent exhibition to talking exhibition,

the problems which were involved so far as your company was concerned, and the problems the distributors had during that period.

A. Of course, our first problem was to change over our studios, which in the early stages looked something like armories. We had no sound proof equipment or they were not equipped with this new electric business to record the voice and things of that kind. Then the problem
2523 came with the theaters, they all had to have this new device installed and it was very expensive. I think the first ones that came out, and they didn't come out in such great quantities, were around $15,000, in the neighborhood, and later they got cheaper ones. I recall one particularly called "Phototone." I think that came out two or three years after the first ones started coming around, and I think they ran around $2500 or $3000, I don't know exactly—I didn't sell that equipment. I had nothing to do with the merchandising of it, but it took a little time for the theaters in the country to become equipped with this new apparatus and project these pictures, and a lot of the theaters had to be treated with accoustics because they were not built for sound recordings.

Q. Well, did the coming of talking pictures and the use of sound equipment make it a new situation so far as these houses for the exhibition of pictures which were converted store buildings?

A. The buildings which had been constructed with the idea of using them for motion picture houses, a lot of those you call store shows, they certainly were not able to house, operate and project sound motion pictures, and a lot of so-called de luxe houses had to go through a lot of renovating to get the proper accoustics and things.

Q. These first sound machines, or machines for
2524 developing sound in connection with the exhibition of motion pictures, did they operate substantially as the machines of today do? What I am particularly referring to is the use of discs as distinguished from the sound effect being a part of the film. Explain that.

A. Well, our company, Mr. Fox, as a matter of fact, I understood, bought certain patents and developed these patents which were sound on the film, whereas another company developed sound but it was on discs. That is like phonograph records, and they were put on and they synchronized with the picture that came through the projection booth. At first those new type machines all went to the discs and it looked like we were sitting behind the eight ball in the development of sound film, and we had to go to discs too in the early days, because the theaters were set

up and equipped with that, but later on they were all set up on our side of the fence, and ran sound on film because when a break came in the film there was some voice that could not synchronize and you had quite a problem but with the sound on film it is the natural flow.

Q. I gather from what you say there was a transition period in which there were problems that had to be worked out both from the standpoint of the producer and the exhibitor of motion pictures.

2525 A. That is correct.

Q. And also from the distributor's standpoint?

A. Yes.

Q. Over what period did this transition take place, a month or year?

A. Oh, it wasn't so long. I would say most of the theaters, and eventually all that went to sound—some went out of business—converted I would say in a period of possibly two years or two and a half; perhaps three years at the most.

Q. You said some theaters went out of business. Were there a number of theaters that went out of business during that period?

A. I don't believe there were many. There were some little places that didn't go for the equipment. They could not afford it to begin with because the theater couldn't support that expenditure and the community could not pay for it, and therefore, they didn't go along. There were very few with silent pictures after that.

Q. Mr. Kupper, are you acquainted with L. C. Griffith?

A. Yes, sir.

Q. Were you acquainted with Mr. R. E. Griffith?

A. Yes, sir.

Q. How long have you been acquainted with those gentlemen?

2526 A. I first met both L. C. and R. E. Griffith in 1930 in Dallas, Texas, when they were selling films. I knew R. E. Griffith—I was more intimate with R. E. Griffith than I was with L. C. Griffith. When I say "more intimate" I knew him better, let us say, until later on, oh, I guess 1928 or '29. In the meantime I had left the southwest territory and went up east, and when I came back later on they were theater operators.

Q. Did you at any time negotiate for the licensing of pictures with R. E. Griffith or other representatives of the Griffith Amusement Company, later the Consolidated Theaters, and R. E. Griffith?

A. Yes, I did, many seasons.

Q. When did you first participate in those negotiations?

A. I believe it was for the season of 1928–29; somewhere around that neighborhood. It might possibly have been 1929–30, but I think it was 1928–29.

Q. And did you continue to participate in those negotiations from that time through the season of 1938–39?

A. Yes, sir. I did through 1939.

Q. Through 1939?

A. I think it was through 1939.

Q. In 1928 when you first commenced negotiating with R. E. Griffith in the licensing of pictures, he was a
2527 representative of what company, do you recall?

A. R. E. Griffith?

Q. Yes.

A. Well, I always called it the Griffith Amusement Company. They had various companies that operated certain theaters, and I always construed it as the Griffith Amusement Company or Consolidated Theaters. I don't know exactly the corporate name of the various groups.

Q. You don't know the date that each of the corporations came in?

A. No, sir.

Q. In other words, the time when the Consolidated was organized and later the R. E. Griffith and so forth, you don't know that?

A. No.

Q. Do you know H. R. Falls?

A. Yes.

Q. In this first deal you negotiated, was Mr. Falls participating in that deal too?

A. Yes.

Q. During the entire time from 1928 through 1939 season when you were negotiating with R. E. Griffith in the licensing of pictures, state whether or not he was in your opinion a competent and aggressive buyer or exhibitor?

A. Mr. R. E. Griffith?

2528 Q. Yes.

A. I considered him not only one of the most competent but one of the shrewdest buyers you would come up against, a man who knew the business. He knew our side of the business as well. He knew the distribution end.

Q. Did you attempt to be on your toes to look after your company's interest in dealing with Mr. Griffith in making those deals?

A. I most assuredly did.

Mr. KIMB. If that was not leading in a little different way I would not think about objecting to it, but let's quit that.

A. If I hadn't, I would not have been with the company very long. You had to be on your toes with him.

By Mr. COCHRAN:

Q. In 1928, was the Griffith Company, which R. E. Griffith was buying for at that time, was that company already the established customer of Fox?

A. Yes.

Q. In a number of towns?

A. In a number of towns.

Q. State whether or not it has continued to be a customer of Fox in many towns down to the present time.

A. It has, every season.

Q. I hand you a document that has been identified as Exhibit F-1 and ask you to state what that is.

2529 A. This is a memorandum agreement which I drew up after my negotiations with Mr. Griffith in New York City. It is dated August 11, and it is for our season's product which we generally term the K-1 product for the season of 1933-34.

Q. I notice this copy does not have your name signed to it. It appears to be typewritten but you identify that as a copy of the estimate, do you?

A. I do.

Mr. COCHRAN. I believe that you have not heretofore offered that, due to the fact probably it has not been signed but I now offer in evidence Exhibit F-1.

Mr. KIMB: No objection, your Honor. At present it is F-A to F-E inclusive; in our stipulation we cover the matter of the individual contracts that were later made up, and if they are not already in counsel for the Government will check with us and we can put those in later.

The COURT. What does this agreement cover? Are you coming to that?

(Hereupon counsel reads from Exhibit F-1 heretofore referred to.)

2530 The COURT. Now, let me ask the witness a question. 54, you say?

Mr. COCHRAN. Yes, sir.

By the COURT:

Q. These 54 pictures you have leased them to the Griffith interests to be shown in 40 towns, 40 different towns. That would be first run in the 40 towns, would it?

A. Yes, sir.

Q. Could they show them second run under that contract in that town?

A. Well, there was 54 in 40, and there were less pictures, a less number of pictures in the other towns than called for. There is two, four, six, eight, ten other towns.

By Mr. COCHRAN:

Q. That is still first run?

A. Yes, sir, that is still first run.

Q. His Honor was asking about second run?

A. I am getting to that. There was a privilege in this contract that was separate and apart from this that was read. It is on the fourth page, I think, the third page. It says: "In the following situations, we have set up the prices allocated against" of so much for four towns where they may play and repeat.

Q. Go back a little back of that, on the same page.

A. Then further there are two theaters here in the City of Oklahoma, that is the Rialto and the Reno
2531 Theaters that also have a set-up for repeat showing.

Q. And the contract provides as to repeat runs, "We agree to the following: Lubbock and Shawnee 40 pictures at $17.50; Chickasha 40 pictures at $12.50; plus the $2.00 per booking score charge; 40 two reel comedies at $3.50 each; 40 one reel comedies at $1.50 each." That was your second run agreement in regard to Lubbock, Shawnee, Chickasha, is that right?

A. That's right.

Q. Then the clause that you referred to, "In the following situations, we have set up the price allocated against these for repeat bookings—no definite commitment being agreed upon, however, these would be the prices for all subjects, plus the usual $2.00 score charge per booking. Bartlesville, $12.50; Enid, $17.50; Okmulgee, $12.50; and Pampa, $12.50." Just explain under this arrangement, so far as Bartlesville, Enid, Okmulgee, and Pampa were concerned, whether, if there were any competing theater there, you had the right and the privilege to license your pictures for second or subsequent run at any time before Griffith should exercise its privilege of playing them at these prices?

A. No, I am not sure that that was the contention as you put it. I believe we set up a price allocation for repeat bookings in that situation. I don't think there was a definite second run at the time, but they wanted a repeat.

2532 Q. It is your understanding that when the individual contracts were drawn up, that definite contracts

for the second run for these towns, based upon these prices, were set up?

A. It was. The understanding was when we made this deal that they didn't know exactly, being in New York, just how many pictures they would be able to consume until they got back to New York, so we agreed upon the prices and as soon as they got back they made a contract, which all this was reduced to the regular form contract, and they also wrote the contract in as to the number of pictures they would use as against these four towns at that price.

Q. Then it says, "We further agree that for the Rialto Theater, Oklahoma City, and the Reno Theater, the following prices would be set up—no definite commitments."

A. This is the same basis as the four towns.

Q. In other words, the arrangement was the same, and handled in the same way, except the difference in prices to be paid?

A. Yes, sir.

Q. It provides, "These runs follows the Warner and all the Cooper-Publix runs, provided, however, that these work out to be the same runs as were sold last year. We agreed in this situation, that for every feature used a two reel comedy, also a single reel comedy, would be
2533 used. We also agreed to the privilege of playing out of order of release. However, you agreed that 25 per cent of the commitment would be played in all situations every thirteen weeks. It is my understanding that we are to set up the allocations per town, as to the prices for features as soon as possible, so that we can properly bill these subjects." Now, Mr. Kupper, you referred to this document as a memoranda of your agreement. Just explain to the Court the reason for handling this matter in that form and subsequent transactions in the form of a memoranda of this kind, instead of drawing up a formal contract for each situation at that time?

A. Well, prior to that time I would come down to Oklahoma City to negotiate and when I was here I would have our Oklahoma City branch manager and our Dallas branch manager here with me, and we would have our negotiations right here. Generally, it was during July and August of each year, and while we were here we would complete everything and even make the contracts up here, and I would have them signed and I went on my way, and the contracts went in for final execution in New York. Well, on or about this time, the Griffith Company elected or suggested that they wanted their representatives, Mr. R. E. Griffith and Mr. Falls, they wanted to come to New York,

and they came, as you can see, in August, and I was
2534 delighted; my home was there, and it is usually pretty hot down here in August, and we worked these things out, sometimes in their hotel room and sometimes in my office. They had other people to deal with when they got through with me, and I didn't have time or the mechanics set up in my office to have all the individual contracts made for all towns represented in this deal, so I drew a memoranda of the substance of what our negotiations were and sent it down to our branch, who went through the mechanics of filling out the individual contract for each situation, and that was signed and automatically executed, and that is the reason for the memoranda, so there would be no misunderstanding as to prices and the various points that were negotiated and settled.

Q. Mr. Kupper, in drawing up a contract in final form between an exhibitor and your company, do you find that it is usually true or always true that there are and must be insertions in the printed form of contract to meet the terms that have been finally agreed upon as a result of negotiations and bargaining?

A. Definitely, in all contracts.

By the Court:

Q. You have sold under this contract the Griffith interests 54 pictures, and that is in 40 towns. Now, those could all be shown, of course, it wouldn't be in a single week, but they would be in a time covering not more than——

2535 A. One year.

Q. One week in any one town?

A. The life of the contract generally runs for a year from the time of the execution of it.

Q. Yes. Now, did you sell any of those pictures to anybody else in this territory?

A. Oh, yes.

Q. Did the contract that you make with the Griffith interests interfere in any way with sales to anybody else in this district?

Mr. Kallis. If the Court please, it is possible that the witness may not have exactly in mind what your Honor does, and if he relates just exactly what was done in connection with all these sales in this territory, which I understand is what your Honor is trying to elicit from him, then——

By the Court (interrupting):

Q. Well, put it this way: Did the negotiations which you had with the Griffiths, and the contract that was made, did

that deal in any way interfere with your right to negotiate with anybody else in the circuit?

A. None whatsoever. That deal was exclusively for these pictures in those theaters, and it had no reference or nothing to do with any other situation in this territory or any territory.

2536 By Mr. COCHRAN:

Q. It is true that as to each of these towns that are named here by reason of this contract no other exhibitor in that town would have the right to buy the pictures covered by this contract in that town on first run exhibition?

A. Well, that is definite. I think everybody——

The COURT. The contract says that.

A. It says that.

By Mr. COCHRAN:

Q. Yes, sir. Now, this contract provides——

The COURT. Pardon me, just one more question. I have something in mind that I want to clarify.

Mr. COCHRAN. All right, your Honor, go ahead.

By the COURT:

Q. You sold the 54 pictures to Griffith. Now, those can be shown in 40 different towns throughout the year. Of course, there would only be, each one of those pictures can only be shown as a first run picture once in any one town?

A. That's correct.

Q. Now, could these pictures be shown as second run by any other theater?

A. Well, under this contract he specified certain theaters, certain towns in which he will play the pictures second run.

Q. Where he hasn't specified any, then you have
2537 the right to sell them?

A. We have the right, yes, to sell those pictures.

By Mr. COCHRAN:

Q. Did you have any agreement or understanding with R. E. Griffith, Mr. Falls, or any other representative of the exhibitors with whom this contract was made, if one was made, that you would not license second run or make a contract of any kind or character with exhibitors in any of these other towns?

Mr. KIME. May I have the question read?

(Question read by the reporter.)

Mr. COCHRAN. I will withdraw the question. It is too complicated.

Q. Did you have any agreement or understanding of any kind or character with the Griffith interests that you would not license second run or subsequent run to any other exhibitor in any of the towns involved here?

A. I had no agreement, but where I sold the pictures to Griffith second run, I certainly couldn't license them to somebody else.

Q. In conflict with that?

A. No.

Q. I mean aside from the written agreement that appears in this memorandum that you have, that we have in evidence here, did you have any agreement which in any way restricted your right to license these pictures in
2538 any way you wanted to any other exhibitor?

Mr. KIME. I don't think that's quite correct, your Honor, because as a matter of fact they did execute hundreds of these individual situation contracts.

Mr. COCHRAN. Well, that was pursuant to this memo.

Mr. KIME. Will you please read the question?

(Question read by the reporter.)

Mr. COCHRAN. Let's amend that to this extent.

Q. Aside from the memo agreement which we have in evidence, and the individual town contracts which were executed pursuant to this memo agreement, did you have any agreement of any kind or character with the Griffith interests which in any manner restricted or limited you in dealing with or licensing your product to other exhibitors?

A. None whatsoever.

Q. This memo has a clause which provides that you would agree to the privilege of playing out of the order or release; however, you agree that 25 per cent of the commitment would be played in all situations every 13 weeks. Will you explain that provision to the Court?

A. Yes sir. I asked for that clause. I asked for it not in its fullest clause but I asked for the playing of 25 per cent of the commitment every 13 weeks, which is nothing unusual, for the contract of pictures to be played
2539 slightly out of order or release, that is nothing unusual. That has gone on for years. But there was a limitation of prints in this territory, and in order to get the pictures played and flowing quickly, I insisted that if we went for that like he asked for it, which I again say was nothing unusual, I was insisting in turn that he must play 25 per cent of the commitment every quarter or every 13 weeks during the year, which would force our product through faster, because when they have that obligation they are going to run it. It is just like when you are paying for something in advance, you generally use it.

By the COURT:

Q. In that connection, how many theater towns were there in this territory in which Griffth operated?

A. Well, I——

Q. Approximately?

A. Well, this practically covered all their towns in this area. It was 42, wasn't it?

By Mr. COCHRAN:

Q. I imagine his Honor is referring to how many towns are in the Oklahoma City Exchange, and how many in the Dallas Exchange?

A. Well, I think—

By the COURT interrupting:

Q. You wanted all that 25 per cent released quarterly so you could sell the same picture to somebody else, did you?

A. So it would give a quicker flowfi so there would
2540 be no hold-up for anybody else, and our product would be liquidated faster.

By Mr. COCHRAN:

Q. Explain to the Court the problems which the distributor has in the matter of availability of prints for booking into various theaters that may want to exhibit those pictures; explain that briefly to the Court, giving some of the problems that you have in regard to the availability of prints on the day that the exhibitor wants to exhibit those pictures, and which also would prevent the picture from being exhibited in various theaters and in all the theaters in strict order of release?

A. As I say, the number of prints on the subject in the Oklahoma City territory varied from three to five. There was an occasional picture, I think, we would have a few additional prints on, possibly to the extent of seven. Naturally, you would start off and try to start off on the more important situation, like Oklahoma City or Tulsa, then you would come to Enid, and the next largest towns. There is a good reason for that, just not a mercenary one either; it is because in these situations they are the distribution center, and they have more important newspapers, and in these newspapers they advertise, advertise heavily, and these papers circulate throughout the whole area, and it has its advantage in the smaller towns, which don't have a
newspaper or publication. Maybe they do have a bi-
2541 weekly, or once a week paper, or something like that, but some don't have any at all. And these papers flow through the whole territory, and you naturally book your more important pictures in the larger situations down

to the smaller ones, and with the limited prints you couldn't supply everybody the day they wanted them.

Q. Explain to the Court how the matter of preferred playing time entered into the matter of booking the pictures?

A. Naturally, preferred playing time is generally considered, where you have week-end playing time, like Saturday or Sunday, or a holiday, if it was in the middle of the week, and you have an important picture, particularly if you are playing on percentage, not only that, but if you are playing flat, you would like to see the pictures played under the most favorable circumstances when they would do the most business because you have a more satisfied customer. There is only a limited amount of preferred playing time. There is only one showing a week in the theater, he has only that preferred time, and as I say, assuming you have five prints, that you can get only for bookings in that particular week, so some of the other bookings may have to come in mid-weeks and take less important time, and in order to carry out an important picture and play it preferred time all the way through the territory, you may have
2542 to put them out of order of release and move it ahead or back, and move another picture up so you can supply a picture during that particular week.

Q. Explain to the Court what was the practical operation in the matter of playing your product in theaters throughout Oklahoma and Texas during the period involved, where under the form of contract it was provided that the pictures would be played in the order of release; was it customary for the pictures under those contracts to be played in strict order of release?

A. Well, you couldn't possibly follow it all the way through because of the prints, and there were many, many situations, and many, many contracts. I venture to say there is not a contract we had that followed strictly down and hued to the letter with that understanding or that paragraph in the contract.

Q. Even where the prints were available, did you require your customers to play the pictures in strict order of release, even where the contract provided that it might be done?

A. We endeavored to, but we never fully enforced that particular part.

Q. If the customer's contract was not in bad shape because of failure to pay, or something of that kind, did you permit a liberal departure from that section of the contract?

A. Yes, sir, not only here, but everywhere else in
2543 the United States, in our other branches, I mean.

Q. Did your contract, your printed form of contract, also carry a clause which provided for the playing out of order of release in the event the picture was paid for?

A. I believe it did.

Q. Now, as I understand it, it is contended here by the plaintiff that even though any and all exhibitors might have been privileged by your company to play pictures out of the order or release by paying for the pictures in accordance with the provisions of the contract, nevertheless, that those provisions and the provision under the Griffith contract which I read to you, enabled the exhibitor to delay the playing of the pictures without any control on your part?

A. That is not a fact.

Q. Why not?

A. Well, on the reverse side of our contract, as a part of our contract, we have the right to select and set arbitrary play dates after a certain time of availability.

Q. Do you mean by that that on account of that provision, even though the pictures were played out of order of release, that you nevertheless had a right to set those play dates when you considered that the contract was not being properly handled?

Mr. KIME. Your Honor please, we object to that
2544 question. The contract is the best evidence, and it shows and says specifically what can and what cannot be done, and there is no occasion to have the expression of any opinion.

The COURT. I think the contract speaks for itself.

Mr. COCHRAN. If the Court please, that is true, but I think in this matter, in these cases, the matter of the intention of the parties is rather important, and I think it is permissible to show that this distributor at no time intended or in fact didn't under the terms of the contract didn't, and it was not his intention to, relinquish the right of controlling the matter of fixing the play date.

Mr. KIME. Your Honor please, a part of that is correct; if that thing happened, if they can bring in these contracts where they allowed the independent exhibitors to do that, or where they forced the exhibitor, the independent exhibitor to book them, I submit that cannot be done.

The COURT. I think he has answered the question.

Mr. COCHRAN. All right, your Honor.

By the COURT:

Q. Let me ask you this question. Now, during this period from '33 to '39, assuming that you sold 54 pictures to the

Griffith interests to be shown in 40 towns, now under your construction of this consent decree and under your practice since the decree was entered, do you continue to do that if you want to and the exhibitor wants to by selling it in blocks of five or less?

2545 A. Yes, sir. Yes, we will. In other words, under this contract I have sold him my entire product for the year for those 40 towns.

Q. Yes.

A. He is my customer. When it comes to selling under the consent decree, I go to him and offer to sell him those pictures which I am selling at that particular time. There is a block every month, two, three or five pictures, we will offer him, but the only difference is, he was buying before the whole product at one buy, but now he is buying after he has had the chance to see the merchandise and evaluate it, and therefore he knows what he is buying, but he can only buy it in small groups.

Q. But if you desire to sell and he desires to buy, you can sell him the entire group throughout the year in blocks of five or less?

A. Yes, sir.

The Court. Proceed.

2546 By Mr. Cochran:

Q. Now, approximately how many accounts were you serving in the Oklahoma City Exchange?

A. That we were selling?

Q. Yes.

A. I think 230, or thereabouts.

By Mr. Kime:

Q. When was this?

Mr. Cochran. During the period from 1933 to 1939.

A. Over 200 I am sure.

By Mr. Cochran:

Q. How many in the Dallas Exchange area?

A. Dallas is much larger. I think we supplied on Dallas, 700 and some odd accounts.

Q. You have testified to some extent about some of the problems that were involved in booking, but I believe you have not covered the matter of the actual physical services of these various accounts. Just explain how that is done, say over 200 accounts here in the Oklahoma City Exchange of three to five prints. Just explain what is done by the exhibitor upon receipt of positive prints, three to five positive prints in the matter of servicing these more than 200 accounts, and the length of time that it takes to get these

prints from one theater that is being served to the next situation and so forth.

A. Well, it may seem a bit complicated but we have set up a system whereby when we sell a contract we
2547 generally have a playing arrangement like for instance when we were selling the entire product, say 52 pictures a year, we generally had a playing arrangement of possibly one a week. Then they would have a certain starting date.

Q. You say you had a playing arrangement of one a week?

A. Generally, in the days you are talking about when we were selling all the product on one contract in the beginning of a season. Generally a starting date, when that contract would take effect as to the playing, the actual date of the signing, let us assume was today, September 17, that contract, that might be taken by an exhibitor say out at Hugo or some other town, may not start playing until in November or later. They graduate all contracts and they don't start and they are not all taken at the same time, so there is a period of time in which you can organize yourself and designate the prints, as they have been sold and as to the starting date. Then as we have the prints and the pictures are available we notify the account that we have a print and it is available at such and such a time, and he automatically dates his picture in.

Q. What is his problem then when you notify him a certain picture is available on a certain date, then what is the exhibitor's problem?

2548 A. Generally, every exhibitor tries to live up to his contract and book it in accordance with his available time. If by chance he is booked beyond that, and that time is consumed, then he will submit other dates and it is mutually worked out, and there is a mutual arrangement as to the exact playing time for that picture.

Q. Are the dates agreed on for some future times always?

A. They are always booked in advance. The exhibitor doesn't wait until today to find out what he is going to do tomorrow. He has the schedule himself in advance. That is arranged at our local exchanges with the exhibitor. He has to prepare advertising and publicize the picture. A lot of the small towns used to have a calendar which they printed every week, or maybe month. They would book a month in advance or several months in advance, and they would have these printed calendars, and they would distribute them in the community to the homes, they had a mailing list and they would mail them to their patrons so

they would know what pictures were going to be played within a certain given period and on certain dates.

Q. After you give notice of availability that you have mentioned, how are those dates on which the pictures are to be played by individual theaters in the territory determined?

A. Well, the exhibitor selects his date. He asks
2549 for a certain date.

Q. Suppose when he says "I want this picture dated on the 20th day of October" does that mean that the distributor is going to give him that on the 20th of October?

A. If the print is available.

Q. That is what I want you to explain, what the problem is there between the distributor and exhibitor in getting a mutually satisfactory date. Try to explain that to the Court.

A. Well, it is a mutual arrangement and we try, naturally, to satisfy the exhibitor if it is possible, if we have a print open. When the print is not available and there is not an opening time on any of the prints on the date he suggests, we suggest to him the open time we have that is not already booked, and confirmed to other exhibitors, and he will select the time he would like from then on.

Q. So it is a problem to be worked out by mutual agreement as to the date these pictures are actually booked into a given theater?

A. That is right.

Q. Just explain to the Court what equipment the exchange has for setting up these bookings.

A. Well, we have a master booking chart, booking book, and we have all these prints numbered from 1 to 5.
2550 Say we have five prints on a subject in the exchange, and these five printes, say that a release date of a picture is a certain definite date, and they are notified of that and we announce that to the trade, and the customer comes in and we will book that picture.

Q. When it is booked, what is shown on this master booking chart?

A. Then the playing time he is going to consume is registered on this book, and that blocks out that much time. Now then, there is always some shipping time that has to be allowed for the print to be returned to the exchange for renovation and rewinding and to be examined and cleaned, if necessary, and booked to another account.

Q. During the period involved, what was the average period you had to allow for the return of the print to the exchange and reconditioning of the print?

A. Well, it would depend on the distance generally a day. We have had developed in the last ten years or more a film delivery service which has expedited things a great deal as compared to shipping by express or parcel post. This film delivery service had saved an awful lot of time. They could pick up a film after say the last exhibition in a theater at night. They generally operate at night.

Q. What would you say is the average time now, under present conditions?

2551 A. Oh, I would say 24 hours to and from.

Q. Then in most of these small towns in Oklahoma there are three or four changes a week, aren't there?

A. Yes, sir.

Q. In some places are there more than that?

A. I imagine so. I imagine some have more but I think in the main there would probably not be more than four changes today.

Q. In the larger towns, of course, there are not as many changes?

A. Not as many.

Q. Would you say on this master booking chart which you have, the playing time for each one of these prints will appear each and every day? In other words, you can go to that booking chart in the booking department in your exchange, and tell whether a particular day is taken or several days have been taken for each one of those prints?

A. Yes, that is a continuous, running, up to the minute record.

Q. Now, a properly operated theater will carry a similar chart of its playing time, will it not?

A. Yes, sir. I imagine every theater has its own booking chart wherein they make their records themselves because they want to know.

2552 Q. So on a particular day, it is a problem of matching the vacant time in the record of the theater with the vacant time for one of the prints in the exchange?

A. That is correct.

(Hereupon Court adjourned until 10 o'clock a. m. September 18, 1945.)

2553 PROCEEDINGS

September 18, 1945, 10 a'clock a. m.

WILLIAM J. KUPPER, was recalled, and further testified as follows:

The COURT. You may proceed.

Direct examination (continuped) by Mr. COCHRAN:

Q. What was the K–1 season, Mr. Kupper?

A. The 1933-34 season.

Q. That is the one in which Fox designated its season's product for convenience?

A. Just for convenience. Mr. Kent became the president of our company a year or so before, but a year prior he had no say so as to the production budget and therefore took no responsibility, as I understand it, as to the quality or the cost, and the next year, when he became president, and in the interim he had decided that if he became in full and complete control as president of the company he would start designating it as K–1, meaning the first year of Kent's supervision and control.

Q. The next season's product was designated K–2. Is that right?

A. That is correct.

Q. And for each succeeding year.

A. That went up as far as K–10.

2554 Q. What year was K–10?

A. That was the year 1942-43.

Q. Since that time how has your product been designated?

A. We dropped that entirely and designated just by seasons.

Q. Why was that designation dropped at that time?

A. Well, I believe in the meantime the consent decree came down and we were not selling by blocks then. I mean by that full season's product; we were selling by small blocks.

2555 Q. Does your printed form of contract today provide for the exhibitor to play the product in the order of general release?

A. No, it does not.

Q. Do you know when that provision was discontinued in your printed form of contract?

A. I don't know when, but it must have been during the 30's, sometime during the 30's.

Q. The agreement with the defendants in the 1933–'34 and the 1934–'35 seasons, and possibly in subsequent

seasons, it was provided that the defendants should have preview privilege the night before the regular exhibition. Will you explain to the Court what was meant by that provision and how it operated?

A. Well, I believe in the main, when we started down in this territory, incidentally, here and in the Texas territory, it was used for exploitation purposes, and it generally was on a Saturday night when they could have a late show, and they put this picture on after the general run of that particular day, and they sold another showing of the new picture coming in.

Q. Well, did that have the effect of additional playing time on that picture?

A. It added to it.

Q. It added to it?

2556 A. Yes, sir.

Q. Now, you say that started down in this territory?

A. Yes, sir.

Q. What do you mean by starting it down in this territory?

A. Well, it was something new; we had had previews before occasionally, but it became a general practice down here.

Q. Do you mean with exhibitors in general, and not just as to the defendants in this case?

A. Oh, no, I am talking about exhibitors in general.

Q. So, would you say that there was anything unusual in granting this privilege to the defendants in this contract?

A. Nothing at all.

Q. There is a clause in this memo that provides that they are not licensing any foreign made pictures. Will you explain that clause of the contract and its purpose?

A. Well, from time to time we would import for distribution in the United States a few subjects, and it is my opinion and my belief that it was because of our interests, certain interests in the British Isles, let's say the Gaumont British as the name of the company; we had investments there, and they made pictures, and we imported a few, I think as high as four in one season, and we distributed them, and they were not generally accepted like our own pictures.

2557 Q. Now you refer to your own pictures. By that you meant pictures which Fox had produced in this country?

A. That is correct.

Q. These pictures you imported, these foreign made pictures, did Fox have anything to do with the production of those pictures?

A. No, I don't believe so.

Q. Were those foreign made pictures, pictures which Fox arranged to distribute in exchange or in connection with the distribution of the pictures made by Fox in the United States in the British Isles and other foreign countries?

A. If my memory serves me correctly they had certain quota restrictions as to what we could import into those countries and I think it was a measure or means which helped us get more of our product into that country.

Q. You spoke of British Gaumont pictures. Were those usually separately sold by Fox during the seasons when you distributed those pictures?

A. No, but we specifically designated them and we were obligated to call it to the attention of anybody we were soliciting; at least, we did that; whether or not we were duty bound to do it, I can't recall, but at least we did it.

Q. Well, just tell the Court what your usual prac-
2558 tice was as to trying to include those in the season's block of pictures when you were licensing prior to the consent decree.

A. Well, we would definitely state we had so many of our pictures plus, say, four foreign pictures, plus reissues if we had any, or something of that nature. We did it whether we had to or not. We did specifically and definitely tell them to make sure there was no misunderstanding as to what they were buying.

Q. When you were dealing with a customer who had been your choice of customer in a situation over a period of years, state whether you permitted in setting up the deal with that customer, such customer to exclude those foreign made pictures?

A. Yes. We never did try to force any sale of any product or of products, and if they didn't want to accept those pictures we would leave them out of the contract.

Q. What do you say about whether that clause in the contract with the defendants, wherever it appears, was out of the ordinary or was a customary arrangement with your customers?

A. It was not out of the ordinary, but this being a memorandum contract it looks like it might have been out of the ordinary but it is not, because in the regular contract they are either left off definitely or scratched
2559 out or eliminated.

Q. Did I understand you to say it was not out of the ordinary?

A. That is right.

Q. How about the attitude of the exhibitors generally in the small towns throughout the United States as to those foreign pictures?

Mr. KALLIS. We object to that question. I don't believe any foundation has been laid that would enable this witness to answer that question and surely there are other people connected with the Fox organization who would have first hand information with respect to the particular question which Judge Cochran put to the witness.

Mr. COCHRAN. That question is withdrawn for the present.

The COURT. I think the general sales manager would know more about sales than anybody, but the question is withdrawn.

By Mr. COCHRAN:

Q. Were you familiar with the reception given these small pictures generally in the small towns throughout the United States?

A. Yes, sir.

Q. How were they received?

A. Not very well.

Q. How were they considered as to box office value?

2560 A. Well, they were greatly inferior to our own.

Q. Can you give us an example of a foreign made picture which was distributed by Fox and which did a good box office business in the larger towns but was not well received in the smaller towns throughout the country?

A. We had a picture called "Night Train", and when the critics in this country saw it they really raved over it but it didn't do business in the theaters at the box office, and it was a well produced picture.

2561 Q. Who were the actors in that?

A. I can't recall that off-hand.

Q. Do you recall any others? Do you also recall the picture, "Escape Me Never", by Elizabeth Bergner?

A. Yes, I have a vague recollection of the name and the picture.

Q. Was that a foreign made picture?

A. Yes, sir.

Q. Do you recall how that was received and the type picture it was?

A. No, I just can't place it.

Q. Do you recall the picture, "Under the Red Robe"?

A. Yes, sir.

Q. Do you recall about it, the character of picture it was, and how it was received?

A. I don't believe we distributed it, but I think, as far as the production of it went, it was a very good production, but I don't think it was very successful.

Q. There is a clause in this 1933–'34 contract that provides that the exhibitor may eliminate a certain number of pictures. Will you explain to the Court what is meant by the clause "eliminating certain pictures from the contract"?

Mr. KIMB. What contract are you talking about, Judge, please?

2562 Mr. Cochran. '33–'34.

Mr. KIMB. Are you talking about the contract that eliminates foreigns?

Mr. COCHRAN. "We have a definite understanding that they are to play 44 pictures. This would mean that over and above the 4 foreign pictures already mentioned, there would be 6 pictures to be eliminated from the lowest allocation. All other situations stand as before mentioned." I will just withdraw that question that I have asked so far.

Q. Calling your attention to Exhibit F–2–E, the clause which provides, "If the total number of feature motion pictures offered to the exhibitor by the distributor at one time"——

Mr. KIMB. What clause is that, Judge, please?

Mr. COCHRAN. Clause 15.

Q. "If the total number of feature motion pictures offered to the exhibitor by the distributor at any one time shall have been licensed by the distributor hereunder, the license fees of all thereof, averaging not more than $250, the exhibitor shall have the right to exclude from this license not to exceed 10 per cent of the total number of the feature motion pictures so licensed hereunder, provided (1) that the said exhibitor is not in default hereunder, and (2) shall have fully complied with all of the provisions, if any, set forth in the schedule for the exhibition of
2563 one or more of said feature motion pictures at specified intervals. Such right of exclusion may exist only upon the following terms and conditions," specifying the terms. Do you recall that provision that your contract had?

A. Yes, sir.

Q. Explain to the Court how that clause originated and the purpose of it.

A. Well, I am not sure whether or not it came about the time we had what we called the Fair Trade Practice, and it was worked out by a joint committee, I believe it was worked out by a joint committee of exhibitors or exhibitor

leaders, and the distributors. They wanted the right of exclusion or the right of elimination or cancellation, and I think that was the background for it.

Q. Well, did that have any relation to the fact that the pictures were being licensed by the distributor, the whole season's product, before the exhibitor knew what type of picture he was getting, that he was going to get?

A. Yes, sir; that was one of the main reasons, I assume, that was responsible for that clause.

Q. Prior to the time that you had that clause in the contract, how were those eliminations, what was the custom of your company in making eliminations, if there was any custom in that regard?

A. There wasn't any; we sold it and they were
2564 responsible for everything they bought.

Q. What I am referring to, though, did it frequently happen that the exhibitor would make requests in regard to trading out some of the pictures, and things of that kind?

A. Yes, sir, and we also had a provision that if there was any question of a racial nature or religious nature, there was never any argument—in any community—there was never any question about terminating or cancelling that particular picture. We always had that.

Q. Well, is the same true in regard to pictures that your experience throughout the country had definitely proven to be of no value?

A. Well, the picture that had very little value or no value was pretty hard to liquidate, and we generally, as a rule, automatically forgot them and shut our eyes to the fact that they were not played, and didn't try to force it.

2565 Q. Do you know just when you first started writing into your contracts this provision giving the right to eliminate 10 per cent if the season's product was licensed?

A. I don't know whether it was K–1 or K–2 but somewhere around there; in the early 1930's.

Q. Did that privilege continue to be granted generally in your contracts with exhibitors up until the time you commenced to write under the consent decree?

A. Yes, sir.

Q. Had you, since you had been licensing under the consent decree, provided for any eliminations at all?

A. No.

Q. That is true in regard to licensing to the Griffiths as well as anybody else?

A. Yes, sir.

Q. For the season of 1934–35, there was an agreement by your company with the Griffith Amusement Company and the other Griffith companies that were operating at that time, which has been introduced in evidence as F–2. I hand you F–2, A to C, inclusive, and ask you to state what that is.

A. This is a memorandum of the negotiations that were conducted between Mr. R. E. Griffith, and I believe another representative of that company, Mr. Falls, but Mr. R. E. Griffith was the main designated representative of their company, and myself. It is a memorandum of the
2566 deal we made for the season of 1934–35, which was commonly known then as K–2.

Q. Was that memorandum executed in the same manner and for the same purposes as you have already explained in connection with the 1933–34 contract?

A. Yes, sir.

Q. And were individual town contracts thereafter executed as provided in this contract?

A. They were, yes, sir.

Q. On your printed forms of contract?

A. On our regular standard form of contract, which is the printed form you are referring to.

Q. That memo provides that they are not licensing foreign made pictures, and further provides that they are not required to play the pictures in the order of release. I wish you would turn to that clause and read that please.

A. It is on the third page (reading):

"We also agree to the continuance of the privilege allowing you to play some subject out of order of release. However, we further agree that 25 per cent of the commitments would be played in all situations every 13 weeks, and it is further understood that this privilege is allowed and agreed upon only as a measure and means of expediting bookings to prevent congestions, and is not to be abused." (End of reading.)

2567 Q. Do you now state that the expression as to the purpose of that privilege was as stated in that clause?

A. Definitely.

Q. This contract also provides for the privilege of eliminating 10 per cent of the pictures, I believe. Whether it does or not, your printed form of contract at that time granted the privilege, didn't it?

A. I believe it did.

Mr. KIME. The second clause on page 2 does specifically, Judge.

Mr. COCHRAN. That clause reads (reading): "It is understood and agreed in those situations where the entire product is bought you have the right to elimination as set up by the code authorities, and which is part of our regular contract."

A. It is in this contract.

Q. During a portion of this time were you operating under a code of fair competition of the motion picture industry under the NRA?

A. Yes, sir.

By the COURT:

Q. What was that?

A. Well, I think that was the beginning of some ideas that were formulated by—I don't know whether it was the President, but I always sort of connected it with some New Deal agency or some New Deal fancy or ideology
2568 and they brought it into the business and we had to abide by it and agree to it and worked under it.

By the COURT:

Q. Was it a regulation made by the government?

A. Whether it was the government, it was some agency of the government.

Q. That was made by an agency of the government?

A. I believe so, yes, sir, by the head of the NRA.

By Mr. COCHRAN:

Q. Hugh Johnson?

A. Hugh Johnson, an Oklahoma man.

By the COURT:

Q. What was that regulation or that code? What do you call it?

A. Fair Trade Practice, I think, or the Code Authority, or something of that nature; I am not sure.

Q. What did it provide?

A. Well, it set up certain changes in the operations——

Mr. COCHRAN. The Court is talking about this elimination that is referred to here.

A. It was an agreement drawn up and agreed to by a committee representing both the exhibitor and the distributor.

By Mr. COCHRAN:

Q. What the Court wants to know is, you provide here for an elimination as set up by the code authorities, and which is part of your regular contract. Now what the Court wants to know is, did that provide for 10 percent elimination or 20 percent elimination or what?

2569 A. Yes, but I think it varied according to the average price of the pictures over the country. The high-

er the price the less the elimination, and the lower the price the greater the elimination.

Mr. COCHRAN. I read you the clause which was in the contract made during this time which sets out the right of elimination.

By the COURT:

Q. What I had in mind was this: Was your contract in all particulars in accordance with the provisions of this new code you are speaking about? In other words, did you comply with that code in the construction of this contract?

A. Yes, we did. We included it. It became part of our contract; part of the one under which we sold our pictures.

By Mr. COCHRAN:

Q. And that continued as long as those codes were in effect?

A. Yes, sir.

By the COURT:

Q. Before we get away from that, you say this code became a part of the contract. Were those contracts subject to the inspection of this Bureau or Department?

A. Well, I would say they were. We agreed to work along and in conjunction with the agreement worked out and particularly in accordance with the cancellation privilege. That was definitely written in I would say,
2570 verbatim of what was agreed upon and if we violated it, in my opinion the exhibitor had recourse to go before the Board or submit his complaint to the Board or to the NRA.

By Mr. COCHRAN:

Q. Were there hearings on complaints of exhibitors before a board set up during the period that code was in effect, do you know?

A. There were hearings.

2571 Q. There were hearings?

A. Yes, sir.

By the COURT:

Q. Was there anything in that code that regulated in any manner your course of procedure where there were various exhibitors in a single town?

A. Well, I think the thing was broad, the aspect was very broad, and it took care of every type of exhibitor, whether in a small town or a large town.

Mr. COCHRAN. If the Court please, we will bring up a copy of that code.

The COURT. All right.

By Mr. COCHRAN:

Q. Do you recall whether there were provisions for arbitration set-up in that?

A. There were, definitely.

Q. Where there were disputes between the distributor and the exhibitor?

A. That's right.

Q. The provisions in regard to repeat runs in this contract appear to be the same as they were in the '33–'34 contract and cover the same towns, is that correct?

A. Yes, sir, they look identical.

Q. I now call your attention to a document which has been identified as Exhibit F–3–A, B, and C, and ask you to state what that is.

2572 A. This is similar to the one that we had for the prior years, and it is a memorandum, a record memorandum of the negotiations that I entered into with Mr. R. E. Griffith for the various Griffith Theaters, dated August 22nd, 1935.

Q. Did Mr. Horace Falls also participate in those negotiations?

A. Yes, I believe he did.

Q. This contract also contains the clause in regard to playing out of order of release. Will you read that at the bottom of the second page?

A. "We agree to the continuation of the privilege of allowing you to play some subjects out of order of release; however, it is further agreed that 25 per cent of the commitment is to be played in all situations every 13 weeks. It is also understood that this privilege is allowed and agreed upon only as a measure and means of expediting bookings to prevent congestion, and not to be abused."

Q. It also contains the clause providing that no foreign made pictures are to be included in the contract, is that correct? Just above there, the third paragraph above.

A. That's right.

Q. It also contains a clause providing that the exhibitor has the right to eliminate 10 percent in accordance with our regular contract form. That is near the top of the same page?

2573 A. That's right.

Q. I notice that this contract has a different provision in regard to second runs. Will you read the provision of this memo relative to third run pictures, I mean second run pictures, second and subsequent run pictures?

A. "We further agree to the privilege of using 30 pictures, Fox Feature Product, and the following subsequent runs; however, the price is to be allocated on the first run

showing, and the towns which have this privilege are as follows," and then it lists the towns.

Q. What towns are listed?

A. Eleven towns, Ada, Bartlesville, that is in Oklahoma; Borger, Texas; Enid, Oklahoma; Okmulgee, Oklahoma; Pampa, Texas; Seminole, Shawnee, and Chickasha, Oklahoma; Lubbock; and Ardmore, Oklahoma.

Q. How about the Oklahoma City runs, what is provided in regard to that?

A. "We also agree to a run included in the original price set-up, two runs in Oklahoma City, one run each at the Reno and Rialto Theaters, the price set-up, however, is to be worked out of the original monies mentioned and allocated against these two theaters. These two Oklahoma City subsequent runs are to be the same runs as formerly enjoyed following the Warner and Publix-Cooper run, and the product is to be made available within 180 days
2574 after the first run release in the territory."

Q. Now, do you recall at this time what those runs were that the Reno and Rialto had in Oklahoma City at that time?

A. Well, I think they were as available within that period. I don't think there were any definitely designated runs, whether second, third, fourth or fifth.

Q. While they may not have been designated that they were second or subsequent runs, the time within which each theater in Oklahoma City could play would fix——

A. A run.

Q. A run, would it not?

A. That's right.

Q. Would you say that those runs were runs beyond the third run?

A. Oh, I would imagine somewhere around third or fourth run, perhaps fifth run.

Q. Do you know what runs those two theaters enjoy in Oklahoma City today?

A. No, I don't.

Q. This contract provides for second run in eleven towns exclusive of subsequent runs in Oklahoma City, is that true?

A. That's right.

Q. In your contract for the preceding year, the memo agreement, exclusive of Oklahoma City, covered
2575 only seven towns, is that right?

A. That's right.

Q. Apparently there has been added to the second run agreement the towns of Ada, Borger, Seminole, Shawnee——

A. And Ardmore.

Q. And Ardmore?

A. Yes, sir.

Q. And I notice that in your agreement for the year 1935–'36, it is provided that the price is to be allocated on the first run showing price?

A. Yes, sir.

Q. Instead of a definite price being fixed for second run in each of those situations?

A. That's correct.

Q. Will you explain that to the Court?

A. Well, when we worked out, made out our negotiations we had a definite price in mind as to what the first run would be, plus, let's say, assume the second run price, and I coupled it together, all together, and when they played first run they paid for both runs as they played it on the first run, and then later on when they played the picture it automatically flowed through.

Q. In other words, it gave you your rental money?

A. On the first showing for both runs.

Q. At an earlier date?

2576 A. At an earlier date; and I believe in doing that it still would expedite the play-off because when I had the money and had collected, they were going to play the picture quicker.

Q. I notice in this contract also that on the second run the privilege of using the picture second run extends only to 30 pictures, 30 feature pictures, instead of the entire product?

A. Yes, sir.

Q. You have heretofore told us that during that period prior to the consent decree, in selling your first run pictures, you endeavored to license the entire season's product, and customarily you did so with your regular accounts; that is correct, is it?

A. Yes, sir.

Q. Now, in licensing pictures for second or subsequent runs in the situation where you customarily licensed all of your season's product for first run, state whether it was the custom for the exhibitor to license all of the season's product second run, or subsequent run, or to take a selective contract?

A. In the main, it was a selective contract; there were a lesser number of pictures than were generally sold first.

Q. Why would that distinction be made between the first run and the second or subsequent runs?

2577 A. Well, the pictures of lesser box office caliber, if they were not good first run, they certainly would

have less value second run, so they just wouldn't buy them.

Q. Now, under this kind of an arrangement, where the pictures which were to be played on second run or subsequent run had not yet been produced, and it was not——

A. (Interrupting.) Had not yet been what?

Q. Not yet been produced, and it was not certain that all of them, all of the pictures which you had announced would in fact be released during that season, and when there was a selective provision or an optional provision such as you have here, how did you arrange the matter of the elimination or the exclusion of the pictures which the exhibitor would not desire to use?

A. I believe the contract so specifies that he has to, within a given number of days, advise or exercise his right or reject the picture after it is released.

2578 Q. You are now referring to the clause in your printed form of contract?

A. Yes, sir.

Q. Which specifically provides the manner in which all eliminations shall be made?

A. That is correct.

Q. And that referred to a certain number of days after the picture was available?

A. That is correct.

Q. Now I assume that since you have been licensing under the consent decree there is no occasion for the use of selective contract in the licensing of the product either on first or second run, is there?

A. There isn't. You either buy or you don't buy now, as you see the pictures and as we offer them for sale.

Q. This clause provides for an option or the privilege of using a certain number of pictures on subsequent run or a clause providing for selection of certain number of pictures to be played on repeat or subsequent or second run. Was there anything unusual about that clause in Mr. Griffith's arrangement?

Mr. KIME. Now, if your Honor pleases—read that question.

(Hereupon the reporter reads the above question.)

Mr. COCHRAN. Change "arrangement" to "memo."

2579 Mr. KIME. Now, if your Honor pleases, that is one of the very things your Honor is going to decide, whether it was unusual or not and what this man may think about it. I don't think that will help your Honor decide that point at all.

The COURT. How do you expect the Court to decide it without some evidence?

Mr. KIMR. From the contracts that are in evidence, your Honor.

The COURT. Overruled. Exception allowed. If this man doesn't know I don't know of anybody that would. You may answer the question.

(Question read.)

A. Well, I would say this. It is not shown in every contract but it is done, and I can recall very distinctly a contract with a very large circuit, or much larger than this Griffith circuit is, in Florida where we had—where they paid on the first showing for the entire cost of the picture——

By Mr. COCHRAN:

Q. You are directing your attention now to the matter of including the rental in the first run rental?

A. That is right.

Q. The clause in the contract which I am talking about now is the clause which permits the exhibitor to
2580 have the privilege of running less than the entire number of pictures, subsequent run.

A. That is right.

Q. I wanted to know if that is a customary clause in the contract.

A. That is an ordinary practice. There are many subsequent run contracts and much less than the full line of product that we sell.

Q. You say it would be the exception where the second or subsequent run contract that was given during this period of 1933 to '39, for the contract to cover the entire season's product?

A. It would be an exception if we got a full commitment of the full sale, rather than a deal like this of lesser pictures.

By the COURT:

Q. Then would you say this was not out of the ordinary?

A. No, sir, it is not out of the ordinary. It is very much in line with general sales practice.

By Mr. COCHRAN:

Q. I now hand you a document which is marked "P–5, A to E" and will ask you to state what that is.

A. This is a photostatic copy of the memorandum of negotiations that were conducted between Mr. R. E. Griffith and myself for the Griffith Amusement Company theaters. It is dated August 19, for our commonly known
2581 X–4 product for the season of 1936–37.

Q. Did Mr. Falls also participate in those negotiations?

A. I am quite sure he was there.

Q. Does that memo contain a clause providing for playing out of the order of release similar to those contained in contracts which you have already explained?

A. I haven't found it but I am certain it does.

Q. On page 3?

A. Yes. I see it. "We agree to the continuation of the privilege of allowing you to play some subject out of order of release." It is the same in substance, the same as the other.

Q. Does it also contain the clause in regard to the privilege of 10 percent eliminations; that is on the second page about two-thirds of the way down?

A. Yes, sir.

By the COURT:

Q. Is the contract as a whole practically the same as the contract before, the form of the contract?

A. Yes. In the main it is identical. There is something in here that differs from the prior one and that is we set up a definite price, I believe, in this contract for the subsequent runs, and the reason that was done was because in the years prior I was criticized severely because there might be some misrepresentation that I was
2582 giving them pictures as a repeat for nothing.

Mr. KALLIS. My understanding is that the 1936–37 contract, concerning which the witness is testifying about, provides there should not be a charge for the second run product.

Mr. COCHRAN. I don't think it provides there should not be a charge but I was under the impression that the prices were handled in the same way for that year and possibly a year or two more, and I want to find out.

By the COURT:

Q. Is the contract now under consideration the 1936–37 contract?

By the WITNESS:

A. Yes, sir.

Q. What does it provide with reference to second or subsequent runs?

A. (reading) "We further agree the privilege of using 30 pictures"—that is the same as the other "Twentieth Century Fox product, the price to be allocated on first run showing." I was confused, I guess, because I am ahead of myself. I thought this was the year I was criticized for allowing this type of contract to be in existence.

Mr. COCHRAN. I think you will find it probably was not until 1939–40.

Mr. KALLIS. My understanding is that the first definite charge that was made specifically was for the '38–39 season.

2583 Mr. COCHRAN. We will check that. '38–39?

Mr. KALLIS. That is my understanding.

By the WITNESS:

A. The contract will show.

By the COURT:

Q. This contract then is practically the same?

A. The same thing.

By Mr. COCHRAN:

Q. Does it cover the same towns as the preceding year?

A. I will have to check. There are eleven towns, yes. You mean in the second run?

Q. Second run.

A. Yes, the same eleven towns.

By the COURT:

Q. I understand you to say you did make a charge for the first run and you made a charge for the second run?

A. That is right.

Q. But in your negotiations you made a lump sum charge for the pictures to be run first and second run?

A. First and second run.

Q. And it was paid for at the time they paid for the other?

A. At the initial showing, that is right.

By Mr. COCHRAN:

Q. I hand you a document marked F–7, A to D.

The COURT. Those contracts are in evidence, are

2584 they?

Mr. COCHRAN. Yes, sir. A to D, inclusive, and will ask you to state if that is the memo agreement entered into with R. E. Griffith for the companies he was representing for the season of 1937–38?

A. It is.

Q. Is that contract substantially, so far as the clauses we have been referring to are concerned, the same as the preceding season?

A. It is but there are a few additional towns here.

Q. You mean on second run?

A. No, on first run.

Q. As to the towns, there were probably some additional towns, first run, added each year, were there not?

A. There were, and there is one additional town here for second run too. That is the only change I can see.

Q. I was going to call your attention to that. What additional was added that year for second run?

A. Norman, Oklahoma.

Q. In licensing the pictures to those companies which had previously been included in the memo contracts you have been testifying about for the season of 1938-39, do you recall that there was a difference in the way those contracts were negotiated, the persons who negotiated them and the manner of negotiation?

2585 A. '38-39, this was the year following the one we are discussing now?

Q. Yes.

A. Yes, sir, there is a decided change.

Q. What was the change that you refer to?

A. Well, there were two memorandum agreements. One was made with Mr. R. E. Griffith for a certain designated number of theaters called the R. E. Griffith Theaters Incorporated, and Wes-Tex Theaters, and the other memorandum dated August 8, that one by the way was dated August 24, but an earlier one is dated August 8, and was made between myself and Mr. Horace Falls.

Q. For what company?

A. This was for—I would say the Griffith Amusement Company. It doesn't say in this memorandum but the standard form of contract will show the companies that operated each theater.

Q. And the names of the towns appear in the memo?

A. They do for each one of the memorandums and for each one of the divisions.

Q. You have stated that the contract which was negotiated with Mr. Falls bears date of August 8, 1938?

A. Yes, sir.

Q. I notice this address of Mr. Horace Falls, Griffith Amusement Company is 11½ North Lee Avenue,

2586 Oklahoma City, Oklahoma.

A. That is correct.

Q. Can you tell us where that contract was negotiated?

A. In Oklahoma City.

Q. Now where were the negotiations carried on for the licensing of the product for the season of the 1933-34 through the season of 1937-38?

A. For 1933-34 season I know definitely it was negotiated in New York City.

Q. 1934-35?

A. 1934-35 was in New York City.

Q. 1935-36?

A. 1935-36 was in New York City.

Q. 1936-37?
A. 1936-37 was in New York City.
Q. 1937-38?
A. 1937-38, New York City.
Q. Now you have examined those documents and have so testified because the memo was addressed to R. E. Griffith at a hotel address in New York City. Is that correct?
A. That is correct.
Q. Now this contract for the 1938-39 season, negotiated with Mr. Horace Falls, you definitely know was negotiated with him in Oklahoma City?
A. I am quite positive of that.
2587 Q. And it is addressed to Mr. Falls at Oklahoma City?
A. At Oklahoma City.
Q. At that time did Mr. R. E. Griffith participate in any way in the negotiations which you had for the licensing of product that was covered by this memorandum agreement dated August 8, 1938, and which has been identified as F-8, A, B, and C?
A. No, I don't believe he had anything to do with it.
The Court. That is the Falls contract?
Mr. Cochran. That is the Falls contract. In other words, Your Honor, we are seeking to develop here that beginning with the 1938-39 season, Mr. R. E. Griffith negotiated for the licensing of pictures exclusively for the R. E. Griffith Theaters, Incorporated and Wes-Tex Theaters, Incorporated, which were the companies he was operating, with his headquarters in Dallas, Texas. That Mr. Falls negotiated for and licensed pictures for the Griffith Amusement Company and Consolidated Theaters, or commonly referred to as L. C. Griffith Theaters, and without the assistance of Mr. R. E. Griffith.

By Mr. Cochran:

Q. Were those two deals, the ones that are reflected by Exhibit F-8, A, B, and C, and the other which is reflected by the memo agreement, identified as F-10, A and B, separately negotiated with you?
A. Yes, sir.
2588 Q. Did you participate in the negotiations?
A. I did.
Q. You handled those negotiations for your company?
A. That is right.

By the Court:

Q. In other words, as I understand, beginning with the 1938-39 contract, the Griffith Amusement Company and Grif-

fith Consolidated Theaters, the contracts were made entirely with Falls and Mr. R. E. Griffith had nothing to do with them?

A. That is correct.

By Mr. COCHRAN:

Q. Did the making of either of these contracts depend in any way on the making of the other contract?

A. None whatever.

2589 Mr. KALLIS. Now, if the Court please, I think that calls for a conclusion of the witness, and without furnishing your Honor with the proper foundation. I don't think the witness is qualified.

The COURT. Well, here is the man that made the contract, he had absolute control of the licensing of the pictures. Now, who would know about it better than he?

Mr. KALLIS. Your Honor may be correct in that statement. What I had in mind was instead of giving Your Honor a conclusion, I think that the best way to present the matter to Your Honor is by this witness testifying to everything that was said and done.

By the COURT:

Q. Let me ask you a question, Mr. Witness. When these contracts were made, that is, the '38–'39 contracts in Oklahoma City were negotiated with Mr. Falls, did you talk to R. E. Griffith about those contracts?

A. Relative to the towns that Falls negotiated?

Q. Yes.

A. No, sir.

Q. Did he talk to you?

A. Well, he talked to me about the towns that I negotiated with him.

Q. But about these towns?

A. No.

Q. Now, did Falls talk to you about R. E. Grif-

2590 fith's towns?

A. No, sir, he didn't.

Q. Now, in making these contracts, did you take into consideration the interest of either one of the others with reference to making the individual contracts?

A. No, sir, as far as I was concerned, they were two separate and distinct negotiations, neither one had anything to do with the other.

By Mr. COCHRAN:

Q. That answers the question. Now, the '38–'39 contract that has been identified as F-8, contains the usual provision in regard to not licensing foreign made pictures and

playing out of order of release and elimination privileges, is that correct?

A. That's correct.

By the COURT:

Q. In what way is it different from the preceding one?

A. It doesn't differ at all; the substance is about the same, I believe. I haven't read it.

By Mr. COCHRAN:

Q. Well, pointing here to the fact that in this contract there are certain provisions for the playing of pictures in certain towns on a percentage basis, is there not?

A. Which contract are you referring to; the R. E. Griffith contract?

Q. August 8th, 1938?

2591 A. That's the Falls' contract?

Q. That's the Falls' contract.

A. There is a difference of terms than what they were. Up to now we were selling in the main on flat rental or a lump sum, but now, when I negotiated with Falls this particular year, they were on percentage.

Q. In certain towns?

A. In certain towns, for 26 pictures.

Q. How about the contract with R. E. Griffith for that year, did that contain any percentage deal?

A. No, it didn't; it was flat rental.

Q. That continued on a flat rental?

A. Yes, sir.

Q. Now, tell us what difference there was in the Falls' contract in regard to the second run pictures.

A. I think the commitment was for 26 pictures, whereas the prior year it was for 30 pictures; that is one difference.

Q. Just read that clause, Mr. Kupper.

A. "In the following situations which are subsequent run showing, we agree to a 26 picture commitment on the following basis: 10 pictures at $450 each, 8 pictures at $245 each, and 8 pictures at $205 each. The towns for this second run or subsequent run are as follows," and it lists the towns. Shall I read them?

Q. Well, you might tell us what additional town,

2592 if any, has been added since the preceding year.

A. I think Ponca City.

Q. All right; now, turning to the R. E. Griffith contract, is there any second run clause in that at all?

A. I don't see it. I don't believe there were any second runs.

Q. And in the contracts that we have considered up to the present time, there were none of those, there were no

Griffith, R. E. Griffith towns, in which there was any provision made for second run?

A. That's correct.

Q. In the subsequent years that Fox has licensed its pictures to Griffith Amusement Company and Consolidated, have those contracts been separately and independently negotiated from the contracts which were negotiated for product for R. E. Griffith, Inc., and Westex?

A. Yes, sir.

Q. Has Mr. H. R. Falls continued to be the representative who has dealt with Fox in the licensing of pictures for Griffith Amusement Company and Consolidated during all those years since 1938–'39?

A. In Oklahoma City?

Q. Yes.

A. Yes.

Q. And who has been the person who has repre-
2593 sented the R. E. Griffith Theaters and Westex since the season 1938–'39?

A. To the present?

Q. Down to the present?

A. Well, R. E. Griffith until the time he died, and then I believe Mr. Higdon, Mr. Ray Higdon. I never had any negotiations, by the way, with Mr. Higdon for the sale of our product to this circuit, but he was the buyer.

Q. As I understand it, your job was changed so that you didn't actually participate in the negotiations for the licensing of product to R. E. Griffith and Westex?

A. That's right; I became general sales manager. Then we also had—I will say the consent decree operation in effect—where we sold in small groups, and it was a physical impossibility for me to go around and sell each group to Falls, Griffith, or anyone else, and the negotiations were handled locally by our local branch manager or district manager.

Q. In that connection, can you give the Court some idea of the difference in the amount of labor connected with the licensing of pictures to the exhibitors in the towns which were covered by contracts, say of 1938–'39, as the same existed in 1938–'39, and since the consent decree?

A. Well, I would say this, it was just as easy to sell those 52 pictures in 1938–'39 as it was to sell the first block under the consent decree. Since the consent decree it
2594 is ten times, you make ten negotiations where you did one before, and it is ten times harder.

Q. In addition to that, I assume you have the matter, I believe you said, of trade showing of pictures?

A. Yes, sir, the screening and trade showing, showing it to the exhibitors before purchase.

Q. Well, are those trade showings made at the exchange, the branch exchange in each one of your towns, or where do you make those trade showings of pictures?

A. In the main they are. We have generally a fine, well equipped projection room. We don't always have them there, however. We have on occasion gone out and rented a theater and showed it there in various places, but in the main, we have our own well appointed projection rooms in the various cities where we have exchanges.

Q. Mr. Kupper, I notice that in these memo contracts for the season 1933–'34 to and including 1938–'39, there is no reference made to admission prices which are to be charged by the theaters exhibiting the pictures licensed under these memo agreements. I also notice that in the printed forms of contracts which Fox used during that period, there is a blank space left where it specifies the admission prices to be charged. Will you please explain how in the drawing of your contracts, where admission prices
2595 were specified, how you arrived at the prices that were to be inserted in those blank places?

Mr. KIMM. Now, if the Court please, he has testified that everything was incorporated into these contracts. That is a contract for your Honor to determine what governs here, and this man's explanation or guess or surmise as to why they were left out of some contracts and put in other contracts is not competent or material or relevant to any issue now before the Court.

The COURT. Overruled. I don't know of any better evidence as to a contract or the terms of a contract than the man who made it. Exception allowed.

By Mr. COCHRAN:

Q. My question relates to the method of determining the price that was to be inserted in these blanks, generally, not relating to any particular contract, but when you would insert in the blanks certain admission prices, how did you arrive at those prices, what was your policy in regard to the amount that was to be inserted in there?

A. Well, for years we had a minimum admission price clause in our standard printed contract. It was an accepted clause by the industry. And then we wanted to know exactly what the admission price would be for showing of our pictures. I am not talking about Griffith, I am talking by and large throughout the United States, and we wanted

that inserted in the contract. It was generally what
2596 the exhibitor was charging. That was not entirely—occasionally we had a picture that we wanted shown at an advanced price, and that was negotiated and became a part of the contract, so did this, as a matter of fact, but in the main it was the price that the customer exhibitor charged, that was inserted in the face of the contract.

Q. In other words, you didn't attempt generally to insist upon an exhibitor charging more or less, provided it was a price——

Mr. KIMB (interrupting.) Now, Your Honor please, we object to him leading the witness and asking him just exactly what he wants him to say, "I want you to answer this 'Yes' or 'No' ".

The COURT. I think it is leading.

Mr. KIMB. Certainly.

By Mr. COCHRAN:

Q. State whether or not, except in the occasional instances which you have testified to, you attempted to regulate the amount which should be charged provided the admission price exceeded the minimum price which you sought to obtain?

Mr. KIMB. Now, the same objection to that question, your Honor; it is leading.

The COURT. I think that is slightly leading too.

By the COURT:

Q. Just what determined in your mind the price that you would insert?

2597 A. In the main, it was what the exhibitor was customarily charging; he fixed the admission prices to his theater generally.

Q. Of course, he had to do it above your minimum price?

A. Yes, sir, that's one thing we tried to enforce, and even later on we had to drop that minimum clause in the contract, but at least we tried to have a minimum that they couldn't go below, which we tried to enforce.

By Mr. COCHRAN:

Q. What was that minimum?

A. I think 15 cents for adults, and 10 cents for children.

Q. When was that dropped?

A. I don't remember, but it just vanished away sometime during the writing of the contracts.

Q. Well, was it prior to the consent decree?

A. I think just prior to the consent decree.

By the Court:

Q. Now, let me get one thing straight in my mind. Mr. Kupper, say here is a town that has seven theaters?

A. Yes, sir.

Q. We will say theaters Nos. 1, 2 and 3 are owned by "A," and 4 and 5 are owned by "B," and No. 6 is owned by "C," and No. 7 is owned by "D." Now, how would you determine to whom to lease your product in that town?

A. How would I determine that?

2598 Q. Yes, sir.

A. Well, naturally, the first consideration I would give would be to the first run which would have the ability to pay more than second or third or on down to seven; then I would adjust myself as we went down to the lowest, whoever owned it. Of course, I would have in mind the best performance in the town, who was our regular established account. I don't think I would deviate from selling away from that established account, and so on down through for the seven runs.

Q. Is that decision made by you entirely?

A. It is more or less, I would say, a definite company policy.

Q. Now suppose you go into a town where there are three theaters?

A. Yes, sir.

Q. And they are owned by three different people. Would you reserve the right to or did you sell to whom your best judgment dictated in that case?

A. Always, we always felt that we had the right to pick and choose our customer, and I would naturally do so and sell the one who would give us or throw off the greatest amount of revenue, the one I could get the most advantageous contract from.

Q. Suppose you had a regular customer in a town,

2599 and some new concern came in and built a better theater, a nicer theater, and a better location. Would you feel free to sell to the new man if you wanted to?

A. No, I don't. I think I would have a very definite moral obligation and relationship with the customer in that town, and, unless he proves himself unsatisfactory, I would continue to stay with my old account.

Q. Now, in making these contracts generally, and particularly in making these contracts with the Griffith interests covering this period, at any time were you solicited by the Griffiths or any of their agents or representatives, as a condition to their purchase of your product, not to sell to any of the other exhibitors in the town?

A. No, sir, there never was any discussion; the thought was never entertained.

Q. If the Griffith interests had been purchasing in this town for several years, and they were your regular customers, it was your policy to go to them first?

A. Yes, sir. Just as our policy was in towns where Griffith came in, which were an independent operation. I am thinking of Sapulpa and Hobart.

By Mr. COCHRAN:

Q. And Mangum?

A. And Magnum. Griffith came into those towns; we had an account, but Griffith never got one inch of our film;
2600 we sold it to our independent customer; despite the fact that Griffith was a big buyer of our product in other situations, he never got it in those towns, as long as the other operator continued to operate, and they still do today. I am thinking of Sapulpa. I haven't been down here in four or five years, but it still does in those towns, if they are independently operated.

By the COURT:

Q. What I am trying to get at is, whether there has been any understanding of any character between you and the exhibitor to whom you did sell not to sell to somebody else?

A. No, sir, never.

The COURT. Go ahead.

By Mr. COCHRAN:

Q. Mr. Kupper, we touched on the fact that Fox Distributing Corporation changed its name to Twentieth Century Fox. About the time that that change was made, had Twentieth Century Company been distributing product separately from Fox?

A. The Twentieth Century Company was a producing organization, and they released their pictures through the United Artists Distributing Corporation.

Q. All right. So at a certain time during the period involved here your company commenced to distribute pictures which had previously been produced and they were still produced by Twentieth Century, and which had
2601 been previously distributed by United Artists, is that correct?

A. The trade-name—as I recall, it was about 1935, Fox Film Corporation worked out an agreement or a business transaction by which we acquired the Twentieth Century producing organization, and it became one company, Twentieth Century Fox Film Company. And from thereafter it became the producer.

Q. What I wanted to get you to do was to explain your attitude in regard to old customers by illustrating what was done by your company in the matter of licensing Twentieth Century product after you commenced to distribute that product.

A. Well, for the first year or so we continued, if a customer in a town was a regular buyer of Twentieth Century product that was distributed by United Artists, we would sell him those Twentieth Century pictures, irrespective of what happened to the Fox Film pictures.

Q. And did that continue as long as those pictures were separately produced?

A. That's correct.

Q. Was the same true when Fox succeeded to the distribution rights of "March of Time," which had been previously distributed by RKO?

A. Yes, sir, and it is still in effect today, we still continue it. When we took the distribution of "March
2602 of Time," they had regular established customers and we still continued to sell those customers, and service them.

Q. His Honor asked you if some person would come into a town and build a new theater which was a better theater than the theater of the person who had been the exhibitor who had been your customer for a number of years, if you would feel free to license your product to that newcomer, and your answer was that you would consider that you had a moral obligation to your old customer. Now, I would like to know whether, so far as any contractual relations are concerned, there was anything to prevent you from continuing to exercise your judgment as to which of those parties you would perfer to do business with?

A. There was no contractual relation.

Q. In other words, you attempted to explain to his Honor that it was a matter that you considered to be a moral obligation and fair deal?

A. Yes, sir, or ethical, put it that way.

By the Court:

Q. Now, in that connection, let's assume that this man who came in, or the company that came in and built the new theater, was also a customer of yours in another town, or other towns, and was a very large purchaser. Would that fact affect you in determining the issue in this particular town where the old customer existed?

A. No, it would not.

2603 By Mr. Cochran:

Q. You spoke of the town of Mangum.

A. Yes.

Q. Do you recall the fact that Pat Duffy operated theaters in the town of Mangum at one time?

A. I do.

Q. Do you recall along about 1937 that Griffiths put in a theater in that town and operated it for a time in competition with Mr. Duffy?

A. Yes, they did put in a theater.

Q. What did Fox do in the matter of continuing to license its product to Mr. Duffy?

A. We sold Mr. Duffy.

Q. Do you recall that along prior to 1933–34 season in the town of Plainview, Texas, you were licensing your product to Mr. Oscar Korn in his Grenada Theater?

A. Yes, sir.

Q. I believe some reference has been made to the Oscar Korn circuit of theaters.

A. That is right.

Q. Just explain what that is.

A. He had a group of towns and theaters, I think about eleven theaters in all, a small circuit independently operated, which was owned and controlled by Oscar Korn. Incidentally, that was served out of the Dallas office; not the Oklahoma City office.

2604 Q. Was the Korn circuit very small as compared with the Griffith circuit?

A. Yes, much smaller.

Q. Do you recall that R. E. Griffith, either through the R. E. Griffith Theaters, or Wes-Tex Theaters, acquired an interest in a theater there? I believe the name of it was the Ritz and was changed to the Texas along about 1933?

A. It was somewhere around that date.

Q. And operated in opposition to the Korn theaters?

A. That is right.

Q. What did your company do in regard to selling product?

A. We continued to sell Mr. Oscar Korn in Plainview and the rest of his towns.

Q. In the town of Hobart, do you recall that Griffith opened up a theater in Hobart in 1934 in opposition to Mr. Mahone?

A. I do recall it. I don't recall whether it was 1934 or '35, but I know they went into the town.

Q. What did your company do in regard——

A. We continued to sell our regular, established account, which was Mr. Mahone.

Q. Are you still selling him?

A. I think we are, up to this day.

Q. Were you selling him while you were making
2605 these contracts with Griffith?

A. Yes, sir.

Q. You have already referred to Sapulpa?

A. Yes, sir.

Q. You continued to sell there?

A. Yes, sir.

Q. In that connection, you have mentioned the fact that after you negotiated with Griffiths, that is the '33-34 contract, certain towns were covered and thereafter certain towns were added. Just tell the Court, in making that agreement with Griffith, who was your customer at that time and what the situation was relative to Griffiths, either as your existing and satisfactory customer in a town or a person who had succeeded to the theaters which had been previously operated by your customer and things of that kind. What was the situation?

A. Well, it is a pretty long question but I am going to try to think this one out.

Q. I was trying not to lead you.

A. Griffith was our customer—you are talking about '33-34—and some years showed additional towns that we incorporated in our new contracts.

Q. That is right.

A. I would say that those additional towns that they took over and we sold them were all situations where we
2606 had sold our product to the former owner. In other words, they were towns and theaters and situations we served that Griffith bought out, which was our old account.

Q. And so in those towns where you licensed your product to Griffith, when you started the negotiations, Griffith was either your established customer in those towns, or it was a town where Griffith had acquired theaters which had been owned by people who were your customers in that town?

A. That is correct.

Q. Coming down to specific towns, let's turn our attention to the town of Ada, Oklahoma. Miss Nona Kyser has said in 1939 Fox sold some second and third run to her. "We had been trying to buy Fox third run prior to that for a period of several years but they never took the application form." Now will you explain to the Court what the situation was at that time which, as she says, was several years prior to 1939 relative to the licensing of third run in the town of Ada by your company?

A. Well, we didn't think that Ada was large enough to support third run and if we had sold it we believed definitely it would have affected our first run revenue.

Q. Was there a period when you did not license that product third run in Ada?

A. Yes, sir.

2607 Q. When did you change that policy?

A. I would say after the consent decree came in when we were ordered, you might say, to sell some run.

Q. Did you have any understanding or agreement with any representative of the defendants, or either of them, that you would not license third run in the town of Ada?

A. We did not.

Q. The town of Altus. First, let me ask you this: During the time you were carrying on these negotiations with the Griffith Amusement Company in the licensing of product in these various towns in Oklahoma during the period 1933 to '39, were you familiar with these various towns in Oklahoma and Texas?

A. Yes, sir, very much so. I went with our general manager in Dallas. I had been familiar with them years before. I guess I was in most every one of them. I might have skipped a few like Deming, New Mexico, or Kermit or Eunice, something like that. I might have gone through them and not known I was in the towns, but I was in the towns and made a special trip around 1936–37. I went to practically every town and took our new manager at Dallas at the time, as I wanted him to be familiar with the situations, and I went to all the towns and studied them and I saw the development of the towns and I was surprised in a lot of them.

2608 Q. In the period around 1936–37, for the next year or two, did you receive requests in several places where you had not had any second or subsequent run accounts for your product on second or subsequent runs?

A. I am certain we did.

Q. And were you at that time advised by some representative of the Department of Justice of complaints that had been made that your product was not being licensed in certain situations?

A. Yes. In fact, I think we were flooded with requests, particularly from new territory, and the Department of Justice was flooded with them. We got copies and we had to answer everyone and told them why we didn't elect to sell.

Q. Prior to the time the consent decree had been entered was there any change in your attitude in regard to licens-

ing pictures on second or subsequent runs in some of these situations where you had not previously licensed them?

A. Yes, sir. We saw the writing on the wall and we changed and modified it to some extent in the towns where we still thought that, however, and did not believe it was a smart thing to do but we did modify it and did sell.

Q. Was there a period just prior to or just after the filing of the complaint in the United States versus Paramount and others, in which negotiations were carried on by your company and certain other distributors with the Fair Trade Practices Commission, or whatever it was?

2609

A. That is right.

Q. Who participated in those negotiations other than certain of the distributors? Were there exhibitor representatives there?

A. Oh, yes.

Q. In that connection, is there some national group which represents so-called independent operators of theaters?

A. Yes, there are two. There is one called "The Allied Group" and there is another called "Independent Motion Pictures", I don't know, something like that. They are two distinct organizations.

Q. Did those organizations participate in those negotiations?

A. Yes, they must have.

Q. Was there an effort made to try to draw up at that time some fair trade practice agreement or plan that would meet the approval of the Department?

A. Yes, very determinedly, worked hard on it.

Q. No agreement was ever consummated?

A. No, sir.

Q. And finally a consent decree was entered in the Paramount case?

A. That is correct.

Q. This town of Altus, Mr. C. C. Hamm testified that he opened a theater in the town of Altus in July of 1936, and that none of the major companies offered him any product, second run, which would include Fox. I assume you admit that your company is one of the major distributors.

2610

Q. I don't know what the other companies did but he probably requested it from us and we probably refused to sell him.

Q. Why?

A. On the same basis; that we didn't think it was good business and possibly would destroy our revenue from our first run account.

Q. Was there any agreement or understanding with any representative of the defendants, or either of them, which caused you to refuse to sell or license second run in that town?

A. No, sir, there was no agreement or understanding; no request.

Q. Blackwell, Oklahoma. Are you familiar with the town of Blackwell? Were you during those days?

A. Yes, I have been to Blackwell. I can't picture it now.

Q. Well, the testimony up to this time shows that, or rather Mr. Malcolm Geiger testified he was operating for Mr. George Lahan the Bays Theater from 1937 until
2611 the time the Bays Theater was sold to Griffith in October, 1939, and that Griffith was operating the Rivoli Theater. Now, do you recall this Bays Theater?

A. No, I do not.

Q. Mr. Geiger also testified that the Bays Theater had about 1200 seats, and the Rivoli, which was the largest theater which Griffith had, had about 700 seats, and that the Bays was a well equipped theater. Do you recall that someone else was operating the Rivoli in Blackwell in opposition to the Bays Theater for some years before Griffith went into that town?

A. I am sure someone did; I don't recall the name.

Q. It is now about noon and I wish you would see if you can check the records and ascertain whether it is a fact that Fox—Mr. Geiger said the year before the Rivoli was opened —I believe that is his testimony—that Fox was not selling the Bays Theater, so I wish you would examine your records to ascertain whether Fox had been licensing the Rivoli Theater before Bays before Griffith came into the situation.

A. In what year?

Q. I will give you the date.

The Court. We will adjourn at this time until 2 o'clock p. m.

(Hereupon court adjourned until 2 o'clock p. m. this day.)

2612 PROCEEDINGS

September 18, 1945, 2:00 o'clock p. m.

Mr. Cochran. I find that I was mistaken about my information in regard to Blackwell, or rather what the obligations were in regard to Blackwell, and I will withdraw my question and will reframe my question, that I have propounded to Mr. Kupper in regard to Blackwell.

The Court. Very well.

WILLIAM J. KUPPER, a witness called on behalf of the defendants, was recalled, and having been previously duly sworn, was examined and testified as follows:

Direct examination (resumed) by Mr. COCHRAN:

Q. As to Blackwell, Mr. Geiger testified that he commenced to operate the Bayes Theater for Mr. George Laham in August of 1937. Have you checked these several memo contracts beginning with the season 1933–'34 to ascertain to whom your product was licensed in Blackwell for that period prior to 1937?

A. Yes, sir, I did. I went back as far as 1933, and we had been selling the Griffith Theaters.

Q. After this theater opened, this Bayes Theater by Mr. Laham, you continued to sell to Griffith Theaters?

A. We did.

2613 Q. Turning now to the town of Drumright, Mr. James G. Bennett testified that he had been operating all of the theaters there in the town of Drumright, and that he had on behalf of Mrs. B. W. Tessin, his sister, sold those theaters in 1936 to Consolidated Theaters, Inc. He says that in prior years he had been doing business with Fox in those theaters, and that the Fox salesmen had been accustomed to calling on him prior to the middle of the year to solicit business, but that on this year, in 1936, the Fox salesman called on him but only for the purpose of obtaining some play dates and did not offer to take any contract from him at that time. Can you tell us anything about that Drumright situation?

A. Yes; I think they were very delinquent in their product, and there was perhaps no sense in urging other sales when you had a lot of unplayed pictures.

2614 Mr. KIMB. We move that answer be stricken. It is purely a conclusion, "he thinks." If that situation were true their records will show whether he was delinquent. They have all of these records of every man who has been delinquent since they started selling, it seems.

The COURT. Well, it is pretty hard for a witness to testify without thinking, but I think you should frame your questions differently. State whether or not you know that to be a fact.

A. Yes, I do know it to be a fact. As a matter of fact, I think we had to cancel a lot of pictures out because they were unplayed.

Mr. KALLIS. I was going to say his answer should be stricken for the reason he said "perhaps"——

The COURT. I agree with you that the answer was not definite and that is why I asked for another answer.

Mr. COCHRAN. We will pass on and come back to that a little later.

By Mr. COCHRAN:

Q. The town of Duncan. Mr. Guest testified that he opened the Ritz Theater in Duncan in October, 1930. At that time the Griffith Amusement Company was operating two theaters in the town, and he further said in 1930 Duncan had a population of between eight and nine thousand people, and he testified that during the period from 1933 to 1934, to the time of the consent decree, that
2615 he was not offered any second run pictures by Fox. That is, for the season's contract for pictures; that is, any substantial number of pictures by Fox. Will you state what the situation was as to Duncan?

A. Well, we had a first run contract with the Griffith Amusement Company, and I would say in keeping with our policy, we didn't think a town of that size would support it, and if they did have second run it would probably affect our first run revenue, and therefore we did not elect to sell.

Q. Did you have any agreement or understanding of any kind or character with the defendants, or either one of them, you would not license your pictures second run to Guest or for use in his theater?

Mr. KIMR. To which we object. That is one of the main things in this lawsuit. We say from these contracts that thing can be inferred; must be inferred.

The COURT. There is no need to infer anything when you have the source of the information. It is the man who made the contract. It is certainly competent for him to say whether or not he made the contract or agreement. Overruled. Exception allowed.

Mr. COCHRAN. I will state to your Honor in that connection that one of the big contentions that has been made by the government is the fact that because second
2616 run was not sold in various towns, that although the contract was silent with regard to it, that the court should infer, in the absence of testimony, there was some understanding or agreement so we are offering this testimony to show there was none.

The COURT. I think it is competent.

By Mr. COCHRAN:

Q. You answered the question, didn't you?

A. No.

Q. All right, answer it.

A. We did not have any agreement or understanding.

By the COURT:

Q. Did the Griffiths make any request of you not to sell second run in that town?

A. No, sir.

By Mr. COCHRAN:

Q. Going back now to the town of Drumright, I hand you Defendant's Exhibit 100, and ask you to state if that is a contract or recapitulation covering the product that was licensed to the Rex and the Midwest at Drumright for the K-3 season?

A. It is.

2617 Q. Does that sheet show the date that the contract was made?

A. February 11th, 1935. Wait a minute, I think it was January 31st, 1935.

Q. That's the date of the sale?

A. That's the date of the sale.

Q. When was the contract commenced, the playing commenced?

A. November 1st, 1935.

Q. That's the starting date of the feature play-off?

A. That's right.

Q. Now, can you tell us by examining that document how many of those pictures were unplayed on August 1st, 1936, say?

A. Unplayed?

Q. Yes.

A. It looks like 16.

By the COURT:

Q. How many did you sell; how many were included in the contract?

A. I think it was 52; number offered, number sold, number bought.

By Mr. COCHRAN:

Q. And 16 definitely didn't play at all?

A. Definitely. Well, it says on here that he cancelled the unplayed product because of the change of ownership.

2618 Q. From that information which you have just given us, would you say that that account was delinquent at the time this Fox salesman called on him along prior to the middle of the year 1936?

A. Yes, sir.

Q. With that condition of that account, would your salesman at that time have authority to be soliciting the selling of new product to that account?

A. Well, I am quite positive that his instructions were probably very definite as to trying to clean up the contract and get dates before trying to sell any more pictures?

Q. Is that the customary procedure?

A. Yes, sir, that is the customary procedure.

Q. Turning now to the town of Enid, the period which is involved in the testimony here in Enid is the period from February 20th, 1937 to July 6th, 1940, when Mr. Gray said that he—first, Mr. Gray said that he and Roy Shield went into Enid and opened a theater in 1935, and that he sold out to Mr. Shield in 1936 and left Enid, and then he came back on February 20th, 1937 and opened the theater called the Rivoli and operated that to July 6th, 1940, and he says that during that period he was not able to make a deal with Fox for any run in that town, that is, a substantial, substantially the full product for any run in the town. Do
2619 you have in mind the situation there in Enid?

A. No, I don't recall it right now. I am trying to think. We probably had a second run there.

Q. Well, your contracts that you have introduced in evidence show that you were licensing the Griffiths?

A. Yes, sir.

Q. First and second run, but Mr. Gray's testimony was that he was not offered any run by Fox in that town. Now, the question is, why didn't Fox offer him any run of its product?

Mr. KIMB. Your Honor please, is this leading of the witness going to be tolerated constantly?

The COURT. I don't see anything leading in that question; in saying why?

The COURT. I don't see anything leading in that question; I think it is a plain, straight question.

Mr. KIMB. He testified five minutes before and says this is all the facts. Now, answer it "Yes" or "No".

The COURT. I will overrule the objection, and an exception is allowed. Read the question.

(The last question read by the reporter.)

A. Well, I would say, or at least assume that we were satisfied that we had contracts enough in the town that the town would justify.

2620 Mr. KIMB. Now, if your please, we move to strike that, because the witness says it is an assumption.

The COURT. Yes, unless you remember, can testify that you remember the situation, the objection will be sustained.

By Mr. COCHRAN:

Q. Do you remember the situation in regard to that?

A. No, I really don't, but I know we had two runs in the town during that period.

2621 Q. Do you know whether you were selling or licensing any of your product at that time in addition to the product that you were licensing to Griffith, to Mr. Shield for his theater?

A. I don't remember.

Q. Tell us then whether there was any agreement or understanding with any representative of the Griffith Amusement Company whereby you would not license your product on subsequent run to Mr. Gray or any other competing theater there.

A. There was no such understanding.

Q. You know there was no such agreement of that kind?

A. That is correct.

Q. When I say "subsequent run to Mr. Gray", I mean licensing a subsequent run or subsequent exhibition of pictures; licensing pictures for subsequent exhibition to Mr. Gray, is what I refer to.

A. I understand. I answered the question, I believe, as stated.

By the COURT:

Q. This Mr. Gray opened the Royal Theater in July, 1935?

Mr. COCHRAN. That is right, and sold out to Shield in 1936.

By the COURT:

Q. At the time he opened it in 1935 he testified
2622 there were four theaters operated by the Griffiths, one by Berger and then this one by Gray. At that time had you contracts with the Griffiths for first and second run?

A. Yes, sir.

Q. Over how long a period?

A. Well, quite a period; all during this period I am sure. I sold Griffith at Enid for a good many years.

Mr. CORCORAN. This situation, as I understand it, was that Mr. Gray was not contending he ought to have second run but they should sell him some run there in that situation.

The COURT. I understand.

Mr. COCHRAN. And that Fox did not offer to license him any run whatever.

By Mr. COCHRAN:

Q. In the town of Hominy, do you recall the Pettit Theater there in Hominy?

A. Yes, sir, I do.

Q. It appears that along in 1934, the Ritz was owned by a man by the name of McClain. Can you tell us whether your company licensed its product to the Ritz Theater instead of the Pettit for that season?

A. Yes, we did. We never could sell the Pettit Theater.

Q. The Pettit was a larger theater?

A. A bigger theater. We couldn't sell it. They
2623 just wouldn't buy our product and when McClain opened the theater we sold McClain and the Ritz Theater.

Q. Did you continue then with that theater as your account?

A. Right on through.

Q. At the time that Griffith acquired the Ritz Theater or the Consolidated Theaters, Incorporated, acquired that theater June 15, 1936, were you still selling the Ritz?

A. Yes, sir.

Q. And since then you have continued to sell Griffith?

A. Yes, sir. In other words, he bought the theater where we were playing our product and then we continued right on selling and servicing that account.

Q. I believe you have already covered Hobart and said you have continued to sell your product to Mahone in Hobart?

A. That is right, and Griffith, incidentally, went into that town and was in that town, but our account was with Mahone for years.

Q. And you continued to sell him?

A. We continued to sell him.

Q. In Lubbock, Texas, Messrs. Smith and Bearden constructed a theater known as the Tech Theater along in 1936, and as said, that theater was located near the Texas Technology College and that in 1940 Griffith constructed and owned a theater known as the Tower in that
2624 town, and then stated that about the time that that Tower Theater was being constructed that they communicated with Fox and requested that they be permitted to play Fox pictures, first run, on College Avenue, Lubbock; that is, that they be permitted to play pictures ahead of the Tower Theater which Griffith constructed. Do you recall that matter coming up?

A. Yes, I do.

Q. At that time what was the situation in Lubbock as to whether the town was zoned for runs or whether you simply licensed your pictures for runs in the town of Lubbock?

A. It was not zoned. It never was zoned. We licensed this theater first run and another theater second run, and

so on, but we never zoned the town of Lubbock. This Tech Theater was right across the street from the Campus.

Q. When that request was made state what you did relative to changing your method of licensing or continuing licensing.

A. We didn't change. We continued the same way.

Q. In reaching a decision as to what action you would take in connection with this request made by Messrs. Smith and Bearden, tell the Court whether you acted with any other distributor or any other person other than your own organization?

A. We never acted with anybody else. We made our own decisions and we sold accordingly.

2625 Q. The testimony, I believe, of Mr. Smith or Mr. Bearden, or maybe both of them, further is that after this Tower Theater had been constructed, that Griffith then commenced to play pictures, your pictures among others, in the Tower Theater on second run, whereas formerly Griffith had played your pictures second run in some theater which it had down town in Lubbock. State to the Court whether you are familiar with this Tower Theater?

A. Yes.

Q. What kind of a theater is it?

A. Well, the Tower Theater, when it was erected and finally completed turned out to be, and I would say even to this date is the second best theater, the second finest theater in the town, whereas the Tech Theater is a reconverted laundry which was made into what we call a store show. There is quite a difference in the theaters.

Q. State what your judgment is as to whether from the standpoint of the advantageous exhibition of your pictures that a change or removal of that run from downtown to the Tower Theater was advantageous?

A. Of course it was advantageous. In the town group, I think Lubbock, I think history will show, the census will show that Lubbock has doubled itself in 20 years, and the town, the Tower Theater, therefore, was built and in keeping with the times, and naturally it would be more

2626 advantageous to us to sell out there. After all, it was right off of the campus; the town was going that way.

Q. Now, in Mangum, I believe you have already stated that you continued to sell Mr. Duffy after Griffith went into that town, until Mr. Duffy sold his theaters to Griffith?

A. We did.

Q. In Norman: Mrs. Berry testified that during the year 1937 Griffith opened up the Variety Theater and commenced to play your product, among others, second run,

whereas it had not formerly played any considerable amount of second run product; that prior to that time she had been unable to obtain second run product from Fox. Now, will you explain to the Court what that situation was?

A. Well, we sold our product first run to the Griffith Amusement Company at what was called the Sooner Theater, and it was a good sized house, the best house in the town. Mrs. Berry, or Mr. and Mrs. Berry, Mr. Berry died, they had two theaters, one of which was a first run operation, and that was out on the campus off the college in Norman. They had a second house, I think it was called the Oklahoman, I am quite sure it was, and that was downtown, practically in direct opposition to our first run. Now, Mrs. Berry would not buy our pictures out at the Campus Theater; as a matter of fact, the Campus Theater for years closed three or four months during the summer when
2627 school was closed, and they didn't need pictures out there; and we certainly didn't want to sell our pictures downtown in her other house which would be in direct opposition to our first run. Now later on Griffith did open a theater called the Varsity, and we sold them second run because they are our account first run, and if Griffith exploited and advertised our pictures, certainly if they had a second run theater we should sell them; if anybody is going to get the benefits of their advertising and exploitation for the first run, they should get it, instead of somebody else.

Q. Who determined that policy on the part of your company?

A. We do.

Q. Was there any agreement or understanding between you and your company and any representative of the defendants, or either of them, that you would not license second run Fox product to Mrs. Berry?

A. None whatsoever.

Q. In regard to Lubbock, it has been suggested that I didn't ask you about whether your action there was pursuant to any agreement with any person or corporation, and my recollection is that I did ask you and that you said you determined the matter for yourself; do you recall?

A. Sure, we did; we determined our own action all the time. We didn't ask anybody's opinion as to what
2628 we did, or what we do.

Q. All right. Now turning to Sapulpa, during the period 1933 to '39, you have stated that you were selling Mr. Moulder your product first run all the time, is that correct?

A. That is correct.

Q. During that period did you sell second run in that town at all?

A. No, sir.

2629 Q. Do you know along in '39 Griffith opened a second run house in Sapulpa?

A. Yes, I think they did. I believe they did.

Q. Do you recall when you first licensed product for second run exhibition in that house?

A. No, I don't recall it. I am not sure we did. We may have but I don't recall ever selling them second run. It was perhaps after the time that I was having direct negotiations, and I don't recall making any contract for second run at Sapulpa with Griffith or anybody else.

Q. You are not able to say of your own knowledge then whether it is a fact you declined to sell Griffith second run in that theater which they put in in the town of Sapulpa until after the consent decree?

A. It must have been after that because as long as I dealt with Griffith I never sold them any pictures for Sapulpa. We always sold Speedy Moulder—I recall the name now—he was our account. We never sold Griffith when they went in there. He has been our account all the way through.

Q. Mr. Moulder didn't play your product second run, did he?

A. He played it first run.

Q. During that period you mentioned you didn't sell Griffith any product?

2630 A. No, sir, we didn't.

Q. The town of Seminole, Mr. Joe Love testified he opened the Chief Theater in Seminole in October, 1936. At that time your contracts you referred to this morning show you were selling Griffith first run and second run. He said that in 1937 he tried to get third run pictures from Fox and that he could not obtain them. Can you state whether that was a fact and if so, why you would not sell third run in Seminole?

A. If he so testified it is undoubtedly true, he tried to get them, and our policy was, as I said before, we did not think it good business to encourage or sell another run in that town.

Q. Did you have any agreement with any representative of the defendants, or either of them, that you would not sell any pictures third run to Mr. Love?

A. We did not have any.

Q. Shawnee. Mr. Jake Jones testified that along in the season of 1936–37 that he tried to license pictures third run for his theater or theaters in Shawnee, and that you

wouldn't take any applications to license him third run. Do you recall the situation there in Shawnee?

A. Yes, I recall Jake Jones. He had a son too, that helped operate those theaters. I believe they both asked for the product but we didn't think it good business
2631 to sell. We did sell Jake Jones some pictures I recall distinctly, but just what they were now I can't put my finger on.

Q. Did you have any agreement or understanding of any kind or character with any representative of the defendants, or either of them, that you would not license your pictures third run to Jake Jones, or to anybody else there in Shawnee?

A. We did not have any such agreement with anyone.

Q. In Stillwater, Oklahoma, Mr. Russ said that in 1939 Griffith built a new theater called the Campus Theater opposite the A & M College campus, and operated it as a second run house, and that he endeavored to obtain second run pictures from the major companies but had been unable to obtain them up to that time. Do you recall what the situation was there in Stillwater?

A. Up to what time?

Q. Up to the time that Griffith opened the Campus Theater in 1939.

A. Yes. It is the same story I have given you before. Up to this, we didn't think it good business to have too many runs, second runs in some of these situations, and we did not sell. Later on we had a change of policy and we did sell.

Q. You have heretofore testified that in 1939 by
2632 reason of these negotiations and the complaints and so forth there has been a change in your policy.

A. That is correct.

Q. Do you recall that Griffith did open a second run house?

A. They did and we sold them.

Q. In refusing to license any second run product to Mr. Russ for his theater prior to that time, did you act pursuant to any agreement or any understanding with any representative of the defendants or either of them?

A. We did not.

Q. Going back to Drumright for a moment, I will ask you to examine this record entitled "Memo of Alteration of Cancellation", and state if that shows the number of pictures on that Tessin contract for the '35–36 season which were actually cancelled?

A. It does.

Q. How many does it show?

A. Thirty-one feature pictures; thirty-one.

Q. Thirty-one out of how many?

A. Fifty-two. We offered fifty-two and they bought fifty-two.

By Mr. COCHRAN:

Q. The document which you refer to is the one which is marked for identification Defendants' Exhibit No. 101?

A. Yes, sir.

2633 Q. I inquired this morning about the manner in which you ordinarily determine the amount which would be inserted in the contract, standard form of contract for admission prices, and then went on to something else without inquiring about the Griffith contract. It appears from a typical contract for the K–1 season that admission prices were filled in in the town of Ada, which was the contract that was selected. The K–2 season contract for the town of Ada shows that the admission prices were filled in. For the K–3 product the contract for the town of Ada, the blanks for the admission prices are not filled in. That is the '35–36 season. The same is true for the '36–37 season and the '37–38 and '38–39 seasons. We do not have in evidence here or before us the contracts for all the towns. By agreement these contracts were taken as typical, and as far as I know are typical as to that admission price arrangement. Now, can you tell us why the prices were not inserted in those contracts for some of those years?

A. I can't tell you why but it was perhaps negligence on the part of our office here when they were making the contracts up.

2634 Mr. KIME. If the Court please, he says——

A. (Interrupting.) Perhaps it was negligence.

The COURT. He said he couldn't tell.

Mr. KIME. Well, your Honor, doesn't that conclude it? Why a voluntary statement?

The COURT. He is just telling you why he can't tell.

Mr. KIME. Oh.

By Mr. COCHRAN:

Q. So far as you were concerned, who made these contracts, was there any intention on your part to discriminate in any way in favor of Griffith in those contracts in that particular?

Mr. KIME. Now, your Honor please, to which we object because he cannot know what was the intention of these people here in Oklahoma City.

Mr. COCHRAN. I am talking about at the time.

The COURT. Just tell what your intention was.

Mr. KALLIS. My observation on that, your Honor please, is that regardless of what his intention was, what they actually did is the thing that counts in this case, and what they actually did can best be inferred and understood from the contracts themselves.

The COURT. An omission can be explained. If it was your intention to leave those out for some purpose you can say so.

2635 A. No, it was never my intention that they be left blank. I really thought they were in all this time. They had established the prices definitely in my mind; as a mateer of fact, they sent me a list of the prices that they charged in all their theaters that we did business with. They are a matter of record, I am certain, in our Oklahoma City office today. I don't know whether I could find them or not, but I know they were.

By the COURT:

Q. Who prepared the contract?

A. It was done by a stenographer or contract clerk.

Q. In whose office?

A. In our local branch office.

Q. They were prepared by you and not by the defendants?

A. No, they were prepared by us on our own forms.

Q. If this omission was made, was it made due to your failure to put it in, or to the other side?

A. No, it wasn't made due to my failure to put it in. I thought they were in all the time. The first few years they ran through the form, and if they were not put in from there on, that is an error of mine.

By Mr. COCHRAN:

Q. What the Court wants to know is whether it was your error or omission or the exhibitor's?

A. It was mine.

Q. Putting it this way, was there any request on the part of the representatives of these distributors that there

2636 should be any omission?

A. No, sir.

Q. During that entire time did you have furnished to you the then admission prices which were being charged in each of the theaters operated by these defendants?

A. We did.

Q. Were some complaints made from time to time by competing theaters in regard to the admission prices charged by Griffith in some situations?

A. Yes, sir, there were.

Q. When complaints were made, what did you proceed to do?

A. We told them that they had to correct their price policy or we would not serve them the pictures.

Q. Correct it in harmony with what?

A. With what our understanding was as to what their admission prices would be and should be.

Mr. COCHRAN. That's all, your Honor.

The COURT. Did you cover all the towns that were covered by the testimony in chief?

Mr. COCHRAN. I have intended to cover all of them, your Honor. If I have left out any of them, it has been by oversight entirely. I have tried to cover all of them.

The COURT. Vernon, Texas, did you cover that?

2637 Mr. COCHRAN. I don't believe Vernon is in controversy here.

Mr. KALLIS. That is an Interstate Circuit town, your Honor, as I understand.

Mr. COCHRAN. If I have omitted any of them, I will be glad to cover them.

Mr. RICE. I have a few questions.

Direct examination (continued) by MR. RICE:

Q. Mr. Kupper, may I ask how old you are?

A. 49, going on 50; on October 20th I will be 50.

Q. For 25 of those years or more you have been with the Fox organization continuously, have you?

A. 26 years.

Q. 26 years?

A. Yes, sir.

Q. In that time have you seen the Fox organization grow to a larger size and importance in the industry?

A. Yes, sir.

Q. And you have grown from clerk to sales manager accordingly?

A. Yes, sir.

Q. At the time you went with Fox back in 1920——

A. 1919.

2638 Q. 1919?

A. Yes, sir.

Q. Was Metro-Goldwyn-Mayer in business?

A. No, it wasn't.

Q. Paramount?

A. Paramount was.

Q. What was the leading distributor of film in those days?

A. Paramount.

Q. Was Columbia in business?

A. I don't believe so.

Q. Was Universal?
A. Yes, sir.
Q. Was United Artists?
A. Yes, sir.
Q. Was RKO?
A. No, sir.
Q. Was Warner?
A. No, sir.
Q. First National, which later was merged into Warner?
A. Yes, sir.
Q. That was then a franchise company, was it not?
A. It was a company owned by exhibitors who went to producing pictures.

Q. The exhibitors contributed the cost of production through their box office?

2639

A. That's correct.

Q. When I said Metro-Goldwyn-Mayer, of course that includes what is referred to here as Loew's at this time. Was Loew's in business as a distributor?
A. There was a Metro company, and there was a Goldwyn company; later they consolidated and became Metro-Goldwyn-Mayer.
Q. Were there any other distributors of any prominence engaged in the field at that time?
A. Yes, there was a company called Vitagraph.
Q. That is now the distributing organization——
A. A part of Warner.
Q. Was it then a producing company?
A. It was.
Q. Was S. & A. in business?
A. Yes, sir.
Q. And a firm called P. D. C., was that in business?
A. No, sir.
Q. When did it come into business?
A. It came in later.
Q. And another firm called F. B. O.?
A. It came in later.
Q. These firms that I have referred to hurriedly, they were considered large, representative distributors of motion pictures, were they?

2640

A. They were all national distributors.

Q. All national distributors?
A. Yes, sir.
Q. In the 20 years some of those have passed out, and some have merged, and today we have, for example, Columbia. What relative position did Columbia have in the industry 20 years ago?

A. It didn't have any.
Q. It wasn't in existence?
A. It wasn't in existence.
Q. About how old is it?
A. I should say in the neighborhood of ten or twelve years.
Q. Twelve or fifteen years at the outside?
A. Something like that.
Q. What was Fox's position in the industry then?
A. Well, I always thought we were second to none.
Q. You still think you are today, don't you?
A. I still think we are ahead of them all.
Q. Outside of Fox, then, how would you group the distributors then in business with reference to Paramount, which was conceded to be the outstanding company?
A. Are you talking about 20 years ago?
Q. Yes.
2641 A. I would say first National was second.
Q. Then what?
A. Well, excluding Fox, of course.
Q. Yes, excluding Fox.
A. We were on top. I would say then Metro.
Q. That wasn't Metro-Goldwyn-Mayer?
A. No, sir.
Q. Or Metropolitan Pictures?
A. Something like that. There is another company that we have forgotten entirely about at that time, it was called Real Art.
Q. Real Art, what became of that outfit?
A. They went out of existence.
Q. Who was the head of that? Did Adolph Zukor have anything to do with it?
A. Yes, he had quite a lot to do with it.
Q. You have seen those various changes take place, and during that period, if I understand your testimony, Fox Film Corporation, partly under your guidance, had adopted a set sales policy; that is correct, is it?
A. Yes, sir.
Q. Has that been in a competitive field or by agreement, or by combination with other distributors?
A. We set our own policy; we had no agreement as to how we were going to operate our business.
2642 Q. You based your selling policy on your experience and judgment?
A. That is correct.
Q. You mentioned yesterday a picture called "Heaven Can Wait" as having played in the Roxy Theater in New

York. Does the Roxy Theater yield you your largest rental on any picture in any season, or is there another theater which yields more?

A. Just recently we played "Bell for Adano" within the past six weeks, in the Music Hall.

Q. What did that yield?

A. Over $200,000.

Q. The Music Hall is not owned or controlled by Fox?

A. No.

Q. Who owns and controls it?

A. I think John D. Rockefeller.

Q. And that picture "Bell for Adano" and that picture "Heaven Can Wait" that you got $180,000 for from the Roxy, that was what year?

A. That was last year.

Q. 1944?

A. Yes, sir.

Q. Can you recall substantially the amount of film rental which R. E. Griffith Theaters and Westex Theaters paid to Fox Film Corporation last year on the whole season's product?

2643

A. Oh, I imagine in the neighborhood of $50,000.

Q. It might be more?

A. It might be a little more.

Q. Now, during the time you were located in this territory and since you have been sales manager, you are familiar with the exhibition policies in Texas, aren't you?

A. Yes, sir.

Q. You have referred in your testimony to key cities. What is a key city?

A. Well, for instance Oklahoma City and Tulsa are the two key cities in this territory, the two largest. I also consider Enid a key city.

Q. In Texas what are the key cities?

A. Dallas, Houston, Fort Worth, San Antonio, and El Paso.

Q. Those five are considered key cities and are your relatively more important accounts in that state?

A. That's correct.

Q. What is your largest account in the state?

A. The state of what; Texas?

Q. Texas.

A. The Hoblitzelle Theaters, the Interstate Theaters.

Q. Including the Texas Consolidated Theaters?

A. Yes, sir.

2644

Q. Do they operate the Palace and the Majestic in Dallas?

A. The Palace and Majestic, and a number of other theaters.

Q. And a number of others?

A. Yes, sir.

2645 Q. The Palace and Majestic are the large downtown or luxury houses in Dallas. Is that right?

A. That is right.

Q. During the years involved in this lawsuit was that true?

A. Yes, sir.

Q. In the Palace and Majestic you, as a representative of Fox, endeavored to get your pictures exhibited. Is that correct?

A. That is right.

Q. When your pictures were exhibited in the Palace and Majestic during those years, can you give the Court any idea of the average return per picture?

A. Yes, I would say anywhere from $3500 to $5000.

Q. During the five year period?

A. During that period; some were less but that was the better pictures you are talking about?

Q. That is right, class A pictures.

A. Class A pictures.

Q. In the exhibition of those pictures, you furnished the pictures, the regular distributor's service, advertising, exploitation and so forth, and then you were through?

A. Yes, sir.

Q. At the end of the week you received $3500 to $5000 for rental of your picture?

2646 A. Yes, sir, first run, Dallas; not the circuit.

Q. First run in Dallas only, one theater, one week?

A. That is right.

Q. There is a memorandum in evidence, F-10, A to D inclusive. It is your letter of August 24, 1936, to Mr. R. E. Griffith and it provides for six pictures at $2421.00 each, and that the contract covers 32 towns. In the serving of those 32 towns throughout Texas would it require more than a week or less than a week?

A. Much more than a week.

Q. Would it require more or less expense than servicing the Majestic and Palace Theaters?

A. It is 32 times more operation, the cost and everything else.

Q. The print has to come back and be inspected, advertising matter has to be shipped, and at a price approximately half of what you say was the maximum average at the Palace and Majestic Theaters?

A. I don't say the maximum average. I say about that average.

Q. Do you have any information as to the relative gross rentals paid to you by the Interstate Circuit and Texas Consolidated Theaters which you state is your largest account, compared to the gross rentals paid by the R. E. Griffith Companies and the Wes-Tex Theaters during the five year period?

2647 A. You mean you want to know what percentage one is of the other?

Q. Yes, multiples or percentage.

A. Interstate I would say is almost ten times greater than the R. E. Griffith or Wes-Tex.

Q. There is some testimony here the largest year in the period the Interstate Circuit paid you approximately $660,000 and R. E. Griffith Theatres and Wes-Tex approximately $100,000. That would be about the top relative value?

A. It would be.

Q. Is there another account besides the Interstate account more important than the R. E. Griffith account?

A. Yes, sir.

Q. Which one?

A. Robb & Rowley.

Q. After Robb & Rowley is there still another?

A. Yes, sir, there is another one.

Q. What is that?

A. Jefferson Amusement Company.

Q. Combined with East Texas Theaters, it is also an affiliate?

A. Yes, sir.

Q. I have requested those relative figures only on the Texas circuit. How do your average annual gross

2648 rentals received in your Dallas branch during the five year period compare with your annual average gross from exhibition in the Roxy Theater or Music Hall at New York, or both?

A. I think we took a million dollars worth of film rental out of the Roxy Theater last year, compared to the few pictures that we played in Music Hall, where they would run from $125,000 to $200,000 and some odd dollars.

Q. Did you take more or less than that from the Dallas territory?

A. The whole territory?

Q. Yes.

A. Yes, I think we took a million dollars.

Q. About equal?

A. Yes, sir, that is the whole state, however.

Q. How many exchanges do you have?

A. We have 37 in the United States and Canada; 31 in the United States.

Q. What portion of your gross do you expect to realize from your Dallas exchange?

A. I would say three and a half percent.

Q. From the Oklahoma City exchange?

A. One and one-tenth percent.

Q. Mr. Kupper, back in the days when you were selling 52 pictures in blocks, a season's product, what type were those pictures?

2649 A. Well, they were a variety of entertainment. There were dramas, musicals, westerns, and there were comedies.

Q. In the season's total did you release all of your comedies all at once and your musicals and dramas all at once?

A. No, we tried to space them, just the same as a star. We would not play the same star one week and the same star in another picture the next week.

Q. In other words, you are following the principal of showmanship they used to have in vaudeville, where they had the acrobats, sword swallowers and so on?

A. Yes, sir, but they gave you one show. They followed one another and gave you a complete show.

Q. And like vaudeville you had your headliners?

A. Yes, sir.

Q. Did you group pictures in those days as they are grouped in this August, 1938 contract, a few at the top and a larger number in the middle?

A. Yes, sir. They had different values. There were some that were our best pictures and we sold them for more money than we did the next group and so on down.

Q. This contract shows six pictures at $2,421 each; eleven pictures at $422.00 each. Those prices, in your opinion, are the relative box office value of those

2650 pictures. Is that correct?

A. That is correct.

Q. Mr. Kupper, do you have anything to do with production?

A. No, but they ask my views and opinions. That is the extent I have to do with production.

Q. Can you tell what a picture is going to do at the box office when you see it being made?

A. No, sir.

Q. Can you tell after it is made?

A. We have a very good idea after we see it. Then we are not always sure. The public is the final judge.

Q. Take your picture "Wilson." It was a great picture, wasn't it?

A. And the most expensive one we ever had.

Q. What did that picture cost?

A. Almost three million dollars without advertising and without prints.

Q. Did it attract in the Oklahoma and Texas towns a substantial patronage, enough to pay what you thought was a fair proportion of the cost?

A. It did not do that anywhere.

Q. People stayed away enthusiastically?

A. I think it was because of the admission price. We had a high price on it.

2651 Q. You advanced the admission price and people did not go?

A. That is right.

Q. They didn't think you had another "Gone With The Wind"?

A. No, they didn't.

Q. Incidentally, will that picture be released at the regular price?

A. It is being released now and we are doing much better proportionately.

Q. Have you read a book called "Forever Amber"?

A. Yes, we bought the book to make a picture from it.

Q. Have you read it?

A. I started to but I didn't finish it.

Q. Which man did you quit on?

A. I got to No. 6.

By the COURT:

Q. What is the book?

A. "Forever Amber."

Mr. RICE. Perhaps your Honor has heard about it. That is a book of life in England, the principal character being a girl who I will say was catholic in her tastes.

By Mr. RICE:

Q. Do you think Fox is going to produce a picture from that book?

A. I think so. I think they have every intention to.

Q. Do you think they are going to have Amber

2652 pursue her amorous episodes in that picture the way she does in the book?

A. I don't think we would be able to show it on the screen that way.

Q. What it amounts to is, you have bought a title to the book, haven't you?

A. It may turn out that way, I don't know.

Q. That is one of the things nobody can tell about in this business?

A. That is right.

Q. And when that picture is shown you will be Forever Amber wondering whether people who know about the book will come and see it?

A. I don't know what we will do until we get the picture.

Q. It will be like the girls on the platform in front of the side show?

A. It may surprise you. It may be another "Gone With The Wind."

Q. Get back to your selling problem. When you sell a circuit, I believe you said it takes just the same amount of time and effort to make one sale for 52 pictures as to make one sale for four or five pictures?

A. Just about.

Q. During that same period, did you sell to people
2653 say in Littlefield, Texas, or away out beyond the Big Bend country?

A. Our salesmen would go out and sell them the product.

Q. Do they still do that?

A. Yes, sir.

Q. How does the sales expense under the present system of selling compare with what it was?

A. It is greater.

Q. In other words, the salesman if he is going to make a sale has to make trips to the territory where he has blocks to offer?

A. That is correct. I wouldn't say exactly that number. Take Littlefield, some town like that, he may make an accumulation of two or three blocks and he may sell them individually, or sell the block individually.

Q. He may sell 10 or 12 pictures?

A. That is right. It may work out that way.

Q. These outlying exhibitors, when you were exchange manager, a man who owned a town like Littlefield, for example, how would he get his pictures, by mail?

A. A lot of times.

Q. Would he come into Dallas and book them?

A. Lots of them do.

Q. From 700 miles away?

A. That is correct.

2654 Q. And after they made up their booking schedule they would go back home and then changes would be necessary, wouldn't they?

A. Yes, sir.

Q. And they would have to do it all over again.

A. Make a substitution.

Q. They would have to change their booking sheet so they would have a constant flow of pictures into their theaters?

A. That is right.

Q. Under the old limited amount the distributor could sell at one time, how would it affect the exhibitor by virtue of buying all these pictures at one time?

A. Well, I think he perhaps bought them cheaper.

Q. He got an assurance?

A. A steady supply of product.

Q. He had chairs to rent in his theater and a screen to put pictures on and he has got to have 52 pictures, or one a week of some kind?

A. That is right.

Q. Some pictures would be good, and even Fox made bad ones sometimes?

A. Once in a while we made a mistake.

Q. And neither you nor the exhibitor knew what they would be like when he did get them. Isn't that largely so?

2655 A. Very true.

Q. You did the best you could to give him a variety of entertainment?

A. We never intended to make a poor picture. We did our best under all circumstances.

Q. And some were more expensive, sometimes the poor pictures?

A. Yes, sir.

Q. These key situations, going back to that for a moment, what value, aside from rentals received in the exhibition of pictures in the Palace or Majestic at Dallas or a first run house here at Oklahoma City, the Criterion. What value, aside from film rentals, is that to you, as a distributor of motion pictures?

A. Of what value?

Q. Yes.

A. A great value.

Q. Tell the Court what that value is.

A. First of all, it automatically stamps it as a good picture.

Q. And the exhibitor who is operating that theater has yielded and considered it worthy to go in that house which you in the first place indicated it to be?

A. That is right.

Q. And it is open to view by the critics?

2656 A. Yes, sir, and it is advertised and publicized in the newspapers and gets around throughout the state.

Q. So later on the smaller towns will have learned that is a good picture.

A. An important picture.

Q. Not everybody will like it even then.

A. That is right.

Q. Mr. Kupper, what is preferred playing time?

A. Generally it is the choice time of the week; usually the week end or holidays.

Q. In this area where there are usually three or four changes, preferred time means Friday, Saturday or Sunday?

A. Usually.

Q. In cities like Oklahoma City and Dallas——

A. You have a week's stand.

Q. You have a week's run at the de luxe houses.

A. Yes, sir.

Q. In Oklahoma City how many of those theaters are there which have a week's run of A pictures?

A. I think there are three; possibly four.

Q. In Dallas how many?

A. Dallas has less.

Q. It has two?

A. It has two.

2657 Q. And in the small towns, a small town operator has just as much preferred time as Dallas?

A. That is right.

Q. Having two a week. In your experience in the business have there ever been enough A, really A pictures in the sense of fine box office attractions to fill anybody's screen?

A. No, sir.

Q. In your experience, has there ever been in one year, 52 sure fire A box office attractions?

A. No, sir.

Q. And that about includes all the distributors, even Fox?

A. I would say so, yes.

Cross-examination by Mr. KIME:

Q. Mr. Kupper, I hand you what has heretofore been marked as Exhibit F–3–D, which purports to be a telegram sent by you and ask you whether or not you sent that.

A. Yes, sir.

Mr. KIME. We offer in evidence Exhibit F–3–D, which has heretofore been identified.

Mr. COCHRAN. So far as that particular document is concerned we have no particular objection but we anticipate this is but a forerunner of other documents,
2658 telegrams and letters which may have been signed by Mr. Kupper, and we submit that so far as the admissibility of those documents is concerned, they are not admissible as such. The witness can be asked about the subject matter, and if they want to use it for the purpose of refreshing his memory or contradicting this witness it is perfectly proper to do that, but so far as substantive evidence is concerned, the documents would not be admissible against the defendants.

2659 The COURT. I haven't been able to read it yet. Overruled and exception allowed. Let it be admitted.

By Mr. KIME:

Q. Now, Mr. Kupper, I hand you what has been identified as Exhibit No. F–4, and ask you if, looking at that in connection with F–3, A to C, it is your conclusion that F–4 has any relation to F–3, A to C?

A. Well, F–4, do you want me to explain what that is?

Q. Yes.

A. This is the record of our K–3 product as sold and played by the Griffith Amusement Company, that is for the year,—I will have to look back to K–3.

Q. Let me ask you one question: Is it your record, or is it the allocations as made pursuant to that contract?

A. The top part of this is the allocations made of our K–3 product for the Griffith Circuit, first run, on these situations.

Q. That's right.

A. Now, what is down here below that is the towns which are additional towns, and shows the prices which we sold the pictures at for that year.

Q. I see.

A. Now, down here is other towns acquired by Griffith, two, four, six, eight, it looks to me like—they are not all Korn towns, but towns out around West Texas there, which were contracts that were played in those towns prior
2660 and during, say prior to the time that Griffith acquired them. This is a past record, or a record of what actually was paid and how the product was sold in those towns during that season—what it was allocated at.

Q. F–4, the first part, starting with Cleburne and ending with Wink, is that allocations that were made as part of the contract F–3, A to C?

A. That is correct.

Mr. KIMB. Now, your Honor please, we offer in evidence Exhibit F–4, which was rejected at the time it was offered heretofore.

Mr. COCHRAN. I think you will find it is already in evidence.

A. I don't think that is the full—there is some more.

Mr. KIMB. That's right.

A. Quite a bit more. That is only section of the circuit.

The COURT. Exhibit F–4 has already been admitted.

Mr. KIMB. All right, then, forget about it; thanks.

By Mr. COCHRAN:

Q. Just one question in connection with Exhibit F–4, if I may. You didn't mean by your tsetimony that this Exhibit F–4 is a complete allocation of prices under the contract that you referred to, did you?

A. No, sir, that is only a portion of the circuit.

2661 Mr. COCHRAN. All right.

Mr. KIMB. That's right; and the other portion wasn't furnished us.

By Mr. KIMB:

Q. Mr. Kupper, I hand you Exhibit F, what has heretofore been identified, as Exhibit F–9, A and B, and ask if you received that letter?

A. I undoubtedly did. I don't recall it, but I know it was written by Mr. Clark who was our manager in Oklahoma City.

Q. Mr. Kupper, in this letter from Mr. Charles W. Clark, your branch manager, to you, he says, "I have just talked to Horace and he says it will be necessary that they make their deal with you direct, and he is writing you today to find out if you can definitely be here sometime during the week beginning July 31st." Did you make a deal direct with Horace in 1938?

A. Yes, I did.

Q. Did you come here to Oklahoma City to make it?

A. I did, yes, sir.

Q. He also says: "I wrote you some while back and called your attention to the fact that we are not receiving anything like a satisfactory play-off on our bigger pictures from Griffith, and with a few exceptions we have received no Sunday dates on any subjects since their contracts were converted to percentages." Do you recall that?

2662 A. Yes, sir.

Mr. COCHRAN. If the Court please, we move to strike that answer and object to the question for this reason: Mr. Kupper, this cannot be used as a method of getting in correspondence between representatives of the

company. Now, if they can produce Mr. Clark, if he is available, and find out what he knows, it is subject to cross examination. If they ask Mr. Kupper what he knows about this situation, then we can inquire further of him, but to have a letter written by Mr. Clark, who is not here, in which he makes a statement in regard to certain matters, it doesn't give us an opportunity to cross examine him at all, and it is hearsay evidence so far as the defendants are concerned.

The COURT. It hasn't been offered.

Mr. COCHRAN. No, but here is the question, he asked him if he didn't receive that statement in a letter from Mr. Clark. In other words, the letter itself is not admissible and that method of attempting to get the contents of the letter in is not admissible. It is hearsay.

Mr. KIME. I asked the witness whether or not he knew about this unsatisfactory play-off, and he says he did.

Mr. COCHRAN. That wasn't the question. He asked him if Mr. Clark didn't write him to that effect.

By Mr. KIME:

2663 Q. All right, did Mr. Clark write you about the unsatisfactory play-off by Griffith?

Mr. COCHRAN. If your Honor please, we again say that is hearsay evidence and is not competent.

The COURT. How would that be binding on any of these defendants?

Mr. KIME. Well, your Honor, this very witness testified that they played off all these pictures, 25 percent every quarter, and this shows that that wasn't the situation at all: that is evidence to this end, at least.

Mr. COCHRAN. But the point is this——

The COURT (Interrupting.) This letter is information between two officers of the same company, and they are not parties to the suit.

Mr. KIME. I am just asking the witness if the play-off was unsatisfactory as Mr. Clark says it was.

The COURT. You can ask him that question independently. You may use that to refresh your memory, but I don't think it would be proper to quote sections of the letter. I don't think the letter would be competent as against the defendants.

By Mr. KIME:

Q. Did Mr. Clark complain to you of the unsatisfactory method in which Griffiths were playing off their pictures?

Mr. COCHRAN. An objection, if the Court please.

The COURT. Objection sustained. You can ask
2664 him if Griffith did fail to comply with their contract.

By Mr. KIMP:

Q. All right, immediately prior to July 20th, 1938, and for some time prior thereto, had the defendants here played off their product, their contract satisfactorily on the bigger pictures?

A. You are asking me the question?

Q. Yes.

A. I always thought they did.

Q. Did you receive any Sunday dates on your productions from them?

A. I believe we had lots of Sunday dates.

Q. Do you know?

A. Yes, we had.

Q. Were your pictures grossing the proper amount that should have been grossed during that period?

A. I think so.

Q. Do you know?

A. I believe they did.

Q. Do you know whether or not in their affiliated towns, such as Ardmore, Bartlesville, Miami, and Duncan, they were not giving the proper attention to putting in your best pictures in the best dates in those towns?

A. Well, if they did that, it is our own fault, and it is our manager's fault for allowing them to do it.

Q. You don't know whether they did or not?

2665 A. I don't know whether they did. It would seem to me that they would want to get the most out of the picture themselves. After all, we only got the smaller percentage; they got the greater percentage.

Q. When you started negotiating with Falls for the 1938–'39 product, do you remember what figure you started out with?

A. What figure?

Q. Yes, what total figure?

A. No, I don't recall at this time.

Q. Do you remember what Falls started with?

A. No, sir.

Q. Was it $151,000?

A. It could be somewhere like that. As a matter of fact, I think that year, I don't see how you could get a figure, because we played I think 26 of our more important pictures in their better towns on percentage, and the balance was played on flat rental, so I don't know how you could

get a figure. It would be only a proportionate figure.

Q. If Mr. Clark got a figure of $151,000, you don't know how he got it?

Mr. COCHRAN. Now, your Honor please, we object to that as incompetent.

The COURT. Sustained.

By Mr. KIMB:

2666 Q. Do you know for what period of time "Little Miss Broadway" was booked over the Griffith Circuit?

A. No, sir, I don't.

Q. Do you know how much time previous Temple pictures had been given by the Griffith Circuit?

A. No, sir, I don't.

Q. I hand you what has been heretofore identified as Exhibit F–16, and I will ask you whether or not you wrote that letter to Horace Falls?

A. Yes, sir; I recall the letter now.

Mr. KIMB. We offer in evidence Exhibit No. F–16, your Honor please.

Mr. COCHRAN. Will you describe that briefly for me? I haven't been able to locate it.

Mr. KIMB. I have no copy of it.

Mr. COCHRAN. We object to the document only for the reason that it involves a situation or correspondence at a date which is subsequent to the period involved in this lawsuit, which period is from April of 1934 to April of 1939. The letter involved here relates to a contract subsequent to that period, and for that reason it is immaterial.

Mr. KIMB. Your Honor please,——

The COURT. (interrupting.) Let it be admitted for what it is worth.

Mr. KIMB. Your Honor, I didn't offer Exhibit
2667 F–9, A and B, and I now offer that. You have examined it heretofore.

The COURT. Objection sustained, and exception allowed.

2668 By Mr. KIMB:

Q. Do you know "Eddie" or E. H. Collins?

A. Yes, sir.

Q. Is he an officer or employee of Twentieth Century Fox Corporation, or was he in 1936?

A. He was my assistant when I was western sales manager.

Q. Do you know someone called "Pauline?"

A. My wife, I believe.

Q. I hand you what has heretofore been identified as Exhibit F–19–G, and ask you *if that signature there "Eddie"*, is the signature of E. H. Collins?

A. That is right.

Q. Will you read the notation?

A. Yes.

Q. Is that in Mr. Collins' handwriting?

A. That is right.

Q. He says there that "Pauline phoned me at 3 a. m. I awoke out of a sound sleep to find them, Griff and so forth". Whom did he mean by "Griff"?

A. R. E. Griffith.

Q. Do you know whom he meant by "and so forth"?

A. Yes.

Q. Who?

A. Mr. and Mrs. Falls, and I think R. E. Griffith. They invited my wife out to the French Casino for the
2669 evening and when they got home, I had called Collins and he either called my wife or I did. Anyhow, she stayed in town as a guest of the Griffiths.

Mr. COCHRAN. We object to all that testimony in regard to communications——

The COURT. To whom is the letter written?

Mr. KIMB. Written to Mr. Kupper by his assistant, Mr. Collins. Mr. Kupper, then I assume, was at Denver, Colorado. That is where this letter was addressed to him.

The COURT. Are you offering the letter in evidence?

Mr. KIMB. I think I shall in a moment.

By Mr. KIMB:

Q. Had you talked to Mr. Clark before you made the contract in 1936 with the defendants?

A. Did I talk to Mr. Clark?

Q. Yes.

A. I talked to him several times. Do you mean did I talk about the deal?

Q. Yes.

A. Of course, I did.

Q. Did you gather from what he told you that he believed that Griffith was getting away with murder?

A. I used to think it too myself sometimes——

Mr. COCHRAN. We object to that.

The COURT. Sustained. The point is if that
2670 letter is competent you can offer the letter.

By Mr. KIMB:

Q. Did you gather from your official contracts with Mr. Clark that the Griffith circuit should pay more for the production in the '36–37 season than they had theretofore?

Mr. COCHRAN. We object to any examination of this witness in connection with a letter written by Mr. Clark.

The COURT. Sustained.

Mr. KIME. Mr. Clark never wrote them a letter.

Mr. COCHRAN. Well, by a letter written by Eddie, who has been identified by the witness here.

The COURT. As his assistant. Objection sustained.

Mr. COCHRAN. We also move to strike the answer which Mr. Kupper made to the inquiry, the last question which he answered.

The COURT. It will be sustained.

By Mr. KIME:

Q. Did Mr. Clark at any time ask you to take pictures that the Griffith circuit was playing——

Mr. COCHRAN. We object to that——

The COURT. Well, it is a conversation between him and his representative. The objection will be sustained. It cannot be binding on these defendants.

By Mr. KIME:

Q. I hand you what has heretofore been identified as Exhibit F–19–H, and ask you what that is,
2671 whether you have seen it heretofore.

A. Yes, I recall this letter.

Q. That is an inter-office communication from Mr. Clark to you?

A. That is right.

Q. Concerning the Griffith deal?

A. Yes, sir.

Q. I hand you what has been heretofore identified as Exhibit F–19–CC and ask you whether or not you have seen that before?

A. Yes, I remember that.

Q. That is a letter from Mr. Dierdorff to you dated October 6, 1937?

A. Yes.

Q. Relative to the business of the Griffith circuit?

A. That and others.

By the COURT:

Q. Who is Mr. Dierdorff?

A. He was our branch manager in Dallas.

By Mr. KIME:

Q. I hand you what has heretofore been identified as Exhibit F–19–DD, and ask you whether or not you wrote that letter in response to Exhibit F–19–CC?

A. Yes, I did.

Q. And that is in relation to the Griffith business, among other things?

A. Yes, it refers to Griffith and I think subsequent
2672 runs in certain towns, Lubbock.

Mr. KIME. If your Honor pleases, we offer Exhibit F-19-G, H, CC and DD.

The COURT. What is DD?

Mr. KIME. That is the letter of Mr. Kupper dated October 7, 1937, to his branch manager Dierdorff in Dallas, Texas, relative to selling second runs in Lubbock and the comments of the defendants on that business.

Mr. COCHRAN. To which we object. The same objection as heretofore made.

2673 The COURT. Objection sustained. Exception allowed. It would be just the same, the conversation between this witness and his branch manager at Dallas as to the affairs of the company.

By Mr. KIME:

Q. I hand you what has heretofore been identified as Exhibit F-20, A to E, and ask you what each of those are?

A. I remember something about it.

Mr. COCHRAN. The question is to state what that is. It is a lettee, is it?

A. Well, it is a letter that I wrote Mr. Higdon in reply to his letter. He was our branch manager in Oklahoma City.

By Mr. KIME:

Q. That is A; now B is what?

A. It is a letter from Mr. Higdon to me attaching a list of unplayed pictures which he made a settlement on.

Q. How much?

Mr. COCHRAN. We object to the contents of that document, being an inter-office communication between these parties

The COURT. Just identify the exhibit. What is C?

Mr. KIME. C is a portion of a list of K-1 feature productions that were cancelled; that had been contracted by the defendants, or some of the defendants here. D is a continuation of the list, as is E.

Mr. COCHRAN. Our objection is that this is not
2674 admissible against the defendants at all. They can go into the matter in a proper way, but not by communication between these two parties.

By Mr. KIME:

Q. Was this K-1 product as outlined by Mr. Higdon on Exhibit 20, C, D, and E, unplayed by the Griffith Circuit?

A. I assume it must have been or he would not have said so.

Mr. COCHRAN. We move to strike that.

The COURT. Yes, just ask him the question, as related by Mr. Higdon. I think that would make your question competent.

By Mr. KIME:

Q. Did Mr. Higdon send you a complete list outlining the K–1 features which Griffith had not played?

Mr. COCHRAN. We object to that as getting the contents of the letter in. We have no objection to this witness——

The COURT. Ask him the question if they failed to play the list of pictures.

By Mr. KIME:

Q. Did the Griffith defendants, or any of them, fail to play the following pictures in the situations as I read them: "All Men Are Enemies"; "Springtime Henry"; "Was She A Lady"; in Ardmore, Oklahoma?

A. I guess they did. I don't know.

2675 By the COURT:

Q. Do you know of your own knowledge?

A. I do not, no, sir.

Q. Do you know whether your company settled for 50 cents on the dollar on those?

A. It probably did. I don't know.

By Mr. COCHRAN:

Q. The question is whether you know whether it did or not?

A. I don't know now.

2676 By Mr. KIME:

Q. Did you know in 1934, November of 1934?

A. I don't remember.

Q. I hand you Exhibit F–20–A to refresh your memory and see whether or not you didn't have knowledge of it at that time?

A. I certainly did, if I received this letter, and I guess I did receive that letter.

Mr. KIME. We will offer in evidence, your Honor please, Exhibit F–20, A to E, inclusive.

Mr. COCHRAN. We object, if the Court please, to the letter.

The COURT. Objection sustained.

Mr. KIME. It shows the conduct of the parties subsequent to these contracts and under the contracts, and is certainly admissible.

The COURT. Well, the Court thinks it is not admissible, and that is the reason for the ruling.

Mr. KIME. I didn't understand that your Honor had ruled on it. Had you ruled on it prior to my comment?

The COURT. I had.

Mr. KIME. I am very sorry.

The COURT. These are communications between third parties, and I know of no rule of evidence by which they would be binding on these defendants. Well, gentlemen,
2677 it is now ten after 4:00, and we will recess until 10:00 o'clock tomorrow morning. You may recess Court until 10:00 o'clock tomorrow morning.

(Whereupon, Court was recessed until September 19th, 1945, at 10:00 o'clock a. m.)

2678 PROCEEDINGS

September 19, 1945, 10 o'clock a. m.

WILLIAM J. KUPPER, recalled, further testified as follows:

Mr. COCHRAN. There are certain corrections in the record in the proceedings of yesterday I would like to make at this time. On page 2439 the record shows that I asked the question: "Did you have any agreement with any representative of the defendants, or either of them, that you would not sell any pictures first run to Mr. Love?" The question was "third run" instead of "first run." Is there any objection to that?

Mr. KIME. No objection.

The COURT. Let the correction be made.

Mr. COCHRAN. On page 2445 I was inquiring about what Mr. Kupper did when complaints were made as to admission charges being charged by Griffith in some situations: "Q. When complaints were made, what did you proceed to do?" And the record shows the answer to be: "We told them they had to correct their price policy or we would not save them the pictures." The witness' answer was "serve" them the pictures.

The COURT. Serve or sell?

Mr. COCHRAN. Serve. In other words, the pictures
2679 had already been licensed but if they did not discontinue that practice they would discontinue serving the pictures.

Mr. KIME. I have no objection. I think I distinctly recall him saying "save" but if you want to change it, it is all right.

By the WITNESS:

A. We would not serve the pictures.

Mr. COCHRAN. Serve.

A. Serve. Wouldn't allow them to play them, in other words.

The COURT. All right, let the record be corrected.

2680 Q. Do you remember anything about the Plainview difficulty, Mr. Kupper?

A. The Plainview difficulty?

Q. With Dennis Scaling?

A. I remember the name Scaling somewhere along in the record, but as far as Plainview was concerned, I don't recall of any outstanding difficulty. We had an account there for years with Oscar Korn.

Q. Do you recall Mr. Scaling writing to the Department of Justice and your legal staff got hold of it and consulted you about it?

A. No. I won't say that I do, but in all probability it is so.

Q. Do you recall writing a letter to Mr. Scaling relative to the situation?

A. No, I don't.

Q. I hand you what has been identified as Exhibit F–32, A to D, and ask you if D is a letter written by you to Scaling on October 1st, '36? Look over the other three sheets of that exhibit, will you, Mr. Kupper?

Mr. COCHRAN. I don't have but one sheet of F–32. Will you tell me whether you contend that there were three sheets in those that were photostated?

Mr. KIME. Yes, they were all photostated and marked.

2681 Q. Does that refresh your recollection?

A. Yes, sir.

Q. You wrote that last letter, I assume?

A. Yes, I did. You see, the original of the correspondence was not addressed to me, it came to somebody else, and apparently I was away.

Q. That's right. What did you tell Mr. Scaling?

A. The substance of my reply to Mr. Scaling was that our representative didn't think another run for the product at that time was warranted in the situation.

2682 Q. Do you recall whether or not you talked to your representative, Beierdorf, who was then branch manager of the defendant, about this situation?

A. I don't believe I did.

Q. All you knew was what you gathered from this correspondence.

A. Not all I knew. I knew the town of Plainview. I had been through Plainview several times.

Q. Do you know how large Plainview was at that time?

A. I imagine around ten or eleven thousand.

Q. What is "A", Mr. Kime?

A. "A" is a letter from E. H. Collins to H. R. Beierdorf. "B" is a letter from Dennis Scaling to John D. Clark. "C" is a letter from Beierdorf to Jenkins.

The COURT. Who is Jenkins?

Mr. KIME. Jenkins is an employee of Fox in New York City, and I gather from this correspondence that he belongs to the legal staff. "E" is a letter from Mr. Kupper to Dennis Scaling. We offer in evidence F–32, A to D, inclusive.

Mr. COCHRAN. We object to F–A, a letter from Collins to Beierdorf; F–32–A and F–32–B, a letter from Scaling to John D. Clark and F–32–C, a letter from Beierdorf to Jenkins. We have no objection to F–32–D, a letter from Kupper to Mr. Scaling because Kupper has already stated
2683 what he told Mr. Scaling, in substance.

Mr. KIME. Your Honor understands our contention in offering these, as to why they are admissible, I believe, without me repeating that each time.

The COURT. Yes, sir. Objection will be sustained and exception allowed.

By Mr. KIME:

Q. Was the Fox policy the same for all customers?

Mr. COCHRAN. We object to that question as being rather general. I think it should be more specific. Policy as to what?

2684 By Mr. KIME:

Q. What was Fox's policies as to its customers in general?

Mr. COCHRAN. We object to that as entirely too indefinite.

The COURT. In what respect?

By Mr. KIME:

Q. Did you have separate policies for big customers or little customers?

A. We had a policy to sell and distribute our pictures to the best of our ability along certain lines, whether they were large or small.

Q. Was it Fox's policy to sell all of the product that could possibly be sold?

A. Are you talking of any specific time or period?

Q. During the time from say '30 to '39?

A. It was in keeping with our good judgment as to whether a situation would warrant it.

Q. Was it Fox's policy to sell all of the second run that it possibly could?

A. In keeping with our best judgment.

Q. What was your policy as to allowing your customers to play productions before national release date?

A. Well, if we could get a good booking, an important booking, we would play them.

Q. What do you consider an important booking?

A. That depends, it all depends on the situation
2685 and the area.

By the COURT:

Q. While you are on that point, Mr. Witness, counsel asked you your policy.

A. Yes, sir.

Q. With reference to exhibitors.

A. Yes, sir.

Q. I understood your testimony yesterday that you, where you had a customer in a town, so long as that customer played or showed the pictures, in other words, carried out the terms of his contract in a reasonable manner, you continued to sell him?

A. That's correct, sir.

Q. And that you did that regardless of whether it was a small exhibitor or a large one?

A. That's correct.

Q. Now, in that connection, assuming that there is a man or a concern that owned two or three theaters in a town, that he was a good customer at some other place but you had never sold him in this town, and that there were two other exhibitors in that town, neither of which you had sold, now, in selling for the first time in that town how would you be governed in your judgment in the selection of your customers?

A. Well, I am sure I would pick or select the one that I had had experience with in the other towns, and had
2686 proven himself an entirely satisfactory account in those other situations. I have had business with that man. I think I would be influenced more to favor or sell him than I would to the other two that we had no business relations with.

The COURT. Proceed.

By Mr. KIME:

Q. Did you say what you considered an important situation or what you meant by "important" there?

Mr. COCHRAN. I suggest the answer be read.

Mr. KIME. If he has answered, let us read his answer.

(The answer read by the reporter.)

A. It takes in a big field. As an example, within the last two weeks we have a picture called "State Fair" which is an important picture, a big picture. It adapts itself very well to the State of Iowa or the State of Nebraska. It is a picture taken from a book by Phil Strong, and a Technicolor Production. Now, we have set that for an October release, a general release around the country in October. However, we did open the picture in Des Moines, Iowa, and we had quite a preview there. We played it in two or three houses, two houses the first day, and then continued on through in the largest house for two weeks. Well, along with that, and the next day after the first original opening day in Des Moines, we played that picture

2687 simultaneously in about 65 towns, and they were not all big towns like Des Moines. In the Iowa territory there are only a few large towns, and the rest are like towns we have around here in this local area, small towns, eight thousand, three thousand, and so forth. We played those, and we sent as many prints as we could get from the Technicolor Laboratories and played all these towns. They were pre-release engagements, and it was an important thing which we developed. There are many times that we will take a picture, like the picture I mentioned the other day, which played in the Music Hall, "Bell for Adano," that had its first showing in the United States in the Music Hall. Naturally, we would speed up and try to get some situations like that which we could develop and exploit and prove the ability of the picture before the general release of the picture. And we have from time to time taken other steps. For instance, down here I am sure we have played in some of the Griffith towns and in some of the other towns, like Lawton and places like that, pictures, you might say prereleases prior to the first run showing either in Oklahoma City or Tulsa, which are the two largest towns and which we generally try to show the pictures in first. But they were pictures of a type and caliber that it would not affect or lend itself in any way, it wouldn't matter much, and we would play them there.

2688 Q. Do you recall ever allowing Mahone or Moulder or Nagle to play a picture before national release date?

A. No, I couldn't recall, I don't know.

Q. If they asked you to would you have allowed them to?

A. Yes, I think so. It would depend on the picture they were asking for.

Q. Suppose in 1936 they had asked you for a Shirley Temple date before the national release date; would you have given it to them?

A. I doubt it.

Q. Did you receive this telegram from Mr. Higdon and reply by wire, Exhibit F–35–A and B indicate?

A. Right. I acknowledged the wire.

Mr. KIME. We offer in evidence F–35–A and B.

Mr. COCHRAN. We object to the admission of these letters. The witness can be permitted to go ahead and testify in regard to those matters and counsel can use the letters in that connection, as he did the letters written to Mr. Scaling. The letters are not admissible.

The COURT. Who is Mr. Higdon?

By the WITNESS:

A. Mr. Higdon was our former branch manager here at that time. He was our branch manager here.

Mr. KALLIS. He is now connected with R. E. Griffith, Incorporated, and also the Wes-Tex Theaters, Incorporated, and he has been in the Court room for several
2689 days, and we may want to call him later. Can we have assurance of counsel for defendants that he well be available if we want to put him on the stand?

Mr. RICE. I don't know what Mr. Higdon's duties will be.

Mr. COCHRAN. Mr. Higdon will be here throughout the trial.

Mr. RICE. He will be here. I would like to know in advance, if possible, so we can get him.

Mr. KALLIS. If we intend to call him we will give you reasonable notice.

By Mr. COCHRAN:

Q. At that time, the time of this correspondence, Mr. Higdon had no connection with any of the defendants, did he?

By the WITNESS:

A. No. He works for us.

By Mr. KIME:

Q. That you know?

A. That I definitely know.

Q. He had no connection with the defendants that you knew about then?

A. That is right.

The COURT. Objection will be sustained. Exception allowed.

By Mr. KIME:

Q. Mr. Kupper, do you have a general idea and probably a more specific idea from your experience over the
2690 past as to what an exhibitor would ordinarily make out of a second class picture?

A. You mean actual dollars or percentage?

Q. Well, dollars or percentage, either way.

A. He usually makes a pretty fair, reasonable profit.

Q. What would you say was a reasonable profit?

Mr. COCHRAN. We object to that as incompetent, irrelevant and immaterial as to what his ideas are as to a reasonable profit an exhibitor should make.

Mr. KIME. We propose to show that he had the information and has had it in the past—he is an expert here——

The COURT. I suggest you lay your foundation before you ask the question. It is rather indefinite.

Mr. KIME. I thought the foundation was laid for the question but we will exploit it further.

By Mr. KIME:

Q. During your long connection with the motion picture industry you have seen and analyzed figures of what your particular pictures made in various communities, have you not?

A. Well, I have analyzed the individual results of an attraction in a number of situations, yes.

Q. And your branch managers and other employees have submitted figures to you time after time as to what particular pictures did in certain locations, have they not?

A. Yes, sir.

2691 Q. From that experience can you tell what the percentage was or dollar wise an exhibitor in a particular location in a particular size town might make on what you classify as an "A" picture?

Mr. COCHRAN. We object to that. In the first place it is entirely too general. Manifestly the figures would not be the same. The witness has testified he cannot tell what a picture would produce in any given situation.

The COURT. Objection sustained. It is too general and too indefinite. Select a certain town or certain picture or a certain exhibitor and I think he can answer that with some definiteness but generally it looks to me there would be just as much difference.

By Mr. KIME:

Q. Do you remember a picture "Waikiki", probably the full title of it was "On the Isle of Waikiki" or something like that, in 1937?

A. It might have been one of ours but I don't recall it.

Q. You don't recall that Waikiki picture?

A. No. It doesn't come to me right quick. It could be one of ours. I don't remember it.

Q. For the K–4 season?

A. I remember the K–4 season but I don't remember the picture. I can't tell you all the pictures we played in that season. If you show me the schedule I probably can refresh my memory.

2692 Q. I am trying to find it and get another picture if I can. Do you recall a picture "Love is News" from that K–4 season?

A. I remember the title, yes. I don't just recall who was in it. It seems like it might have been a musical comedy or a comedy.

Q. That picture "Love is News" starred Tyrone Power, Loretta Young, Don Ameche, Slim Summerville, and Paul Diggs. That was classified as what sort of picture, do you recall?

A. With Ty Power in it I think we would consider it an important picture.

Q. It was an A picture?

A. I would say so, yes, sir.

Q. You sold that to Mr. R. E. Griffith in that season for the town of Luling, Texas. Do you have any idea what you charged him for it in that town, flat rental?

A. I don't remember. It couldn't be very much. Luling was not a very large town.

Q. What do you mean by "how much"?

A. I said I don't remember how much.

Q. You said it couldn't have been very much.

A. That is right.

Q. What do you mean by "very much"?

A. Well, better say $25 or $30, something like that.

Q. All right, say it was $25 or $30. That is about right. What do you think that would ordinarily gross in a

2693 town of that size?

A. Well, I don't know. It depended a lot on how they exploited the picture. We sold the picture, flat rental, and I had no record as to what it grossed.

Q. They were great exploiters, weren't they?

A. They tried hard I always thought.

Q. Luling was a town of 4,440 and 5,930. We will pass that for the time being and go to the next one until we find that Waikiki. "Waikiki Wedding", does that register any better than "On the Isle of Waikiki"?

A. No, "Waikiki" don't register.

2694 Q. do you have any idea how large Norman, Oklahoma was in 1930?

A. In 1930?

Q. Yes.

A. No, I don't know; I imagine somewhere around eight or ten thousand, probably.

Q. In 1940 it had a population of 11,429, and they also had a college there, did they not?

A. Yes, sir; they still have.

Q. With a very nice enrollment?

A. Yes sir.

Q. You never sold second run there for many years, did you, Mr. Kupper?

A. No, we didn't.

Q. You never sold second run there until the '37–'38 season, did you?

A. I don't believe we did; then we sold Mr. Griffith, the Griffith Amusement Company.

Q. Then you sold it to the Griffiths?

A. Yes sir.

Mr. KIME. We offer in evidence Exhibit F–40, A and B, which is correspondence between one of the defendants and one of the distributors, alleged to be a co-conspirator.

Mr. COCHRAN. No objections. If the Court please,
2695 in connection with that admission of that testimony, counsel for the Government in connection with his offer stated he was offering it as correspondence between one of the defendants and an alleged conspirator. We said we had no objection. We are not failing to object because it is correspondence between a defendant and an alleged conspirator, but we didn't object because it is correspondence between this witness, or rather this company that this witness represents, and Mr. Falls, who represents, who is a representative of one of the defendants in the case, and therefore it is not in the same category as the other documents here.

Mr. KIME. And is undoubtedly admissible under any theory.

The COURT. The Exhibits will be admitted.

By Mr. KIME:

Q. I hand you what has been identified heretofore as Exhibit No. F–42, A to I, inclusive, and ask you whether or not you have seen that correspondence heretofore?

A. I don't remember seeing this, but I understand what it is all about.

Q. What is it about?

A. I believe I asked them to let me know how they allocated the pictures to the various towns, certain towns in the Griffith Circuit.

Q. Does that show how they allocated them?

2696 A. Yes sir, it did.

Mr. KIME. We offer in evidence Exhibit F–42, A to I, inclusive.

Mr. COCHRAN. We object to that as being incompetent and immaterial, and being an inter-office, or rather communications between this witness and other representatives of the company in which none of the defendants participated.

By the COURT:

Q. Who is Mr. Miller?

A. Mr. Miller was our office manager or practically assistant manager at our Dallas branch at that time.

The COURT. The objection will be sustained and an exception allowed.

By Mr. KIME:

Q. Now, Mr. Kupper, I hand you what has heretofore been identified as Exhibit No. F–44, A, B, and C, and ask you if you have seen that corrsepondence, and wrote part of it?

A. Well, I didn't remember it until you showed it to me, but I acknowledge it as correspondence between Mr. Clark, our manager of our Oklahoma City office, and myself, relative to prices on some few additional pictures.

Q. In Enid, Oklahoma, second run?

A. Second run in Enid, Oklahoma.

Q. You had already in your contract for that year sold them 30 pictures——

A. We had.

2697 Q. Second run in Enid. Do you recall what they paid for those second run pictures?

A. I believe $15.

Q. That was the additional. Do you recall what the original contract provided?

A. Enid, oh, I imagine it was somewhere around $17.50, perhaps.

Mr. KIME. We offer in evidence Exhibit F–44, A, B, and C, your Honor please.

Mr. COCHRAN. To which we object.

By Mr. KIME:

Q. When did you ordinarily start your preparation for the next season's deal, Mr. Kupper, with the Griffith Circuits?

A. Well, I think it must be somewhere in the neighborhood of weeks or perhaps a month ahead, as I would have my branch managers get up their experience for the previous year and try to study it and advise me on it, and get up their records to date, and send them in, or bring them

in to me, and when I came here, it depended upon where we would negotiate the deal. I would say weeks ahead, or a few weeks ahead.

Q. Was it necessary to start as far as April?

A. Sometimes, yes, I guess so.

The COURT. The objection will be sustained to the offer of the exhibit.

2698 Mr. COCHRAN. That refers to this exhibit last offered?

The COURT. Yes, sir, to Exhibit F–44, A, B, and C.

By Mr. KIME:

Q. When you started to prepare for a succeeding contract, did you ordinarily assemble the box office receipts on the preceding season?

A. Oh, I didn't personally get those box office receipts, but we had a record which showed the results of the engagements, yes.

Q. Were they prepared for you?

A. Our local branch office had them all, on all pictures that played percentage.

Q. What about those that played flat rental?

A. We had an interest in them whether they did come or not, but we didn't know what the results were. The picture was sold or licensed at a definite specific figure, and they could either give us the information if they wanted to, or they could withhold it. So we didn't know, from them or anybody else, when we would sell a picture flat, unless the exhibitor or the party running the pictures advised us, if they wanted to, and told us.

Q. What was the custom as to these defendants here, did they give you that information on flat rental pictures?

A. If I wanted to know and asked them, they did.

2699 Q. I hand you what has heretofore been identified as F–48–B and ask you if that is your signature.

A. It looks very much like it. I assume it is. I believe it is.

Q. Do you recall writing that letter?

A. Yes, sir, I remember.

Mr. KIME. I offer in evidence Plaintiff's Exhibit F–48–B.

Mr. COCHRAN. To which we object on the same grounds as heretofore raised.

The COURT. Objection sustained. Exception allowed.

By Mr. KIME:

Q. You formerly sold these various defendants on a flat rental basis?

A. Yes. We sold them both ways; sold on percentage also.

Q. Originally you sold them on a flat rental, didn't you?

A. Well. I don't recall how we sold them back in the early days in the twenties, but I believe it was flat rental. In some seasons we sold percentage and then we would go back to flat, and finally we got percentage and flat.

Q. In '33–'34, and '35–36 you sold flat?

A. Yes, I believe that is correct.

2700 Q. Then I expect in '37–38 it was also that way, which is immaterial, but you did then change to percentage or a portion of the deal was percentage, is that right?

A. Yes, sir.

Q. With certain defendants or all of them. Now tell us how that change came about.

A. I am not so sure of the year but I had been trying to get percentage on all our important pictures in that circuit for many years; not only on that circuit—Griffith I am talking about—but all theaters. I was not able to negotiate that kind of a deal. One particular season relative to one of these letters you just showed me, I had already concluded my contract early in the year, probably in August like they generally were, or early September or late July, and during that season we changed our contract. I remember it because it was in Kansas City and we were having a meeting there of a number of branch managers and the Griffiths came down to see me. Things were not going as well as they should. I think conditions were a little bad or were off, and our prices had gone up each year and were considerable. There was a meeting there and we were talking about the conditions and I was able to get them to go percentage so I had that contract. It wasn't exactly abrogated but it was changed and we worked out what we con-

2701 sidered agreeable terms and we went over certain towns. I don't believe we took every town in but I got what I considered the important towns that I always wanted to sell on percentage and I was very pleased.

Q. You had for many years been a great believer in selling pictures on a percentage basis?

A. Yes, important pictures.

Q. But you couldn't sell them to Griffith for many years and then finally after you already had a deal worked out Griffith got the idea they might like some percentage pictures. Isn't that right?

A. Again I state we had various types of deals. Originally flat. That was the history of the industry. Then we had years where we would sell percentage. Then they go so they didn't want percentage and we went backwards and forwards until today I would say they are all percentage; all important pictures, at least.

Q. I hand you what has heretofore been identified as Exhibit F–49, A to V inclusive, and ask you if some of that correspondence is signed by you, some addressed to you.

A. Yes, sir. I recall this correspondence as pertaining to our business and the letters were between Mr. Clark, our local branch manager at the time and our district manager, Mr. Scott in Kansas City and myself, all relative to the Griffith Amusement Company contracts.

Mr. KIME. We offer in evidence Exhibit F–49, A to V.

2702 Mr. COCHRAN. To which we object on the same ground as heretofore in connection with other documents.

The COURT. Objection sustained.

By Mr. KIME:

Q. You testified during the course of your time on the witness stand relative to the Smith and Bearden attempt to secure product from you in Lubbock, Texas, I believe.

A. I did testify as to Lubbock, yes. I know they tried to buy product and did buy product from us.

Q. Do you recall correspondence with them?

A. Yes, I had correspondence with them.

Q. Is this some of the correspondence which has heretofore been identified as F–60, A to I?

A. Yes, sir, I recall this correspondence.

Q. Correspondence between Smith and Beardon and your company relative to an attempt to get product in Lubbock, Texas?

A. Yes, but there is another letter or wire or something in there relative to the Cactus which has nothing to do with Smith and Bearden.

Q. Well, that is relative to the town of Lubbock.

A. I thought you meant Smith and Bearden.

Mr. KIME. We offer in evidence Exhibit F–60, A to I, inclusive.

2703 Mr. COCHRAN. To which we object on the same grounds as those raised in connection with the offer of previous exhibits.

The COURT. Objection sustained. Exception allowed.

2704 Q. I hand you what has been heretofore identified as Exhibit F–62, A to DD, and ask you if that correspondence is also relative to Smith and Bearden's Lubbock situation?

A. I am familiar with this correspondence, a lot of letters between our branch in Dallas and myself, and relative to product for Lubbock.

Mr. KIMB. We offer in evidence Exhibit F–62, A to DD, inclusive.

Mr. COCHRAN. To which we object on the same grounds as those advanced in connection with similar exhibits which have been offered.

The COURT. The objection will be sustained and exception allowed.

By Mr. KIMB:

Q. On occasions, Mr. Kupper, exhibitors down here who were attempting to get product from your company wrote you and various other officials and employees of your company, did they not?

A. There have been some, yes sir.

Q. And some of those you did not answer?

A. I don't recall that. I am quite positive I always acknowledged receipt of letters. If the courtesy of a reply was necessary, I believe I always answered.

Q. Do you think it is probable that on occasions you instructed your subordinates not to answer certain letters, and that you were not answering them yourself?

2705 A. I don't believe so. There may have been, there may have been times when I was going to discuss the matter further that I would say, "Withhold your answer until you hear from me," or until I discussed it, let's say with our attorneys, or somebody, or with my superior, who was the general sales manager, and I might have sometimes say a letter from an exhibitor and I might contact my branch manager and tell him to straighten the matter out, and maybe I didn't, or I overlooked it, overlooked acknowledging the letter or something, but I generally followed through to answering the correspondence. We have always done that. It is business courtesy.

Q. There may have been times when you didn't do that?

A. It could be, sure.

Q. All right. I hand you what has heretofore been marked as Exhibit F–70, A to F, inclusive, and ask you whether or not some of those letters were written by you and some to you?

A. Yes, sir, some of it is correspondence between our Mr. Clark and myself. There is a letter there addressed to Twentieth Century Fox Company from a Mr. Guest, asking for certain product, I think that is the substance of it, isn't it?

Q. Relative to second run?

2706 A. Yes sir, I think he wanted second run. He wanted product in that town. Where was it, Blackwell—or Duncan?

Mr. KIME. That's right. Now, Exhibit F–70–D is a letter signed by an agent of one of these defendants, addressed to Fox, and I assume there is no doubt as to the admissibility of that. We offer in evidence Exhibit F–70, A to F, inclusive.

Mr. COCHRAN. We object to Exhibits F–70, A, B, C, E, and F, for the reason that each of those exhibits is a letter between representatives of the Twentieth Century Fox and the defendants and their representatives who are not parties to the same.

The COURT. You are objecting to all except D?

Mr. COCHRAN. Exhibit D, except D, yes sir.

The COURT. The objection to Exhibits A, B, C, E and F will be sustained. There is no objection to D, and it is admitted.

By Mr. KIME:

Q. Mr. Kupper, you knew exactly what your pictures made on a percentage basis, did you not?

A. What they made?

Q. Yes.

A. Do you mean what the exhibitor made off of them?

Q. Yes, and what you made?

A. We knew what we got, our share of the gross.

Q. And you knew what the exhibitor told you that they grossed in his theater, did you?

2707 A. We knew what he reported.

Q. That's right?

A. Yes, sir.

Q. On all your pictures?

A. When they reported, yes sir.

Q. That were on a percentage basis?

A. Yes.

2708 Q. I hand you what has been heretofore marked as Exhibit F–71–A to C, and ask you if that is correspondence to and by you, together with a contract.

A. It is a photostatic copy of a contract made by Mr. Clark, or somebody, for second run at Blackwell and correspondence between Mr. Clark, branch manager at Oklahoma City, and myself relative to that blank contract.

Mr. KIME. We offer in evidence Exhibit 71,—F–71, A to C, and suggest that C is a contract between the alleged co-conspirators and purely admissible.

Mr. COCHRAN. We have no objection to F–71, C, which is a contract between the Griffith Amusement Company and Twentieth Century Fox covering certain product in the town of Blackwell, Oklahoma, but we do object to Exhibit F–71–A and F–71–B for the reason that those docu-

ments are correspondence between Clark, the representative of Fox and Mr. Kupper, representative of Fox, to which the defendants were not parties.

The COURT. You are objecting to A and B?

Mr. COCHRAN. A and B, yes, sir.

The COURT. Objection to A and B will be sustained. Exception allowed. Exhibit C will be admitted.

By Mr. KIME:

Q. Did you have a formula which was applicable to certain sized towns for the sale of certain of your product?

2709 A. Well, I would say we did, yes.

Q. What was that formula?

A. You mean as to how we sold in blocks?

Q. No, not blocks. We are not interested in blocks. Blocks were subsequent to that time.

A. I mean the grouping of the pictures. Is that what you mean?

Q. No, you evidently had a formula which was followed in the sale of all or certain pictures.

A. Our pictures, our policy was to try to sell all of our pictures in the situation that we elected to do business with. We naturally endeavored to sell our pictures.

Q. Did you have a formula as to price?

A. Price was a matter of negotiation.

Q. I hand you what has heretofore been identified as Exhibit F–72–A to N inclusive, and call your particular attention to F–72–C, where it is indicated that the prices for third run followed a particular formula, and ask you if that refreshes your memory as to what formula you had at that time. Does that refresh your recollection?

A. Yes, but the use of the word "formula" there is quite different than what you are asking about.

Q. What does it mean here?

A. We from time to time each year have our dis-

2710 trict managers and our sales managers analyze each account with generally the salesmen in that particular area so as to have benefit of his intimate knowledge of the situation, and they endeavor to set up a price of respective groups of what they think is the proper and fair price for our product. That was done in this particular case, and it was a matter of record. If we were going to sell a third run to Miss Kyser in that town, and prior to that time they had no third run, but she finally got a third run; they had already agreed with Mr. Clark or Mr. Scott, district manager, as to what they considered a fair price, and that was written on the service record for this particular theater so they were all in accord as to what they thought our pic-

tures were worth and what they would charge, as a matter of record, and it was there, so when they sold that particular contract he is referring to, they sold in accordance with the formula they had agreed upon, which was right and it was acceptable to them for that town.

Q. Were those formulas submitted to you before they were used?

A. No, sir. The sales manager was supposed to be in accord with those prices, and he was generally the one that approved or agreed to them.

Q. Did you have any familiarity with a formula that was applicable to Ada at that particular time?

2711 A. No, I didn't.

Q. Look at Exhibit F–72–L and F–72–N there in that exhibit and see.

A. Just L to N?

Q. L to N at the present time.

Mr. COCHRAN. I understood the witness to say the formula he referred to was a deal as to a particular theater or theaters and not relating to a town, as I understood it. Counsel is now asking him if he had any knowledge as to a formula there applicable to Ada.

By the WITNESS:

A. I should have said "minimum price". That is the whole structure.

By the COURT:

Q. Did the formula he referred to include towns as well as theaters?

A. No, it means specific theaters. It didn't set a price for the town. It was the theater.

By Mr. KIME:

Q. You had a formula price for each theater. Is that right?

A. Each theater we did business with. There was no use establishing or putting something down for an account you didn't do business with; that you couldn't sell or didn't sell.

Q. Referring to Exhibit F–72–L, which is the contract between your company and Nona Kyser for Ada, you sold her "Swamp Water" third run for $20. "How

2712 Green Was My Valley" for $22.50. "Remember the Day" for $17.50. "Young America" for $12.50. "Cadet Girl" for $12.50. On Exhibit F–72–N you sold her "Charlie's Aunt" for $22.50, "Sun Valley Serenade" for $22.50, "Great Guns" for $12.50 and "Week End in Havana" for $15.00 and "I Wake Up Screaming" for $15.00. Now the formula applicable to that theater was determined from those figures?

A. The formula was not determined from these figures. The formula was determined by a discussion between our own people who thought that would be a fair price and what they should get in the situation for which they went out and sold the picture, and the price is in relation here, I would say, to the price figured as a minimum, but it might be more because that became a matter of negotiation, but there isn't much variance, I can assure you of that. I had not seen it and had nothing to do with the so-called formula as to that theater.

2713 Q. From those figures, then, you couldn't tell whether your people down here in Oklahoma were abiding by the formula that they had set up or not, is that right?

A. No, I couldn't tell.

Q. Well, look at Exhibit F-72-G, which is a cancellation of some of these pictures, third run, in Ada, Oklahoma, from the McSwain, Kiva, and Ritz Theaters, owned by—which you refer to here in your material as the Griffith Circuit—and compare that with either L or N, and see if you could say from that that the same formula was applicable to the three Griffith Theaters as was applicable to the Kyser Theaters?

A. I don't know whether it is the same formula or not, but the prices are very similar.

Q. Look at F-72-H, which is a cancellation of certain product of the third run from the Griffith Circuit again, of "Charlie's Aunt," which had been sold to the Griffith Circuit?

A. For $20.

Q. For $20?

A. And sold.

Q. Third run, and then compare that with Exhibit F-72-N, where you resold it to Mrs. Kyser or Miss Kyser for $22.50. Could you say the same formula was applicable to Miss Kyser's Theater as was applicable to the Griffith Theaters?

2714 A. I don't know whether it was the same formula or not, but there is a relative value out of some of those situations. Maybe Mrs. Kyser's is a slightly better theater, better type theater, or larger theater; maybe the pictures are more valuable.

Q. You are very familiar with that situation, are you not?

A. This is 1942; I had nothing to do with the negotiations here, but it is a similar operation, a similar type, and the prices are very much in conformity with one another.

By the COURT:

Q. Would you make a difference in the price of pictures, say the same picture, sold to a house that seats 500, and one that seats 800?

A. There would be sometimes that difference, yes sir. The days would have something to do with it too, probably, a certain time.

Q. Do you know the size of Miss Kyser's house in Ada?

A. I don't recall it off-hand, no sir.

By Mr. KIME:

Q. Did I understand you to say the days would have something to do with it?

A. Sometimes it has a lot to do with the negotiations.

Q. Well, at the time you negotiate a contract, I have understood that you had no idea what days it would be exhibited, aside from the number of the days?

A. That is what I am talking about, the number of days.

2715 Q. Oh, the number of days?

A. Yes, sir.

Q. Pardon me. Would a picture like "Swamp Water", one to four days, be more expensive than it would for two or three days?

A. Oh, not necessarily. That one to four days they had in there for a long time, that is an established way they run contracts; and two or three days, that meant they could play one day or they could have the privilege of playing four days. The minimum was two days, and it was definite for two days, but they could play it four days.

Q. You sold it to Griffith for $15, third run, one to four days, and you under the formula sold it to Miss Kyser for two to three days for $20, is that right?

A. That's right. Now, maybe I should give you a little explanation of why that is also possible. When we sold Griffith that contract, it was sold earlier in the year, before the pictures were completed. By the time we sold Mrs. Kyser, we knew what the pictures were, and they were finished, and they were offered then to her; we had a better knowledge of what the picture was worth, and she did too.

Q. And Griffith decided it wasn't worth even $15, then you sold it to Mrs. Kyser for an increase?

Mr. COCHRAN. We object to that as not proper ex-

2716 amination.

By the COURT:

Q. Is that true?

A. As far as I know, Griffith decided it didn't want to run third run in the town, and had cancelled the pictures

so Mrs. Kyser could buy the pictures. That is what I would deduct from this.

Q. Your deduction is that Griffith was magnanimously assisting Miss Kyser, is that correct?

A. I wouldn't say at that time. It may be. I don't know what was in his mind. He never talked to me about it.

Mr. KIMB. We offer in evidence Exhibit F-72, A to N, inclusive, and suggest that G is a cancellation of the prices of a contract already in evidence relative to business between these two co-conspirators, as is H, as is I, and that J is a contract between those parties, as is K and M.

Mr. COCHRAN. Your Honor please, we object to Exhibit F-72-A.

The COURT. You are objecting to A?

Mr. COCHRAN. Yes, Your Honor, we are objecting to Exhibit F-72-A, for the reason that that is a document which has not been identified, and appears to be some record made up by someone for the distributor.

The COURT. I can't hear you.

Mr. COCHRAN. It appears to be some record made
2717 up by the distributor which does not relate to the defendants, and to which they were not parties, and which has not been identified. The same is true as to Exhibit F-72-B. F-72-C is correspondence between Mr. Clark, branch manager of Fox, and Mr. Scott, to which the defendants were not parties, and is hearsay. Exhibit F-72-E is a letter from Hilgers, branch manager, to Fox, to balance the Atlanta, Georgia account, and other representatives of Fox, and it is hearsay and immaterial. Exhibit F-72-G is objected to as being hearsay as to these defendants, being an alleged memo of alteration or cancellation.

The COURT. What about F?

Mr. COCHRAN. I will try to go through and get these that are objected to, and then come back and get those others, if you will then call my attention to them, the ones which I have omitted.

The COURT. Very well. I want the ones you are objecting to.

Mr. COCHRAN. That's right.

The COURT. A, B, C, and E.

Mr. COCHRAN. That's right. Exhibit F-72-G, the same being a memo of alteration or cancellation of contract, three pictures, for Griffith Amusement Company, Ada, for the reason that it is hearsay and not binding on the

defendants, being records made by the Fox Distri-
2718 buting Company, to which the defendants were not parties. The same objection in regard to Exhibit F-72-H. We are not objecting to Exhibit F-72-D, and F-72-F. Exhibit F-72-D is a contract between Griffith Amusement Company and Fox covering certain pictures for Ada. We are not objecting to Exhibit F-72-D, the same being——

The Court. I didn't understand.

Mr. Cochran. Exhibit F-72-D.

The Court. That is a contract between Fox and Miss Kyser?

Mr. Cochran. No, Exhibit F-72-D, as I have it, is a letter from Griffith—wait a minute, that is Exhibit F-72-F, is what this is.

The Court. F is a letter.

Mr. Cochran. From Griffith Theaters to Friedel; we are not objecting to that.

The Court. What about D?

Mr. Cochran. There is no objection to D. That is a contract between Miss Kyser and Fox, covering certain pictures. There is no objection to that. There is no objection to F-72-I, which I believe is a letter from Griffith Theaters to Clark.

The Court. To Clark from Griffith?

Mr. Cochran. That's right. There is no objection to F-72-K, which is a contract between Griffith Amuse-
2719 ment Company and Fox, covering the picture, "How Green Was My Valley." There is no objection to Exhibit F-72-J, which is a contract between Fox and Griffith Amusement Company, covering two pictures. There is no objection to Exhibit F-72-L, which is a contract between Miss Kyser and Fox.

The Court. You are not objecting to J?

Mr. Cochran. There is no objection to J. There is no objection to Exhibit F-72-L.

The Court. What about K?

Mr. Cochran. There is no objection to Exhibit F-72-K. There is no objection to Exhibit F-72-M.

The Court. What about L?

Mr. Cochran. There is no objection to L, M, and N. I believe that covers all of them, doesn't it?

The Court. What about G?

Mr. Cochran. We are objecting to that, because that is a memorandum made by someone purporting to act for Fox to which the defendants are not parties.

The Court. You are objecting to Exhibits A, B, C, E, G and H, and you are not objecting to Exhibits D, F, I, J, K, L, M and N.

Mr. COCHRAN. Did you say we are objecting to Exhibit F-72-D?

The COURT. There is no objection to D.

Mr. COCHRAN. There is no objection to D, and
2720 there is no objection to F.

The COURT. Your objection is based upon the fact that these are communications between the Fox Company and other than the defendants?

Mr. COCHRAN. Yes, sir.

The COURT. The objection will be sustained as to A, B, C, E, G and H and exception allowed. There is no objection to D, F, I, J, K, L, M and N, and they will be admitted.

By Mr. KIME:

Q. You are familiar with Hobbs, New Mexico. Mr. Kupper, are you?

A. Hobbs?

Q. Hobbs; yes, sir.

A. Yes, I have been at Hobbs once, I think it was in 1938.

Q. 1938?

A. Somewhere like that.

Q. About what size town was it then?

A. A lot bigger than I ever dreamed of. It was a boom town then. They were living in packing cases and everything. There must have been 10,000 people or close to that, but I never knew it until that night.

Q. When did the boom start; do you remember?

A. Oh, I don't know. It was a secret to me until that night.

Q. That was the only visit you ever made there?

2721 A. Yes, sir.

Q. I hand you what has been identified as Exhibit F-84, A to F, inclusive. A and B have the signature of someone for Fox Film Corporation. Can you identify that signature?

A. It looks like John D. Clark.

Q. Is it John D?

A. Yes, sir.

Q. Or Charles W.?

A. I don't know. It looks like, it looks like a J; it looks like John D. Clark.

Q. Can you tell any better from that one (handing)?

A. I can see part of it. I would say it looks like a J.

2722 Q. Was your manager then, that is in 1935, Charles W. Clark?

A. In Oklahoma City?

Q. Yes.

A. Yes, I think he was here then.

Q. He was not in Dallas?

A. No. Beierdorf was in Dallas that year and Clark was in Oklahoma City.

Q. Tell the Court what that series of photostats are.

A. Well, there are two. A is a photostat of a contract with Mr. J. T. Whelan with the Roosevelt Theater, Hobbs, New Mexico, dated January 10, 1935, second run. F–84–B is a photostat of the contract for the season of 1933–34, I believe, and is dated September 29, 1933. It is for the first run showing of groups of pictures, our product, at the Rex Theater, Hobbs, New Mexico, with the R. E. Griffith Theators, Incorporated.

Q. What is C?

A. C is a copy of our contract recapitulation and register which we book there in our office for the Roosevelt Theater at Hobbs, New Mexico, second run; second run contract I was referring to.

By the COURT:

Q. With whom?

A. Mr. J. T. Whelan, and D is a continuation of C. E is a copy of our contract, recapitulation register with which we work in our office and it is for the R. E. Griffith,

2723 Rex Theater at Hobbs, New Mexico, and F is a continuation of that.

Mr. KIME. We now offer in evidence Exhibits F–84, A to F inclusive, and suggesting that B is a contract with the R. E. Griffith Theaters and Fox, and that E and F show the way that contract is handled by the distributor in part, and I notice from the last objection that probably there will be no objection to A since it is a contract between Fox and an independent exhibitor.

Mr. COCHRAN. In behalf of the Griffith Amusement Company, Consolidated Theaters, Inc., and L. C. Griffith and M. J. Griffith we make no objection to Exhibit 84–3 and B. We do object to Exhibits 84–C, D, E and F for the reason that those exhibits which are offered contain statements purporting to have been made by some representatives of Fox Distributing Corporation to which the defendants were not parties, and therefore, are not admissible as to them. We have no objection, of course, by proper evidence to having the government establish the play off on any of these pictures, and the contracts themselves are in evidence, which show which product was licensed. We are objecting to these documents because they contain statements which are purely hearsay without an opportunity to examine these parties who purport to make the statements.

2724 Mr. RICE. The defendants, R. E. Griffith Theaters and Wes-Tex Theaters make the same objection to

C, D and E as stated by Mr. Cochran. We also have no objection to the contract between Mr. Whelan and Fox or between R. E. Griffith Theaters and Fox.

The COURT. Your objection to C is it is merely an office memorandum and not a contract?

Mr. COCHRAN. That is right. The same is true as to C, D, E and F.

The COURT. The objections will be sustained and exception allowed.

By Mr. KIME:

Q. Mr. Kupper, can you tell from this Exhibit F-84-A contract with Whelan, what season's product that was?

A. 1933–34, K–1 product.

(Hereupon court adjourned until 2 o'clock p. m. this day.)

2725 PROCEEDINGS

September 19, 1945, 2:00 o'clock p. m.

Mr. KIME. Your Honor, in examining these Fox contracts, it has been discovered that there is not a complete contract in the record, and to complete some of these, as many as we possibly can, I will offer these with the privilege of withdrawing them and substituting additional copies. Some of these are marked already, and I think it would be more simple to use these identifying marks. They are F–2–E, F–3–F, F–5–G, F–3–H, F–7–Z, F–10–F, and page 1 of a contract between Fox and Griffith Amusement Company for the town of Ada, dated 8–11–33, which I will ask to have marked as our next number.

(Plaintiff's Exhibit No. 383 was then marked for identification.)

Mr. COCHRAN. If you don't mind let's dispose of these that have been previously identified first.

Mr. KIME. All right.

Mr. COCHRAN. Is this a complete set of the typical contracts of Fox which was covered in the stipulation.

Mr. KIME. That's the backs of all of them from K–2, K–3, K–4, K–3, K–5, and K–6.

Mr. COCHRAN. Now, do I understand that the
2726 document which you have had identified as Plaintiff's Exhibit No. 383 is intended as a typical contract Fox contract, for the group K–1 product?

Mr. KIME. No, it is not intended as typical, Judge. We are offering this, the back of this only, so that we may have in the record a complete photostat of a complete contract for the K–1 season, '33–'34.

2727 Mr. COCHRAN. In connection with the typical contracts which you have described for the K–2, 3, 4, 5

and 6 seasons, are those contracts complete with both sides?

Mr. KIME. That is right and the front is in.

Mr. COCHRAN. The front for K–1 is in?

Mr. KIME. Yes, sir. The fronts for all of them are in.

Mr. COCHRAN. And these documents which you are now offering contain not only the front side of what is designated as page 2, but also page 1?

Mr. KIME. No. I offered them with the privilege of withdrawing and substituting only the back.

Mr. COCHRAN. I must confess I do not understand. We stipulated that instead of obtaining copies of each and all of the Fox separate town contracts, that a typical contract might be selected which was done, but there was photostated only one side of the contract. We then stipulated among ourselves, which is not of record here, that information would be furnished so that the court would have before it the complete contract. That is, the back and the front. Now this F–10–E, as I see it now, has both sides of the contract, and we have no objection if the entire document is offered so that the Court will have the complete Contract.

2728 Mr. KIME. I have no hesitancy in offering it but it is just putting it in twice.

Mr. COCHRAN. I just wanted to understand the situation. You say what is designated as page 2 is already in?

Mr. KIME. That is right.

Mr. COCHRAN. For each one of these?

Mr. KIME. Yes.

Mr. COCHRAN. Now you are wanting to complete your record by offering the other page of the contract?

Mr. KIME. That is right.

Mr. COCHRAN. We have no objection.

The COURT. What is F–2? Is F–2 the front part of the contract?

Mr. KIME. F–2 is a series of pages from A to C, which is a contract for the 1934–35 season. Exhibit F–2–D, which has heretofore been admitted is what has been agreed on as a typical individual contract that was signed for each and every town.

The COURT. Why not just offer those then as they are?

Mr. KIME. We will offer them as they are.

Mr. COCHRAN. If any record is ever made up we can straighten the matter out then.

The COURT. What is your first one?

2729 Mr. KIME. The first one is F–2–D and F–2–E. The next one is F–3–E and F–3–F. The next one is F–3–G and F–3–H. The next one is F–5–F and F–5–G.

The next one is F–7–L; F–7–Z. The next one is F–10–E and F–10–F, and to simplify matters I will offer Plaintiff's Exhibit No. 383 and mark this one No. 384 in toto, only for the purpose, however, of obtaining the printed matter in both of them and the typewritten matter should be disregarded.

2730 Mr. Cochran. No objection.

William J. Kupper, a witness called on behalf of the defendants, was recalled and was examined and testified as follows:

Cross-examination (resumed) by Mr. Kime:

Q. Now, Mr. Kupper, yesterday or sometime heretofore, there have been identified Defendants' Exhibit 100 and 101.

Mr. Cochran. Judge Kime, before we pass, I wonder if you are offering this Exhibit 384 only for the printed matter? We would like to have that contract in for all purposes.

Mr. Kime. All right, that's all right; we will offer it for all purposes.

Mr. Cochran. I was just thinking that would save time.

Mr. Kime. Fine. That's all right with me.

By Mr. Kime:

Q. And you were interrogated concerning these. Will you just take those? I believe you had sold Mr. Bennett in Drumright for some years before that, is that right?

A. Yes, sir, he was our account there.

Q. Now, did Bennett play, "In Old Kentucky"?

A. Yes, sir.

2731 Q. That was an "A" picture, was it?

A. Yes, sir.

Q. What did he pay you for it?

A. He paid us 30 per cent—wait a minute—it looks like he played that on percentage, 30 per cent, yes, 30 per cent.

Q. And he paid you $156.10?

A. His guarantee, I believe, was $22.50 against 30 percent of the gross.

Q. And he paid you $156.10?

A. He grossed $446, and according to this he paid us $156.10.

Q. All right, did he play, "Steamboat Around the Bend"?

A. Yes, sir.

Q. That was another "A" picture, was it not?

A. That's right.

Q. And he paid you $143.01 for that?

A. Yes, sir.
Q. And he played "Little Rebel"?
A. Yes, sir.
Q. "Littlest Rebel"?
A. "Littlest Rebel", yes.
Q. And that was an "A" picture?
A. That was an "A" picture.
Q. And he paid you $136.97?
2732 A. That's right.
Q. And he played "Country Doctor"?
A. He did.
Q. Was that an "A" picture?
A. I would call it an "A" picture, yes, sir.
Q. And he paid you $97.68 for that?
A. That's right.
Q. Then, he played, "Redheads"?
A. Yes, sir.
Q. A "B" picture?
A. He paid $22.50.
Q. That is a "B" picture?
A. Well, it was a "B"—it wasn't exactly what we call a "B" picture.
Q. But it was in the "B" classification?
A. Yes, sir. He bought so many pictures in the "A" group, and so many pictures in the second group, which we designated, A, B, C, and D.
Q. How many A's did he buy, did he contract to play?
A. I would say 16.
Q. How many?
A. 16. There were 6 in the top group, and 10 in the next group. There were two groups; they were all big pictures. Let's say the classification is the second classification, which consisted of ten pictures.
2733 Q. In the first classification, listed as "A", he contracted to play six, and played four?
A. Yes, sir.
Q. Then, in the next classification, which you denominated as "B", he contracted for ten and played how many?
A. Eight.
Q. And he played "Redheads", we have covered that; and he played "Farmer Takes a Wife"?
A. Yes, sir.
Q. And he paid $22.50 for that?
A. Yes, sir.
Q. As per contract. "Dante's Inferno," is that a "B" picture, $22.50, which he played?
A. A "B" picture, not "B" group.

Q. A "B" classification?
A. That's right. He played that at $22.50.
Q. "Dante's Inferno", did I ask you about that?
A. Yes, sir.
Q. "This is the Life"?
A. "This is the Life".
Q. A "B" picture, and he paid $22.50 for that, as per contract?
A. Yes, sir.
Q. "Way Down East"?
A. Yes, sir; he played that and paid $22.50.
2734 Q. "King of Burlesque"?
A. Yes.
Q. What did he pay?
A. $45.77.
Q. "Captain January"?
A. Yes.
Q. And he paid $50?
A. Yes, sir, $50.
Q. "Under Two Flags"?
A. He paid $35.
2735 Q. "Private Number"?
A. He paid $30.
Q. All of those six we have here were in the B classification?
A. Yes, sir.
Q. The first nine out of ten, is that right?
A. That is eight.
Q. "Red Heads" is one, "Farmer Takes a Wife" is two; "Dante's Inferno" is three; "This is the Life" is four; "Way Down East" is five; "King of Burlesque" is six; "Captain January" is seven; "Under Two Flags" is eight; and "Private Number" is nine.
A. There was another group there, two groups of pictures. I thought you were asking for those. Add them all together.
Q. Then he played "Welcome Home", a C classification.
A. $15.00.
Q. "Navy Wife"?
A. $15.00.
Q. "Charlie Chan in Shanghai"?
A. $15.00.
Q. "Thunder in the Night"?
A. $15.00.
Q. "Uncle Dudley"?

A. $15.00.

2736 Q. "Paddy O'Day"?

A. $22.50.

Q. "My Marriage"?

A. $15.00.

Q. "Everybody's Old Man"?

A. $15.00.

Q. And "Every Saturday Night"?

A. It doesn't show it was actually played.

Q. That is right. It doesn't. "Charlie Chan at the Circus"?

A. It shows it was played, $15.00.

Q. "The Country Beyond"?

A. That shows played, $15.00.

Q. "First Baby"?

A. It shows played, $15.00.

Q. Those were all C's?

A. Yes, sir.

Q. And that is eleven of the C classification?

A. That is correct. Played eleven and the contract is for twenty.

Q. That is right. Then in the D classification he played "Gay Deception"?

A. Yes, $12.50.

Q. "Bad Boy"?

A. $12.50.

2737 Q. "Music is Magic"?

A. $12.50.

Q. "Here Comes Trouble"?

A. He played it; $12.50.

Q. Those four were all in the D classification?

A. Yes.

Q. In addition to those that are classified there he played "Poor Little Rich Girl" and paid $65.00 for it?

A. Yes, he paid $65.00.

Q. And "Miss Nobody" for which he paid $15.00?

A. That is right.

Q. Did his contract provide for 30 days after receiving notice of availability?

A. I am sure it did. I am quite sure it did.

Q. And he signed this contract on the 31st of January, 1935?

A. I believe that was the date.

Q. And he sold the theaters on the 2nd day of September, 1935?

A. Wasn't it 1936?

Q. If he sold them on the 2nd day of September, 1936. So you say that was a no good account and you wouldn't do business with him any more?

A. I said the account was delinquent because the contract should have been completed within a year
2738 from the starting date, and our salesman went up to see him to secure play dates on his contract. I think that was the testimony that was read to me. As I said, it was quite certain the salesman didn't try to sell him when he had that many delinquent pictures.

Q. You have washed out many, many that were not nearly so delinquent as that, have you not?

A. Oh, I suppose there are a lot of delinquent contracts. That was very delinquent. That was six months.

Q. You adjusted some, to which reference had been made heretofore, for fifty cents on the dollar that were in worse shape than that, haven't you?

A. Those pictures were not necessarily delinquent. I would say he probably didn't think they were pictures he wanted to play and he would rather settle for fifty cents on the dollar than play them. In making a deal like that it is not always proof they are delinquent.

Mr. KIMB. Incidentally, if the Court pleases, these were not offered yesterday. We now offer Defendants' Exhibits 100 and 101.

Mr. COCHRAN. No objection.

The COURT. Defendants' Exhibit No. 101?

Mr. COCHRAN. Yes, Defendants' Exhibits 100 and 101.

2739 Q. You told us this morning about the phenomenal growth of Hobbs; do you recall from your own knowledge what the population of Hobbs was in '31, '32 and '33?

A. No. I do recall an interesting answer. We checked up the population and we looked, I think it was the census, or Post Office thing, and it showed 31 people at that time. What year that was, I don't know. It was before I ever went to Hobbs. I think we carried it as a very small town when I made that trip and saw the town. I don't think anybody in Hobbs knew how many people were there, as a matter of fact, but there were a lot of people there.

Q. You don't know how many were there in '31?

A. I don't remember.

Q. Or '32?

A. No.

Q. Or '33?

A. I don't recall.

Q. Or '34?

A. No.
Q. Now, take that Whalen contract, is that the Whalen?
A. Yes, sir.
Q. "The Last Trail"; what did you sell that to Whalen for?
A. $10.
Mr. COCHRAN. What exhibit is that?
2740 Mr. KIMB. He has Exhibit F–84, and is looking at F–84–E.
The COURT. What is the date of that?
A. Let's see, Judge. There is a date showing here, October 2nd, 1933. The contract was to start January 1st, 1934. I assume that is the date.

By Mr. KIMB:

Q. You sold him "Dr. Bull" at what price?
A. $33.
Mr. KIMB. Some of these figures don't match up here. Let's wait and see what is going on.
A. You gave me a Griffith contract.
Mr. KIMB. We will switch around here. Here is the Whalen contract, which is 84–A.
Mr. COCHRAN. Do you mean that the witness was not looking at the right one?
Mr. KIMB. I had greatly confused the witness as well as myself.
Mr. COCHRAN. Shall we withdraw everything that has been said about Hobbs?
Mr. KIMB. All right, that is perfectly agreeable, that that be stricken.
Mr. COCHRAN. And start over.
The COURT. What is the date of 84–A?
Mr. KIMB. The date of 84–A is 1–10–35, January
2741 10th, 1935.
Q. You sold Whalen "Last Trail" for $15?
A. $12.50, with a 2.50 recording charge, a score charge as we called it, making $15.
Q. And you sold him "Paddy" for the same price?
A. That's right.
Q. And "Dr. Bull" for the same price?
A. Yes, sir.
Q. "Smoky"?
A. The same price. They were all $15 on the contract.
Q. All right, now turn to the Whalen contract.
A. This is the Whalen contract.
Q. Let's go down the list, because this is not in evidence, and we will have to get it in this way.
The COURT. What is the purpose of this?

Mr. KIME. To show your Honor that second run was sold to Whalen for more money than they sold first run to Griffith.

Q. You sold "The Mad Game"?

A. I don't see it here.

Mr. COCHRAN. If the Court please, counsel stated the matter as to this contract was not in evidence. His recapitulation is not in evidence, but Exhibit 84–A is in evidence; it is the contract between Whalen and Fox. 84–A is in evidence according to my records.

2742 The COURT. Does it show that list of pictures?

Mr. COCHRAN. Yes, sir.

Mr. RICE. There is also in evidence the contract between Griffith and Fox.

Mr. COCHRAN. Exhibit 84–B.

Mr. KIME. All right, we will take the Griffith. We will have to go to the recapitulation in order to get the play-off, I believe.

Q. There is the recapitulation?

A. Yes, sir.

Q. Showing F–84–E. You sold "Paddy" to Griffith for $15.

A. I did.

Q. "The Last Trail" for $12?

A. $12.

Q. "Dr. Bull" for $35?

A. That's right.

Q. "Smoky" for $12?

A. $12.

Q. "The Mad Game" for $12?

A. $12.

Q. "Mr. Sketch" for $33?

A. That's right.

Q. "As Husbands Go" for $5?

A. Wait a minute—yes, sir, that's right, $33.

2743 Q. "As Husbands Go" for $5?

A. No, it wasn't sold for $5; it was sold for probably $15, but that was a $10 picture and it looks to me like there was, that is another settlement situation where he took $5, he took half of the film rental and didn't use the picture. We couldn't charge the score charge because we only charged the score charge where the picture was played.

Q. "Frontier Marshal" for $10?

A. Yes, sir.

Q. "Carolina" for $13?

A. That's right.

Q. "Ever Since Eve" for $10?
A. Yes, sir.
Q. "Devil Tiger" for $10.
A. That's right.
Q. "David Harem" for $33.50?
A. That's right.
Q. "Murder in Trinidad" for $10?
A. That's right, $10.
Q. "Stand Up and Cheer" for $17?
A. Yes, sir.
Q. "Bottoms Up" for $10?
A. That's right.
Q. "George White's Scandals" for $13?
A. That's right.
2744 Q. "Baby Take a Bow" for $10?
A. That's right.
Q. "Change of Heart" for $13?
A. Right.
Q. "Such Women are Dangerous" for $10?
A. Yes sir.
Q. "Charley Chan's Courage" for $10?
A. Yes, I got it, correct.
Q. "Now I'll Tell" by Mrs. Arnold Rothstein, for $10?
A. "I'll Tell", $10.
Q. "Grand Canary" for $10?
A. Yes sir.
Q. "Handy Andy" for $33?
A. Yes sir.

By the COURT:

Q. Now, were those pictures which are listed under the Griffith contract—by the way, what is the date of the Griffith contract, 84-B?

A. The date of the Griffith contract is September 29th, 1933.

By Mr. RICE:

Q. What is the starting date on it, Mr. Kupper?
A. The starting date of the contract is January 1st, 1934.

By Mr. KIME:

Q. The Griffith contract was a first run contract?
2745 A. That's right.

Mr. COCHRAN. The Court, as I understand, wanted the date.

By the COURT:

Q. The starting date on the Whalen contract, dated October 1st, 1935 was January, 1936?

A. The Whalen contract is dated—this contract, incidentally, Judge, is a contract, we offered all of our pictures, but this is a selective contract for just 23 pictures, and the Griffith contract is a contract for all of our product taken at the beginning of the season when these pictures were never even made, but the contract they have here for Whalen is a contract for a selective group of pictures. By the time he bought he knew what those pictures were.

2746 By the COURT:

A. When was that contract to begin?

A. The contract was to begin, and it reads—this is an exhibition arrangement—"Second run to be played 90 days after first run, or as available." Therefore, the play date of the first picture on the contract would be 90 days after the exhibition of the first run.

By the COURT:

Q. How many theaters were there in Hobbs at that time?

A. If I remember there were probably three.

Q. Do you have the contract for these same pictures that were sold as first run to Griffith?

A. Yes, sir, they were sold to Griffith first run.

Mr. RICE. You didn't get the question.

The COURT. I am speaking of the pictures which you sold to Whelan. You sold them in October, 1935?

A. No, they were sold in January, 1935.

Q. Well, you stated the date of that contract was October 1, 1935?

A. January 10, 1935, that is the date of the Whelan contract.

The COURT. Yes, January 10, 1935.

By the COURT:

Q. Were those same pictures sold to Griffith as first run?

A. Yes, sir, in 1933.

Q. Then that was practically——

2747 A. Two years or more after Griffith had bought the contract.

Q. What was the size of Hobbs in 1933? Do you know?

A. Well, I don't know, but according to our contract, the records here—it doesn't list any population in 1933 here.

Q. What was the population in 1935?

A. Here is another one which says 4000 people.

Q. In 1935?

A. It says '33-34. I haven't got the '35 here.

Mr. RICE. The record shows 630 people in 1930 and 11,000 in 1940.

Mr. KIME. Does your Honor have noted whether or not Exhibit F-84-B was admitted or not?

The COURT. It was admitted.

Mr. KIME. That was my understanding.

The COURT. Yes, there was no objection to A and B.

By Mr. KIME:

Q. By Mr. Kupper, sometimes you started the machinery for the negotiations of a season's contract as early as April. Is that right?

A. That is right.

Q. And the people down in the branch offices and in your other offices began assembling material and sending it on up the line so when you got ready to negotiate
2748 personally you would have that material available?

A. Yes, sir.

Q. And then when would you say you first personally began to interest yourself in the negotiations for that year?

A. Well, I would say when I first would get these reports, I would study them and that would be the inauguration of looking ahead for the new season.

Q. From past experience you believe Mr. R. E. Griffith would come to New York to complete those negotiations?

A. Well, sometimes we did it in Oklahoma City and sometimes we did it in New York.

Q. Well, from 1933 to 1939.

A. They were negotiated in New York, I believe with one exception.

Q. With the exception of the contracts that were negotiated by Falls and finally signed in New York City?

A. Yes, sir, that is right. The memorandum agreement was signed.

Q. The memorandum. Then did Mr. Griffith usually come to New York about the same time each year?

A. Somewhere around that. Generally July or August or September at the latest and we generally completed negotiations by the middle of September.

Q. Did you have any word from him direct or
2749 through your Oklahoma branch office as to when he would arrive in New York?

A. Oh, I imagine I did sometimes; generally when he arrived in New York he would call me up and tell me he was there and that he would like to come over and say hello, the first day.

Q. That first day he just dropped in and said hello?

A. As a rule, the first day we didn't get started. We might have sometimes but generally we didn't.

Q. Then what happened?

A. Well, then eventually we got started to selling our pictures; get to talking about what product we were going to have, and I would try to outline to him the pictures to the best of my ability, outline what we were going to have.

Q. Would you call him up and ask for a specific time when you would discuss your contract, or would he call you and say "I want to talk to you at a certain time"?

A. I think it was pretty mutual. He wanted to buy our pictures and we wanted to sell him. There was no mystery about it; no haggling about it. We wanted to make it as early as possible.

Q. I am trying to get the complete picture.

A. He would come in and say "When can we get started?" I would say maybe tomorrow or maybe Tues-
2750 day, it would depend on the day of the week. Chances are if it was Friday we would let it go until next week because I didn't like to work Saturday or Sunday.

Q. When you went there to say hello did you meet other people?

A. No; as a rule he came to my office. From the first contact I had with him, every time, as far as I can remember, he would come over to my office.

Q. Then later during the time he was there you met at a specific point mutually agreed upon, where you discussed some features of the proposed deal?

A. Yes.

Q. Just tell the Court how you went about arriving at various features of this deal, what you said to Griffith and what he said to you; what you did and how you determined this feature of the contract and so forth.

A. Well, Mr. Griffith would come to New York, as I explained, and we would make our hellos—I have known him a good many years—then getting down to business I would tell him the number of pictures we expected to release that year. In fact, we would go over a list of them, of what we would have maybe, say two or three or four Shirley Temple pictures, two, three, four or six Will Rogers pictures, and so on down. I would give him a general outline of what we anticipated to make or hoped to make;
2751 the number of pictures we would have, tell him we would have four in this group and six of that group and twelve in the other, and so on, and I would tell him about how many one reel and two reel features we were going to have, and I talked about the progress we had made and the further development, the better quality that we hoped to produce and so on; tried to sell him in general on their value. We never talked price up to now, but I was trying to sell him on the box office value of these pictures, which I developed up to that time in connection with my own branch manager or by my own figuring and I would make a long sheet and list every one of these towns

and I would go down that list of towns, and later on when we had percentage figures I knew we could get a better idea of what they were going to be and I would put that down; where we were going to sell percentage pictures. There was no mystery about it. I knew what they were and what my return would be. I would try to gauge my other pictures, the earning power of what those better pictures were, and I would mark that down and I would total it up, and it came to so much for that particular series in that particular block. The total was there. Maybe I would even try to get a little more than what my manager and I had talked over and maybe I would think this is a little heavy or that I was over optimistic or under optimistic and maybe I didn't appreciate the value fully, and I worked un-

2752 til I got what I thought I was going to ask him and generally when I had that I probably asked him more than what that total was because I knew we were going to have some negotiations, and finally he would get out of me what I wanted for that particular group or those particular pictures, and then it was a question of one outlasting the other, and finally we came to an agreement and we made our contract. Sometimes we took a week or ten days or two weeks; sometimes a little longer maybe, but eventually we got together and I drew up my memorandum contract, and I sent my branch manager back home if he had to be there. Mr. Beierdorf was up there a couple of times and Mr. Scott was always there. He was the district manager. Finally they would go home and take these contracts to the various offices and have them signed and they would send them back executed and the deal was consummated.

Q. You say sometimes it took a week or ten days to work this out? Did you work on them jointly for a week or ten days?

A. We worked on them. We talked—I talked with R. E. Griffith when he was buying. Sometimes—there was a time when R. E. Griffith was in on the deal there for all these theaters up here. Later on he was out of these theaters up here. Then it was Falls alone.

Q. Was Falls usually with him on those earlier trips?

2753 A. Yes, when they were together.

Q. But you finally told him what you thought that product was worth and then he would—

A. He would haggle with me—he would disagree.

Q. He would say it wasn't worth that much, then sometimes it was a week or ten days before you finally came together on a definite price for a particular group?

A. That is correct.

Q. During this ten days did you see him each day during that ten days or did you let him cool off a little, or were you cooling off?

A. Sure. I couldn't give my entire eight hours to this deal. I had other things to do. I was running a big organization and had quite a large territory. We didn't spend from nine o'clock in the morning until late that night on it. There were periods of time he would have something else to do, or we would break off for an hour or two, but I am talking about the whole time in which it was consummated.

Q. In 1933, as shown by Exhibit F–1, you finally agreed on four pictures at $5000 and $3500 each. How did you arrive at that particular figure for those four pictures, and what type pictures were those four to be, or if you already knew?

A. I just can't remember the names of the pictures. Oh, I don't know. It could have been four Shirley
2754 Temple pictures or four other pictures, but as I told you before, I would take the list and break it down and I would analyze the town and I would put the price down at the town, and I would total up all of the towns until I came to a figure. You see I must have analyzed the town or I wouldn't have gotten that $35 in there. It would have been easier to take a lump figure of $5,100, I must have analyzed each town and then tabulated it and added it all up.

Q. That was the time you were selling second runs in with your first runs. Is that $35 probably for that?

A. It could be.

By Mr. COCHRAN:

Q. That is—you are talking about, is it?

A. Yes, sir.

Mr. COCHRAN. The contract there shows the prices were fixed for the second run. It shows on the face of the contract on the third page.

By Mr. KIM:

Q. So that is in addition to the——

A. That is in addition.

Q. And the $5,035 for those four pictures, that was in addition to that?

A. Yes, sir.

Q. Taking your '33–34 release schedule, does that assist you in determining what those four pictures might have been for, that $5,035?

2755 A. Yes, sir; all Will Rogers pictures.

Q. And the next group was two pictures at $3500 each?

A. Yes, sir.

2756 Q. How did you arrive at that figure?

A. I believe they were two Shirley Temple pictures. I am not sure. I will look down to see if we had them. We had two pictures in there. I think it was the Shirley Temple picture, or something like that; I am not sure which ones we designated there, but there were two we figured would have a value of that.

Q. In the four at $2,805, how did you arrive at that?

A. By the same process. There were a certain number of pictures which we thought of equal caliber, but not quite as much as these $3,500 ones, and we worked out and totaled it up to that figure. It was probably more, but that is the figure we agreed upon.

Q. Did it sometimes happen that you agreed on the four top pictures, but couldn't agree on the others?

A. Yes, sir.

Q. And there would be a lot of discussion back and forth?

A. Yes, sir.

Q. And that is some of the things that probably delayed it for a week or ten days?

A. That's right.

Q. During the times that you were attempting to arrive at these conclusions, did you have the figures at what they had bought pictures from other producers before you?

A. No, sir, I never knew what they paid other producers.

2757 Q. At any time?

A. At any time. I would like to have known sometimes, but I never knew.

Q. Did you ever receive any communications from your branch managers or people out in the field that showed what they paid for pictures from other producers?

Mr. Cochran. If the Court please, we think that is a rather general question. If they have something in mind, I think in fairness to the witness they should bring his attention to it.

The Court. He said he didn't know.

Mr. Cochran. But he is now asking if he ever received from some agent of his out in the field any information as to what some other producer was getting for one of his pictures. I say that is a rather broad question. If they have something specific in mind, I think in fairness to the witness, he should ask him about it.

The Court. He may answer, if he knows.

A. I don't recall of ever getting any.

By Mr. KIME:

Q. So that the figures you submitted to Mr. Griffith were always made up without relation to what they might be buying other pictures for from other producers?

A. Yes, sir.

Q. You knew they were buying pictures from other
2758 producers, didn't you?

A. Of course, I did.

Q. And other producers knew that they were buying your pictures?

A. Yes, sir.

Q. But what they got from, or what they bought Paramount Pictures for, you didn't know?

A. No, I didn't.

Q. I hand you what has heretofore been identified as Exhibit F-39-A to K, where Mr. Beierdorf had written you relative to checking pictures. Incidently, did your people check the pictures of other producers, as well?

A. Well, not as a practice. I do recall down here one of our managers, he wanted to get a line on what a theater was doing, and he may have hired a checker to what we call blind check a theater for a whole week. They may have played two or three different companies' pictures; he wanted to get an idea of what a house could do in a week. I would say in that way, and that is the only way, we might have checked other companies' pictures.

Q. Do you have any knowledge of other companies checking your pictures?

A. I don't know; they might have done it, to see what we were doing, but I had no direct knowledge of it, no.

Q. Now, I will ask you to look at this exhibit and
2759 tell me whether or not you did at this time have knowledge of what other pictures were doing in the Griffith Theaters, and what they were paying for those pictures?

Mr. COCHRAN. Will you read that question again?

(Question read by the reporter.)

A. I recall those.

By Mr. KIME:

Q. And Beierdorf did write you and tell you he wanted to check, and that he did check, and you wired him to send you Air Mail a special report on certain situations of pictures checked?

Mr. COCHRAN. We object to that, if the Court please. It is the same question that was asked before. We have no objection to the question as to what this witness knew about or was informed about, but as to the correspondence be-

tween Mr. Beierdorf, the manager of Dallas, and Mr. Kupper, and so forth, we are objecting to that.

Mr. KIME. I am not asking him about any correspondence. I asked him if he wired him.

Mr. COCHRAN. You asked him if he wired him, and the contents of the wire, and to that we are objecting. In other words, we are objecting to this correspondence, either by letter or by telegram, but we have no objection, of course, to the witness stating what he knows about the situation.

Mr. KIME. Any ruling, your Honor?

2760 The COURT. Read the question.

(Question read by the reporter.)

The COURT. You may answer it "Yes" or "No", whether or not you did that.

A. He did ask me, and I believe I did, I told him to go out and check Griffith. As a matter of fact, I was criticized by my general sales manager—I think it was put in evidence in a letter here the other day, wasn't it, yesterday,—about the type of deal we had, and we had to do some checking, so my instructions were, I instructed him to go ahead and check, and it came back to me, and I wanted to learn all I could, and Mr. Beierdorf didn't seem to think we were getting enough film rental from some other situations, and he wanted the proof on some situations, to show me he was right, and I told him to go ahead and make the check.

By the COURT:

Q. Was that checking on the Griffith pictures?

A. Yes, sir, checking pictures Griffith were playing mainly our pictures, to see what the gross result was on the theaters.

Mr. COCHRAN. Just at that point, would you have any objection to the witness stating to the Court what he means by "checking"?

Mr. KIME. No, go ahead. Tell the Court what you

2761 mean by "checking"?

A. What I mean by "checking"?

By the COURT:

Q. To determine attendance, I suppose?

A. The attendance and the gross of the day and of the run.

By Mr. COCHRAN:

Q. How was it done; what do you mean by "blind checking"?

A. By "blind checking" it means generally a man is in the house that they don't know is there, who has a clock and keeps a clock on it, and possibly occasionally checking to verify it and make sure about it. The other way of check-

ing, the regular checking is where you have a percentage contract, we retain the privilege and right to inspect the box office regularly, periodically, throughout the run of the picture and get a box office statement of the gross each day and at the conclusion the total, but the blind checking is something different.

By the COURT:

Q. Your purpose of blind checking is to determine whether or not these prices were too low?

A. That is correct.

By Mr. KIME:

Q. Did you have any advice that they had purchased a Paramount Picture for $38 which grossed around $750?

Mr. COCHRAN. We object to that as incompetent,
2762 and hearsay.

The COURT. Sustained. I don't see how that would be binding on these defendants. This witness has testified a number of times since he has been on the stand the price which he charged for a picture, which was fixed by him. While the purchaser of the picture, the exhibitor, might want a lower price, and while they negotiated back and forth, yet he is the one that fixed the price. If he fixed the price, I can't see how it would affect the defendants in any way as to what price they were paying for another picture.

Mr. KIME. This was in March of 1937, March and April of 1937. There was a contract made with these defendants in the fall of '37, I think in August, that is when they were usually made, but that is not important. There was a contract made, and here is positive proof that the Fox Film Corporation or the Fox Company, whatever the specified title may have been at that particular time, or Twentieth Century Fox, had knowledge of what Griffith was buying films for from Paramount, and how much money they were making off of those films. It is possible for a person to know what similar product can be purchased for without that influencing the price he has in mind that he is going to charge for his, but I submit, your Honor, that with

that knowledge of what somebody else can get for
2763 a very similar product, that it must unconsciously have some bearing with him as to what he is going to attempt, at least, to get for his like product.

The COURT. How would that make the evidence competent as against these defendants? Objection sustained.

Mr. KIME. They were all in one big combination.

The COURT. I know that is your allegation. There isn't any line of business in the world today where there isn't

some understanding about the different prices. You go down here and buy a suit of clothes, and say, "I could buy that suit of clothes in Chicago for $2.50 cheaper than you are offering it," or a pair of shoes, you might buy a pair of shoes—people who have articles to sell are the ones who determine the prices, and I can't see that that is material in any way.

By Mr. KIME:

Q. This morning, you said you didn't recognize "Waikiki Wedding"; that was a Paramount release, wasn't it?

A. I still don't know.

Q. You don't know?

A. No. I know it wasn't one of ours, I didn't recognize it as being ours. That was the question you asked.

Q. "Stowaway" was yours?

A. Yes, sir.

Q. Do you have any idea what you sold that in
2764 Alamagorda, New Mexico in the K–4 season for, flat rental?

A. No, I can't say, but I imagine it was too low.

Q. Does $40 seem about right?

A. It seems too low today.

Q. If your man Beierdorf said it was sold for $40, does that sound right?

A. Yes, sir.

Q. And it grossed, playing Sunday and Monday, $234.60?

Mr. COCHRAN. We object to that as being an attempt to get in the statement made by Mr. Beierdorf in a communication with Mr. Kupper in regard to blind checking.

The COURT. Sustained.

Mr. KIME. It isn't an attempt to get anything in. I would like to know if he can look at this and refresh his memory as to what they grossed from their own picture.

Mr. COCHRAN. That purports to be a communication from Mr. Beierdorf as the result of the blind checking, and we object to that.

By Mr. KIME:

Q. Was "Lloyds of London" one of your pictures?

A. Yes, sir.

Q. Do you have any idea what you sold that for flat rental in Ballinger, Texas?

A. No, I don't, sir.

2765 Q. Does $33.50 seem right?

Mr. COCHRAN. We object. The witness says he doesn't know, and a guess is immaterial.

The COURT. He is kind of refreshing his memory.

By Mr. KIMB:

Q. You made the contract for Ballinger for that year with Griffith, didn't you?

A. I made the Griffith contract; if that was his circuit, it must have been there and have been included.

Q. Do you have any idea about what Ballinger was worth that year on flat rental for a picture like "Lloyds of London"?

Mr. COCHRAN. We object to that, if the Court please.

The COURT. Is the contract in evidence?

Mr. COCHRAN. This witness, as I understand, has stated and explained how they arrived at the prices which were included in those contracts, which were definite amounts for certain pictures, for certain towns, but he has told you that in arriving at those figures, at his figures as a basis for the total amount that was fixed for pictures of any classification that he had work sheet on which he put down certain prices, and then he totaled up those entire figures. The contract itself goes ahead and provides that after this contract had been made that the exhibitor, the defendants in this
2766 case, some of the defendants in this case, would make allocations to their several towns, and those would be the amounts that were placed in these contracts, that is the basis of the payment; but those were not figures that he put on his work sheet when he was negotiating, is the way I understand his testimony. Now, the question here is whether or—what was the reasonable amount in his opinion for this town of Ballinger, I believe he said, for that particular year. We submit that is immaterial, because after all it is the question of what the deal was after they completed their negotiations, and the amount that he fixed, if he knows what it was.

By the COURT:

Q. What, do you have any independent judgment at this time as to what would be a proper rental for that picture in Ballinger, Texas, in that year?

A. Well, I would say this, your Honor, that what we finally allocated that picture to Ballinger or any other town for was what we believed to be a fair rental for the picture in that town. Just how it worked out and what was final, it couldn't have been much different from my pencil figures in trying to come to the conclusion of a total. And the allocation, we had some knowledge of it, but very little; we didn't know what the flat rental fixed did. Maybe the picture had an unusual playing time; maybe it played on Saturday and Sunday and got a lot of film rental. We may have sold it too low; our valuation or knowledge of the town may
2767 have been weak; we didn't know enough about it, we

didn't know whether the pictures would produce or whether we were entitled to more or not. I don't remember what we allocated it for. It seems to me that whatever we did finally agree on was satisfactory to us and our judgment as to a proper price.

By Mr. KIMB:

Q. During the course of these negotiations, did it ever come down to a point where you wanted or you thought a certain picture was worth so much in a certain town and R. E. Griffith thought it wasn't worth that much?

A. Yes, sir.

Q. Do you recall any of those particular instances?

A. Oh, I can't pull them out. Well, I know this, when I would give them a figure, we wanted so much, maybe he would say, "How do you arrive at that?" And I would go over with it, I would figure it is worth so much in this town, of Lubbock, or that town, and he would say, "I can't see that," and we would discuss it and finally we would change it, we didn't change any of the towns, but we worked it out and finally we had to change it in the total; if the total was more or less we would have to work out, to work it out, and put it on the towns that were showing the picture.

Q. What is one town that you are especially familiar with in this circuit?

2768 A. Well, I am familiar with quite a few of them.

Q. Which one do you know better than any other town, would you say?

A. Let me think now. It is hard to say. I know a lot of them pretty much alike.

Q. Let me mention a few—Enid?

A. I have been to Enid.

Q. Are you familiar with that?

A. I was familiar with it.

Q. "Love Is News" was one of your productions, was it not?

A. Yes, sir.

Q. Was "Time Out For Romance" one of yours?

A. Yes, sir.

Q. Do you recall what type of picture "Time Out For Romance" was, A, B, C, D, or E?

A. I don't think it was ever a top bracket picture, a top allocated picture.

Q. Take "Time Out For Romance", what do you think that might have been worth in Enid, during the K–4 season, about, in round numbers?

A. Oh, I don't know, $75 or $80, maybe $100.

Q. At the time you had the negotiations for the K–5 season, the subsequent one, you had seen the results of the blind check that had been made, had you not?

2769 A. I don't remember. You know, it is a funny thing about that. Until you showed it to me, I didn't recall those figures. I may have had them, but I don't believe I paid an awful lot of attention to them when they came in, because it was very early in the year and I wasn't ready to negotiate or build up my case for the coming year.

Q. The K–5 was the '38–39 season, was it not?

A. I will tell you in a second.

2770 Q. '37–38?

A. K–5 was '37–38.

Q. It was the next year you started to get the material in in April as shown by 48–B, I guess. These figures that had been submitted to you by Mr. Beierdorf show that you had been selling pictures to the Griffith circuit at an extremely low price and they had been grossing an abnormally large amount, and it made no impression on you?

A. I believe it did make an impression on me. In fact, if I recall, you testified that Mr. Beierdorf was only there a short while and I think I testified I went to Dallas and met Mr. Beierdorf and I had him get his automobile and we visited a great many towns on the Griffith circuit as I wanted to see where we were getting. Maybe we were not getting enough; maybe that gave me the idea that we were not getting enough and I wanted to see the town personally so I could sell them better; sell them higher possibly.

Q. And the fact they were buying pictures from Paramount at $30 in Hobbs, New Mexico, and grossing $1130, did that have anything to do with your negotiations in the subsequent year?

Mr. Cochran. Objected to for the reasons hereto-

2771 fore stated. He is asking about a report made by Mr. Beierdorf in regard to a check of a Paramount picture.

The Court. The witness has been discussing the effect of those reports. You may answer the question generally.

A. I don't believe it was the Paramount gross that influenced me at all because I didn't care what Paramount sold their pictures for to Griffith or what Metro sold them for anyone else. I was only interested in our pictures. If I saw on that list our pictures at an abnormal cost, at an abnormal gross return, let us say a picture as was mentioned here, a small picture, two hundred and some odd dollars, and I sold that picture for $30, that to me is entirely out of line. That is less than 20 per cent. I should have gotten at

least, probably for that picture, 25 per cent or better. That is one reason that led us to go to percentage, and I think about that particular year we converted our important towns to percentage so we would get the proper film rentals, but so far as other companies being on that list, that didn't mean anything. I was not selling those pictures. If they didn't get enough it was their hard luck. If they got too much they probably had to correct it too.

Q. If you sold a picture in a particular town for an average of $46, such as Midland, Texas, which had a population of 5,484 in 1930 and a population of 9,352 in 1940,
2772 in 1937, and you had advice that similar pictures at similar prices were grossing in that town $750, would not that cause you to believe that you might not be getting what you should from that particular town or that particular theater?

A. Yes, I would certainly feel that way.

Mr. KNER. I don't know whether I offered Exhibit F-39, A to K inclusive, or not. If I did not, I desire to.

The COURT. You didn't offer 39 at all.

Mr. KNER. We will offer 39-A to K inclusive at this time.

Mr. COCHRAN. To which we object for the reason that they are communications between representatives of Fox Distributing Company and the defendants had no connection with them.

The COURT. Objection sustained.

By Mr. KNER:

Q. I believe the name of C. E. Hilgers appeared in the testimony this morning as being your branch manager in Dallas.

A. He was our branch manager in Dallas, and I think was also a branch manager here at one time.

Q. Do you recall what period of time he was branch manager in Dallas?

A. I think he was in Dallas prior to 1937; possibly '36 and from there on back a number of years.

Q. Seven or eight years prior to that?

2773 A. I would say all of that; more than that probably.

Q. Now, all of the decisions, policies and prices and so forth, were made by your company and your company alone?

A. All the decisions for what?

Q. As to policy and price.

A. You mean about product, sales policy?

Q. Yes.

A. Certainly.

Q. And they never have been made by a combination with others?

A. No, sir.

Q. You mentioned yesterday in your testimony in response to a question by Mr. Rice that you did business with Hoblitzelle of the Interstate Theaters?

A. Yes, sir.

Q. Is that the Interstate Circuit?

A. Yes, sir.

Q. Is that the same Interstate circuit and is that Hilgers of your company the same that the Supreme Court found to be guilty of violating the anti trust laws?

Mr. COCHRAN. If the Court pleases, I think that is improper. That case will speak for itself and show that decision is based upon the failure of the distributors to go ahead and make certain proof.

2774 Mr. KIME. It will show what it will show, I assume that.

By Mr. KIME:

Q. You talked about exclusion of foreign made pictures in the Griffith contracts yesterday and going out to sell these, your agents were given specific instructions to tell the respective purchasers that they were foreign made pictures. How does it happen that these foreign pictures were not specifically excluded in the contracts with the independents?

A. I guess they wanted to buy them. They were offered them. They were told what they were. They were not excluded. Griffith just didn't want to buy them and wouldn't buy them. The other people, if they wanted them, they bought them.

Q. They were not good box office attractions in this area, were they?

A. They were not.

Q. Did you ever accompany any of your sales agents to any of these independents when they were attempting to sell this product?

A. No, I don't believe so. It has been a long time since I traveled with a salesman around the small towns.

Q. But you say they had instructions to tell these people these were foreign made pictures?

A. Yes.

2775 Q. Whether or not they did you have no personal knowledge?

A. Of course not.

Q. Do you know whether or not these independents knew these foreign made pictures were not good box office attractions in this territory?

A. Well, I think they knew their business pretty well. I imagine they paid for them what they thought they were worth and no more.

Q. Do you recall any particular contract with an independent where these foreign pictures were specifically excluded as they were in the Griffith contract?

A. I don't recall but I know we never sold the same number of accounts of those pictures by far as we did our better box office attraction pictures. We had a harder time liquidating them. I know that.

Q. Charlie Mahone was your account in his town?

A. Hobart?

Q. Yes.

A. Yes, sir.

Q. You sold him a full season's deal each and every year, did you not?

A. I believe we did.

Q. Is there any specific exclusion of these foreign pictures in his contract?

2776 A. I don't recall whether there are or not but he had a cancellation privilege in there that I think he could have exercised if he wanted to.

Q. Did the contract of Moulder specifically exclude the foreign pictures?

A. I don't recall. It may have or may not have.

Q. Did the contract with Nagel?

A. That far back I don't think we ever had a foreign picture to sell.

Q. Did the contracts with Pat Duffy?

A. They may have and may not have.

Q. You said yesterday there were about 17,000 theaters in the United States, I believe. Is that right?

A. I think we were referring to a period at that time. There are more than that now.

Q. During that period you were referring to, you said there were some 17,000 theaters in the United States?

A. Yes, I believe I testified to that.

Q. Now during that same period how many of these did Fox own?

A. Not so many.

Q. Well, about how many, if you know?

A. Oh, I think maybe a couple of hundred; three hundred probably; somewhere in that neighborhood, owned or leased.

2777 Q. Did they have an interest in other than those 200 they owned or leased?

A. I don't think so, unless it was the Roxy Theater, if that wasn't included.

Q. Is it your best judgment they had an interest in about 200?

A. A little better; maybe 300; west coast theaters particularly.

Q. Now you testified at page 2343, and I will start to read on page 2342 to get the context. "Well, on or about this time, the Griffith Company elected or suggested that they wanted their representatives, Mr. R. E. Griffith and Mr. Falls, they wanted to come to New York, and they came, as you can see, in August, and I was delighted; my home was there and it is usually pretty hot down here in August, and we worked these things out, sometimes in their hotel room and sometimes in my office. They had other people to deal with when they got through with me—" who were these other people?

A. I suppose the other distributing companies. They were up there to buy pictures.

Q. From you and the other distributing companies at the same time?

A. No, sir, never.

Q. Don't misunderstand me. At the very same time
2778 they were there they bought pictures from other distributors too. Is that correct?

A. They bought them while they were in New York but they were not buying them while they were with me.

Q. I didn't mean to infer that.

A. That is what I assumed you were inferring.

By the COURT:

Q. Did you ever know when they were there what pictures or what contracts they made with other distributors?

A. No, but I do know they were trying to negotiate with other companies for their product because the man called right from my office and somebody else was on the other end, and he would say, "I would like to meet you tonight and try to work out our deal" so I knew they were negotiating, and they told me they were negotiating with other companies. I have always known that, but one thing about the Griffith Amusement Company we were probably the first ones that closed with them for years. They would complete negotiations with us first. Maybe they like me, I don't know, or our company's product, but I have known them for years and I was able to make my contracts and I was not concerned about the other people.

Q. The sixth clause of your standard form of contract for K-1 reads as follows:

"SELECTION OF PLAY DATES—SIXTH: Unless other-
2779 wise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibi-

tion date or dates of each of said motion pictures shall be determined as follows:

"1. Subject to prior runs and/or protection granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the 'available date'). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

"2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

"3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate
2780 such date or dates by mailing written notice thereof to the Exhibitor."

Can you cite one instance in this territory served by the defendants here where that clause was invoked?

A. I didn't follow through the mechanics of all these contracts down to the details of things like that. I can't cite it, no.

Q. Do you have any knowledge that such Section 6 was ever invoked in any situation in the territory here involved?

A. Oh, I am sure there must be some but I don't recall. I don't know who they were, but I know they followed out their contract or tried to at least. They must have invoked it.

Q. You don't have any actual knowledge of any situation where that was ever invoked in this territory?

A. No, I don't.

Mr. COCHRAN. I understood the witness to say he had no knowledge of how the mechanics were carried out.

A. I didn't say that.

Mr. COCHRAN. Is that correct?

A. I beg your pardon. That is right.

By Mr. KIMB:

Q. What position do you now occupy?

A. General sales manager.

Q. Prior to that you were what?

2781 A. Western Division Sales Manager.

Q. Prior to that?

A. Special Representative and a branch manager.

Q. You were branch manager in Dallas prior to the time here involved?

A. I was never branch manager in Dallas. I was assistant branch manager.

Q. Prior to the time here involved?

A. In 1920, yes, sir.

By the COURT:

Q. How long have you been acquainted with the Griffith Brothers and their territory?

A. I went to Dallas, I think it was in 1920; the early summer of 1920 and I met them. They were selling pictures for another company and I met them. It must have been since 1920.

Q. How long have you known them as exhibitors?

A. Well, I knew they were exhibitors—I left here and I went to Washington a couple of years later, and later on I heard they had become interested in some theaters, and I lost contact with them because I was not coming down here then. I was in another part of the country until later on in years. Then I knew they had become exhibitors because I would read trade papers and things——

Q. What I am getting at is this: When did your company first begin dealing with them as exhibitors?

2782 A. Oh, I would say away back in—well, I know when I resumed contact with them, say in 1928, they were a customer of ours before that time because they were on our books when I went down to negotiate a new contract with them.

Q. How long have they been on your books?

A. I would say since their inception as exhibitors. I believe they bought our pictures when they only had one or two theaters.

Q. Are there any other exhibitors in this territory you have known longer then you have the Griffiths?

A. No. I have know Ralph Talbot equally as long, who is an exhibitor in Tulsa, and operates the first run theaters. I knew Joe Cooper, who operates the Criterion theater here. I have known him, I guess, equally as long, and there are a few others I might know.

Q. Has it been your policy to preserve your contacts by retaining the business of all those you have known a long period of time?

A. I didn't get that.

Q. Has it been your policy to retain the friendship of those exhibitors that you have known a long time and continue to do business with them?

A. Why, of course, certainly. I like to be friendly
2783 with everybody I do business with. It is easier to do business when you are friendly than it is when you are always fighting and quarreling, just doing business because you have to have them or they have to have you.

Q Is it more satisfactory to your company to deal with those with whom it has had satisfactory arrangements over a long period of time?

A. Yes, sir, it is.

2784 By Mr. KIMB:

Q. You have sold Charlie Mahone for a great many years, haven't you?

A. Me, personally?

Q. Fox?

A. Our company, yes.

Q. Have you know him for a long period of years personally?

A. I have met him, know of him. I don't know him personally, no.

Q Do you know Jake Jones?

A. I don't think I ever met Jake Jones. I have met his son, I think once, I don't know how long ago. I didn't know him personally, no.

Q. Do you know Speedy Moulder?

A. have met Speedy and his wife. When I would go to Tulsa I would always stop in Sapulpa. I know him a little better but I never made a deal with him in my life, but my company has made deals with him for years.

Q. At Page 2408 of the record you were asked this question:

"Q. If the Griffith interests had been purchasing in this town for several years, and they were your regular customers, it was your policy to go to them first?

"A. Yes sir. Just as our policy was in towns where Griffith came in, which were an independent operation. I
2785 am thinking of Sapulpa and Hobart.

"Q. And Mangum?

"A. And Mangum. Griffith came into those towns; we had an account, but Griffith never got one inch of our film; we sold it to our independent customer; despite the fact that Griffith was a big buyer of our product in other situations, he never got it in those towns, as long as the other operator continued to operate, and they still do today. I

am thinking of Sapulpa. I haven't been down here in four or five years, but it still does in those towns, if they are independently operated."

Then on Page 2412, you were being interrogated with regard to Mr. Duffy, as follows:

"Q What did Fox do in the matter of continuing to license its product to Mr. Duffy?"

Let's go back a little bit there.

2786 Then on Page 2412:

"Q. You spoke of the town of Mangum.

"A. Yes.

"Q. Do you recall the fact that Pat Duffy operated theaters in the town of Mangum at one time?

"A. I do.

"Q. Do you recall along about 1937 that Griffiths put in a theater in that town and operated it for a time in competition with Mr. Duffy?

"A. Yes, they did put in a theater.

"Q. What did Fox do in the matter of continuing to license its product to Mr. Duffy?

"A. We sold Mr. Duffy."

Then at Page 2435, the question was:

"Q. Now, in Mangum, I believe you have already stated that you continued to sell Mr. Duffy after Griffith went into that town, until Mr. Duffy sold his theaters to Griffith?

"A. We did."

Now, you wanted the Court to understand from those three series of answers that you continued to sell Duffy after you had an opportunity to sell Griffith, is that right?

A That's correct.

Q. There is no mistake about that?

2787 A. Of course, there isn't. We sold him.

Q. All right. Then Griffith put in the Greer Theater on the 1st day of November, 1937, and you had sold Duffy the '37–'38 contract prior to that, had you not?

A. I would assume so, yes.

Q. So you had no opportunity to sell away to Griffith as to the Greer, did you?

A. Maybe not that year, but what about the succeeding years?

Q. Well, we will get to that in just a moment Then Duffy was forced out of business on May 1st, 1938 in his other two theaters?

Mr. COCHRAN. We object to the form of the question, saying Duffy was forced out of business. That is an improper form of question.

By Mr. KIME:

Q. Well, then in 1938, the crops were bad down there and they had a dry year, and cotton was bad?

Mr. COCHRAN. We object to the form of the question. All that is necessary is when he went out of business, so far as this examination is concerned.

The COURT. Well, you can just limit your question to the fact that you want. There were a number of things down there that interfered; one was that he was not able to renew his lease.

Mr. KIME. I was only taking that from the words
2788 of the defense counsel as already in the record, your Honor, that he was forced out of business because he didn't have any money.

Mr. COCHRAN. That was a matter that this witness didn't testify to, if the Court please, so far as his examination is concerned.

Mr. KIME. All right.

The COURT. Well, he went out of business.

Mr. KIME. He went out of business.

By Mr. KIME:

Q. Then Duffy went out of business in his Temple and Rialto Theaters on the 1st day of May, 1938, so you didn't have an opportunity to sell Griffith any product, any years' product at that time, did you?

A. Not if we sold it to Duffy.

Q. All right. Duffy owed you some money at that time, didn't he?

A. I wouldn't be surprised.

The COURT. Didn't Duffy testify that he had contracted for the 1938–'39 season?

Mr. KIME. I don't know, your Honor. I don't recall it.

Mr. COCHRAN. I am just looking for that.

The COURT. My notes, or the notation which I have is that that is in the Duffy testimony, where he said, "I had all the pictures I needed for 1937–'38, and had con-
2789 tracted for the '38–'39 season."

Mr. KIME. Well, wait a minute. The fact is that they did sell to these defendants in Mangum in '38 and '39, as shown by——

The COURT (interrupting.) Well, he sold his theater in April, '38, Duffy did.

Mr. KIME. Well, the defendants acquired it, so they say, on the 1st day of May, or 2nd day of May, the date I just gave.

The COURT. Duffy's testimony, according to my notes, he said he sold in April, 1938.

By Mr. KIMBLE:

Q. I was reading from the interrogatories, the answers to the interrogatories of Consolidated, which say that they acquired the Temple and Rialto Theaters in Mangum on 5-1-38, and you contracted with the Consolidated Theaters for K-6 product on the 8th day of August, 1938, is that right?

A. I believe it is, yes.

Mr. KIMBLE. Now, your Honor, it is about two minutes to 4:00, and I have reached a very convenient place to stop, and it will take me some few moments to get to the next place. I would suggest that we recess at this time.

The COURT. It is a very convenient place for the Court, too. You may recess Court until 10:00 o'clock tomorrow morning.

(Whereupon, Court was recessed until 10:30 o'clock a. m. on September 20th, 1945.)

2790 PROCEEDINGS

September 20th, 1945 10:00 o'clock a. m.

WILLIAM J. KUPPER, a witness on behalf of the defendants, was recalled, and was examined and testified as follows:

Cross-examination (resumed) by Mr. KIMBLE:

Q. Now, Mr. Kupper, referring to this playing out of order clause, which originated the first time as far as we are concerned here with F-1, which was the '33-'34 contract, the clause reads as follows: "We agreed to provide for playing out of order of release, however, you agreed that 25 percent of the commitment would be played in all situations every 13 weeks." Now that means, does it not, that these defendants could postpone the playing of a particular picture for a certain time, that time to be determined in a large measure, if not exclusively, by these defendants, does it not?

A. They might delay the playing of a picture for, well, maybe say a week or a few weeks or something like that, but it didn't mean that they could abuse the privilege, because we have always maintained, and we never waivered our right to assign dates if we thought they were becoming deliquent or were trying to abuse that clause. Incidentally, this is not F-1, it is K-1.

2791 Q. The K-1 season?

A. Yes, sir.

Q. But F-1 Exhibit?

A. I beg pardon.

Q. But the time when they wanted to play a picture was largely, if not exclusively, up to the defendants?

A. It was not; we had a lot to say about when they would play their pictures. They were our pictures and our bookers had to book the pictures. We naturally were anxious to get our pictures played as quickly as possible, all pictures.

Q. But under that clause they could postpone the playing of that picture for a certain time, could they not?

A. Yes.

Q. That's right. Now——

A. (Interrupting.) There is another little point in there which I think is being missed here entirely. Let's take the running of pictures of all types. Now, some pictures, for instance, western pictures or action type pictures are more suitable in one house than they may be for another one. Let's say an "A" house or a better house, there may be a run of a certain type of pictures. Well, he might want to have a little variation in his program. They are not
2792 always good. Like they have a mystery thriller or melodrama, and they like a little variation. There might be a western picture that we have released further back and a house has open time, and it is more suitable for that type of picture, so he might play that picture, and the time is worked out better for the playing of the picture and the rental and results in the theater.

Q. Despite all that, it was largely, if not exclusively up to the defendants as to when they would play a particular picture, was it not?

A. Not exclusively, no.

Q. Well, largely?

A. Well, naturally it was largely up to them when they would like to book the pictures.

Q. And that clause further means that you couldn't give a subsequent run opposition exhibitor any assurance of when a particular picture would be available to him, doesn't it?

A. No, it doesn't.

Q. What does it do?

A. Well, he knows about when he can get it after the picture was released first run.

Q. How would he know when he was going to get it, when it was going to be released first run?

A. The records prove themselves, that the pictures were never held back to any great degree, and he there-
2793 fore knew that picture could be played within a reasonable period of the release.

Q. What assurance could you give a subsequent opposition exhibitor as to when he would have a particular picture?

A. I am sure and positive that when our bookers arranged play dates for the bookers of the theater, let's say the Griffith Circuit, that they had some idea of when they would let a picture be held back, and not book it exactly in the order of release, that they had some idea when he would play it, therefore when the next man came up I would say when I thought he would get it, and they had some idea of when they were going to be booked.

Q. Did you have any actual contact with the men here in the field in the operation of the playing off of these contracts?

A. Do you mean the Griffith bookers?

Q. No, your own bookers?

A. Of course I do.

Q. Now, that clause further makes it possible, does it not, for these defendants playing in opposition to another first run house to look over your releases and book one of your strongest pictures against the best of your competitors' attractions where such opposition exhibitor was playing under the ordinary contract, which forced him to play in order of release?

2794 A. Well, I suppose every theater knew what their opposition was playing; in all probability they would want to be able to compete with them, and if we had a strong picture, I suspect they would like to play in opposition to it.

Q. Under this clause in your contract they could do exactly that, couldn't they?

A. I would say they could, yes.

2795 By the Court:

Q. Is this clause in all the contracts, this clause that is referred to, was that in the contract with all your exhibitors?

A. No, it isn't.

Q. Just with the Griffiths?

A. It was an agreement we made with the Griffith Amusemen Company. But despite the fact that that is the fact in this case I will say, your Honor, that there is not a contract in the United States with exhibitors, any exhibitor, that they don't play out of order of release, for the reasons I have stated. It is almost a physical impossibility, on account of prints and everything else, to hew to the line and the letter of that clause in the contract.

Q. Do you recall any instance under your contract with Griffiths where they held up a picture so it couldn't be released to competitors?

A. No, sir, I do not.

Q. What was the ordinary time that was taken if they desired to change the time of release, what would you say was the maximum time they would hold the picture back?

A. I don't believe they would hold a picture back more than three weeks, or four weeks possibly at the most.

Q. Under this contract, they were required to play 25 per cent within 13 weeks?

2796 A. Yes, sir, definitely. In other words, they had to keep playing our pictures, they couldn't push them around or push them aside. If they did want to hold one back a week or two, they still had a commitment to fulfill. And the full measure of that agreement was to expedite our pictures; that is the thought I had in the back of my mind, I wanted to get my pictures played, and that is why I demanded that the 25 per cent commitment play off in 13 weeks be included, because it didn't give them that chance to stall around or hold back, as has been implicated here as the spirit, which is entirely erroneous. The object was to get our product played so there would be no hold over pictures that we would have to cancel or pass up or make some settlement terms on, as has been done heretofore.

By Mr. KIMB:

Q. What do you understand to be meant by the 25 per cent of the commitment, Mr. Kupper; what did you intend when you made that contract?

A. Let's say there were 40 pictures and 25 per cent, or 10 pictures played within the 13 week period provided we released any.

Q. In '33, in the first 13 weeks, you released 13 pictures. Now, do you mean that those 13 pictures would have to be played in those 13 weeks, was that your understanding?

2797 A. If that is 25 per cent of the commitment that they bought in that town, that is what it meant.

Q. They bought 50 pictures that year?

A. Yes, sir.

Q. Take the 50 that they bought in 40 towns, was it your intention that they play these 13 pictures that were released, or 25 per cent of the 50, which would be 12 and a fraction that they had to be played in that period of time?

A. If that was the contract, the terms, they should have played it.

Q. Do your records show that that was done?

A. The records will show whatever was done.

Q. Do you know what the records showed?

A. No, I don't.

Q. Do you have the records here?

A. No, I don't.

Q. Are they here in the possession of someone that has been delegated as your agent for that purpose?

A. I assume the records are in our branch office over here, the playing records of the theater or theaters, all theaters.

Q. Now, I believe, Mr. Kupper, that you testified that the Fox policies were formulated by the men, the officers, and were the same throughout the United States.

2798 A. In general.

Q. All contracts must be signed in the home office, must they?

A. Well, signed in the home office.

Q. And approved?

A. Approved generally, not all but most of them are.

Q. And you have the same general price policy also throughout the United States?

A. There is no general policy; there is a price policy established for each individual theater.

Q. Do you have the same selling policy throughout the United States?

A. In the main.

Q. Do you know Mr. J. R. Grainger?

A. Yes, sir.

Q. Who is he?

A. Right now he is the president of Republic Film Corporation, or the distributing part of that company.

Q. At one time was he with your company?

A. Yes, sir, he was my general sales manager.

Q. Your superior officer?

A. My superior officer.

Q. And he was with the company in October 21, 1932, was he?

A. I will have to look back to refresh my mind. I

2799 believe he was, though.

Q. He was the eastern sales manager then, was he not?

A. No, sir. You are referring to another Grainger.

Q. J. R. Grainger?

A. J. R. Grainger was the general sales manager. We had E. C. Grainger who was eastern sales manager.

Q. At least, J. R. Grainger was with your company in '32?

A. He might have been for part of the time, but he was not there very long in '32, I don't believe.

Q. Did you have a man in your employ or the employ of your corporation by the name of J. Sichelman?

A. No, his name was Sichelman.

Q. Sichelman? (Spelling)

A. That's correct.

Q. On October 21, 1932, Mr. Sichelman wrote this letter to Meyer Schine: "You made a dea'——

Mr. COCHRAN. We object to the admission or reading of this letter into the record, the letter from the man referred to Sichelman, because it doesn't involve in any way these defendants, and is not admissible.

Mr. KIMR. It involves, your Honor, the sales policy of this company. I propose to show by this letter and the answer of the witness what their sales policy was, and whether, and how it was carried out in this territory.

2800 By the COURT:

Q. To whom was the letter written?

Mr. KIMR. To whom was the letter written?

The COURT. Yes.

Mr. KIMR. To Meyer Schine.

The COURT. Who is Meyer Schine?

Mr. KIMR. Meyer Schine is an officer of a circuit of theaters.

The COURT. Was it connected with this circuit here, or these defendants?

Mr. KIMR. No, it wasn't connected with this circuit.

The COURT. The objection will be sustained.

By Mr. KIMR:

Q. Was it your policy, was it the policy of your corporation, Mr. Kupper, to sell all the second run that was possible to get the revenue from those sales?

Mr. COCHRAN. An objection, if the Court please, as the witness has already answered that question two or three times in response to the cross examination. The record already shows what his answer is. He stated that he endeavored to sell second run consistent with his policy of not selling where he thought it would adversely affect his first run revenue. He answered that on two or three different occasions.

The COURT. I think he has answered that. He stated definitely yesterday that he didn't sell second run
2801 where it might interfere with the revenue from the first run theaters, unless it was in towns where it might be justified.

By Mr. KIMR:

Q. Was it the policy of your corporation to sell one account in each town, Mr. Kupper?

A. One or more, dependent upon the town, dependent on the type of theater operation in the town. In some towns we would sell one, and in some towns we would sell hundreds. Towns or cities, I should say.

Q. What was your general policy in communities like those involved here?

A. I think our general policy is a matter of record, of what we actually did.

Q. What did you do?

A. We sold everybody we thought it was good business to sell.

Q. What was your general policy in towns of say 8,700?

A. The same.

Q. Did you sell as many accounts in that town as possible?

A. As before stated, we would sell as many as we thought it was good business, as in our judgment we thought it was good business to sell.

Q. Does Fox, your corporation, have any popula-
2802 tion criterion for determining whether second run will be sold, or did they have during the period involved here?

A. Well, we thought some small towns couldn't stand second run, but there wasn't any rule of thumb. It was the conditions which we were sometimes governed by, and by the recommendations of our local branch managers.

Q. Was it the policy of your corporation to sell second run in towns having a population of 6,700?

A. It all depended; there was no definite policy.

Q. Did you sell second runs in Paris, Kentucky?

A. We may have.

Q. You wouldn't say that they didn't?

A. I wouldn't say that they didn't, or wouldn't say they did. I don't know, right now I can't recall.

Q. Do you know whether or not they sold second run in Van Wert, Ohio?

A. I am not sure whether they did, or whether they didn't.

Q. Did you sell second run in Picher, Oklahoma in 1936?

A. I can't recall whether we did or whether we didn't.

Q. Since you have been down here, Mr. Kupper, have you had occasion to look at some of the contracts made with independent exhibitors in this territory?

A. Do you mean since I have been down for this case?

2803 Q. Yes.

A. I think I saw one or two connected with this case.

Q. Did you observe any that didn't carry a minimum admission price?

A. I didn't observe that, I didn't look for it.

Q. Do you know of any such contracts in this territory that omitted the minimum admission prices?

A. I don't know; I never analyzed them to that extent.

Q. In this territory here in which these defendants operate, did you ever sell any second run in opposition to them?

A. I don't know that we did.

Q. As long as these defendants had a certain period or to eliminate a picture, your corporation couldn't sell it to a competitor of these defendants until that period had elapsed, could you?

A. We couldn't sell it until they gave us and told us whether they were going to play a picture or not.

Q. How could pictures be available second run during a current season if these defendants could with respect to three-fourths of the current releases play them at least 13 weeks late, and then out of order?

A. I didn't get that question?

Mr. COCHRAN. We object to it anyhow, as argumentative.

2804 Mr. KIME. Read the question to the witness.

(Question read by the reporter.)

Mr. COCHRAN. We object to that as argumentative.

The COURT. I don't think it is based upon the statement of the witness.

Mr. RICE. If I understood the question correctly, he is imposing a physical impossibility or mathematical impossibility upon him to ask him to commit himself on it.

The COURT. I don't think it is based upon the record.

Mr. KIME. He has already sustained it, anyway.

Mr. RICE. Oh, I am sorry.

By Mr. KIME:

Q. These agreements, F-2, F-3, F-5, F-7, F-8, and F-10 do not require Griffith to play any picture within nine months from their release date, do they?

A. You better show me what F-2 and F-9 and all those are; I don't know.

Q. F-2 is your contract for your K-2 season. All the subsequent ones carry the same clause and order of release (Handing).

A. You are talking about the memorandum contract, you are not talking about the actual contract.

Q. Isn't that the contract that you signed with Mr. Griffith?

2805 A. Yes, correct.

Mr. COCHRAN. Read the question again.

The COURT. The main question that was asked, read that again.

(Question again read by the reporter.)

2806 Mr. COCHRAN. Why don't you read what the contract says. You have it in your hand; read what it says.

Mr. KIMM. May I inquire what this procedure is?

The COURT. Well, it is supposed to be the examination of the witness.

Mr. KIMM. Is the defense counsel suggesting the answer of the witness?

The COURT. No.

Mr. COCHRAN. Well, I raise the point that the contract provides, in regard to that matter, and I am just suggesting for the Court's information that the contract be read. Then if he wants to ask about what was intended, he can go ahead.

The COURT. Read the original question again.

(Question again read by the reporter.)

Mr. COCHRAN. He is asking you what the contract provides, and you may state.

A. Well, if this contract provides or gives Griffith the right not to play pictures for nine months, then I never knew it was a part of the contract. My contract and the spirit of this contract was that these pictures would be played within a reasonable period after we sent the prints, or the positive prints of the pictures into this exchange.

By the COURT:

2807 Q. What is there in the contract there; will you read that.

A. It says that this contract must be, that 25 percent of this commitment must be played every 13 week period.

Q. What else does it say?

A. It gives the terms under which the pictures will be played, and if the pictures are not played within a reasonable period—it don't show it here, we have only the front part, that we have the right to designate and set play dates, and we to notify them when the pictures are available in this exchange for dating, which they know about.

Q. What do you regard as reasonable, as a reasonable time, say if they are not played within a reasonable time?

A. Well, I think the record will show that over this circuit it will take perhaps a couple of months to complete the entire circuit on one picture and, of course, you can't play every picture on the same date because we are limited by the number of prints. They have five prints, and occasionally we have had a few pictures where we have allowed

them to have seven, and it takes time to circulate throughout the whole territory in a circuit like this, and you have to gauge as to ability to book these pictures and spread them over that territory as to what is reasonable.

Q. What do you regard as a reasonable time after the picture has been released or its availability is noted and they have the opportunity of playing it?

2808 A. I think they could get started within a month, because they are booked in advance generally, not only with our pictures but other companies' pictures, and we release these pictures in the regular routine and order; so they are notified by the time we have the picture here to say particularly when they want to see it, and I would say a month from the time it got here we would get the dates and work it out.

By Mr. KIMB:

Q. Subsequent runs had a certain time after pictures became available in which they could get those pictures, did they?

A. Yes, sir.

Q. And that was usually 60 or 90 days?

A. Something like that, yes, sir; some as high as 180.

Q. But they couldn't become available to any subsequent run exhibitor in this territory under this Griffith contract until Griffith played them, could they?

A. They couldn't become available whether it was Griffith or anybody else until the first run had played it.

Q. That's right.

By the COURT:

Q. Was that the uniform policy of your company?

A. It is not only uniform but it is the general practice of the industry for years.

By Mr. KIMB:

2809 Q. Then, these defendants' decision as to when to play first run or second run could and did control the date when the second or third run would be played by the competitor, didn't it?

A. Whether it was a competitor or Griffith's second run, it controlled the date.

By the COURT:

Q. You mean the playing of the first run controlled the others?

A. Automatically, sir.

By Mr. KNOX:

Q. If the standard form contract had been used in your contracts with these defendants, the second run or subsequent run theater would know within a specified time after your national or local release date that those pictures would be available to the independent exhibitor, wouldn't they?

A. Subsequent form contracts were used, in my opinion, with Griffith.

Q. You don't consider that this is a contract, then, is that it?

A. I told you, and I still say, that was a memorandum of the agreement of the negotiations I used, which were later reduced to our present standard form contract.

Q. What the contract provides is what the Court will decide, and we cannot decide that, so let's go down to the next question. You used the standard form of printed contract for independent exhibitors, did you not?

A. Yes, sir.

2810 By the COURT:

Q. Did you use the standard form contract with the individual Griffith towns?

A. Yes, sir; it is a matter of record here.

Mr. KNOX. Your Honor, these contracts all provide that where the master contract, which he calls the memorandum contract, are different from the standard form, that they will control, so that settles that question.

Mr. COCHRAN. On that question, the witness has stated that in every contract that it made where the standard form was used, the contract is changed or blanks are inserted to comply with the results of the negotiations with the individual persons, regardless of whether it is Griffith or anybody else, and that this memorandum contract simply gives the material to go into that standard form of contract, just as he negotiates with any other exhibitor and provides the material that will go into that contract.

By the COURT:

Q. Now, these individual contracts, which you call standard forms, say you make one with the Griffith Theaters at Hobart. Now, there is an individual contract for that town.

A. Well, it so happens that I don't think we sold Griffith in Hobart, your Honor.

Q. I am just using Hobart as an example.

A. If the Court will permit me, if I am allowed to say this, this memorandum contract, you will note, was
2811 signed by Mr. Griffith and myself when it was drawn up, and that is all it has on it, what we agreed to,

and he and I signed it. There is no execution of that contract by an officer of our company, and when these memorandum contracts were sent back, then our standard form was made up for each individual situation for Griffith, the same as it is done by our salesmen as they negotiate with independent exhibitors in a local town. And those contracts, those memorandum contracts, those master contracts, standard contracts, that are made up and taken from my memorandum contract, are executed by an officer of our company the same as any other independent contract. It certainly was a memorandum contract.

Q. Are the terms of the contracts which you made with the Griffith towns, the individual towns, the same as you made with any other exhibitor?

A. In general, yes.

Q. Now, if there is a conflict between the standard form, say for Drumright, and the memorandum which you speak of, which would control?

A. The standard form, because in that standard form whatever was agreed to and is in my memorandum is also in that standard form.

Q. Are these delayed dates of playing in the standard form?

A. Yes, sir—not the delayed dates, but the exact
2812 wordage of that clause, that 25 per cent commitment must be played within 13 weeks, that is all in that standard form.

Q. Well, is the clause in there that the exhibitor, if he desires to, may change the dates or delay the date to some future time?

A. He had no clause to that effect, sir. Do you mean out of order of release?

Q. Yes.

A. I am sure it is in there.

Q. In the individual contract?

A. I am quite sure.

By Mr. COCHRAN:

Q. Do you mean the individual Griffith contracts?

A. The individual contracts.

The COURT. Proceed.

By Mr. KIMR:

Q. Do you have anything to do, Mr. Kupper, with the actual supervision of the performance of the details of these contracts made with these defendants?

A. Well, I have, but I don't. We have an organization, we have people, a staff that follow through with the mechanics of it.

Q. Who in your corporation knows how these contracts were performed?

A. Our local branch manager, and our bookers, perhaps our district manager, who lived here.

2813 Q. Who is your local branch manager here?

A. Mr. Osborne at present.

Q. Was he the manager during the period here involved '33 to '39?

A. No. He has been here in this territory I guess for 20 years as a salesman, and he is now our branch manager. I believe he was made branch manager about the last year or two.

Q. Who was the branch manager from '33 to '39?

A. Well, I think we had two in that period, I am not sure. I know we had a Mr. Higdon here; just when he left it was somewhere around '35, I think, something like that; then we had Mr. Charles W. Clark.

Q. Is he still with you?

A. No, he is not.

Q. And neither is Mr. Higdon?

A. And neither is Mr. Higdon.

Q. I am under the impression that you testified on this, but I am not clear whether or not you did. Did you personally negotiate any contracts with independents in this territory?

A. I don't think so. I sat in while they were talking about them, I may have been in the office when some of our sales managers or salesmen were talking to them I didn't get down into it deeply, no. I don't recall signing one myself.

2814 Q. They were negotiated——

A. (Interrupting.) Outside of Ralph Talbot, I have sold him pictures. He is an independent, and an important one.

Q. But in the main, they were negotiated by the salesmen and your branch manager?

A. That's right.

Q. And they are the only ones who would know what was said to these independents when those particular contracts were made?

A. Yes, sir. There is another important account here, that I always considered an independent. I don't know how you would do, and I am thinking of Standard Theaters. I always negotiated for a long time with Mr. Joseph Cooper for his theaters.

Q. Then Mr. Clark and Mr. Higdon would also know about the performance of the contracts with the independents, as well as with Griffith, would they not?

A. Well, I assume that they would know; they should have known.

Q. Is there any provision in any of the contracts made with these defendants during the period of '33 to '39, which would prevent these defendants from playing first run at a lower admission price than second run opposition exhibitor was required by his contract to charge.

2815 A. Was anything in there to prevent them from doing it?

Q. That's right.

A. Well, I thought there was, and I think the spirit of the contract would have prohibited them from doing it. They may have done it without our knowing it.

Q. That is not the question. Was there anything in there which prevented that?

A. Well, we had, originally there was, the admission price of the theater was in the contracts, and we knew what their first run admission generally was in every situation, and certainly it wasn't very ethical for them to sell a picture at a cheaper price for a first run showing than a second run would have played it at.

Mr. KIMB. Mr. Reporter, will you repeat the question that I submitted originally.

(The last question on the preceding page was read by the reporter.)

Mr. KIMB. Now, your Honor please, I submit the witness can answer that yes or no.

The COURT. Well, that calls for the construction of the contract which is in evidence and that is a legal question. It is not a question of fact; it is what the contract provides, and the construction of the contract is a legal question and not a matter of fact.

2816 Mr. KIMB. Do I understand the Court's ruling to be that it is not necessary for the witness to answer that question?

The COURT. Well, there has been no objection.

Mr. DUDLEY. We object to it on the ground that it calls for a conclusion of the witness.

The COURT. It is a conclusion of law. He might say that it did and you might say that it didn't. The objection will be sustained. I think it calls for a conclusion of law.

By Mr. KIMB:

Q. You testified yesterday, Mr. Kupper, that you saw the handwriting on the wall. What was that handwriting you saw there?

A. Well, that is an expression, I guess it goes back almost to the beginning of time. We were discussing at a

certain period when the Department of Justice was fluttered with letters about the lack of ability for certain subsequent runs to buy pictures, and a lot of them came from this territory too, at that time, and all over the country. Well, when I said—then we changed and modified our stand as to not selling so many or not selling, withholding sales on these subsequent runs, we modified it to some extent and started selling, and that's what I was talking about. I think they had a fair trade practice business and discussions at
2817 the time, and with all the letters, with the Department of Justice, the exhibitor would write them and they would write us and we would explain our stand; well, it made us begin to think that maybe we should loosen up and sell more of them, and that's how, what I mean by handwriting on the wall.

Q. Did you mean for the Court to understand from that that you sold second run, subsequent run, to independents before the operation of the consent decree became effective?

A. Well, sure we did; we have sold independent accounts around this country long before there was any consent decree.

Q. Did you sell any Griffith competitor any second run or subsequent run accounts, subsequent to the time you saw this handwriting on the wall?

A. I don't believe so, no.

2818 By the Court:

Q. You never made a picture of Nebuchadnezzar?

A. No, sir, but I made them of Dante's Inferno.

Q. It seems to me that it would have been easier to make one of Nebuchadnezzar than of the inferno; you might locate the position.

A. I will suggest it, your Honor, to the production department, if you think it would be a good and profitable one.

Mr. Kimr. That's all I have, your Honor, unless he wants to put in a plug for another picture.

The Court. Of course, the Court didn't intend to suggest to the production department what pictures they should make. Is there anything further with this witness.

Mr. Cochran. Just one or two questions, I believe.

Re-direct examination by Mr. Cochran:

Q. Counsel for the plaintiff inquired of you whether you could sell pictures which had been licensed to Griffith to any opposition account prior to the time they had been played by Griffith, is the way I understood the question.

A. I didn't understand.

Q. And you answered that, if I understood it, "No, it could not." Now, suppose your product is licensed to Griffith for first run playing in the town of Norman. Do you intend for the Court to understand that by reason of that license on that picture, having been licensed to play first run in the Griffith Theater, that it couldn't be licensed by your company for second run exhibition or any subsequent run exhibition in the town of Norman until after it had been played by Griffith?

Mr. KIMB. Wait just a minute, your Honor, please; may I have that question read again? It is rather complicated and I didn't get it all as he went along.

(The question read by the reporter.)

Mr. KIMB. Go ahead.

A. Well, it may be construed as complicated, but it isn't complicated. It is a long question. First of all, as I consider the question, if I consider it right in my own mind, we couldn't sell—how could we sell Griffith's opposition if we already contracted with Griffith for these pictures? When it comes to second run, certainly we could sell them before; there is nothing to prohibit us from selling if we decided in our own right it was the thing to do for the second run.

By Mr. COCHRAN:

Q. So your answer to that question simply went to the proposition that as long as your picture was licensed to play on a certain run with one exhibitor, that you couldn't license it to be played on that same run by somebody else?

A. Definitely.

Q. The very purpose of the licensing agreement is to give the privilege of running the picture?

A. Correct.

By the COURT:

Q. If you licensed your second run to be played before Griffith played the first run, it wouldn't be second run, would it?

A. You couldn't, you couldn't do such a thing; if you did, you violated the Griffith contract.

The COURT. Anything further?

Mr. COCHRAN. That's all.

Mr. KIMB. That's all, your Honor.

(Witness excused.)

The COURT. We will stop now and recess this case until 2:00 o'clock.

(Whereupon, Court recessed until 2:00 o'clock p. m. of this same date.)

2821 PROCEEDINGS

September 20, 1945, 2 o'clock p. m.

S. G. AMBRISTER, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?

A. S. G. Ambrister.

Q. Where do you live?

A. Norman, Oklahoma.

Q. How long have you lived there?

A. Going on 56 years.

Q. Are you familiar with the property on which there is now operated a theater known as the Boomer Theater in the town of Norman?

A. Yes, sir.

Q. Prior to the time that theater was known as the Boomer Theater, what was the name of it?

A. The Campus.

Q. Where is that theater located with respect to the campus of the University of Oklahoma?

A. About 200 feet north on the west side of Asp Avenue.

Q. What is the name of the street that runs along just on the north side of the campus?

A. Boyd.

2822 Q. And Asp runs into Boyd?

A. Yes, sir, at right angles.

Q. And this theater you are referring to is located in the first block on Asp north of Boyd Avenue?

A. Yes, sir.

Q. Who owns the real estate on which that building is located?

A. I do.

Q. And how long have you owned it?

A. Since 1927, I believe it was.

Q. Did you at any time erect a building thereon to be used as a theater building?

A. Yes, sir.

Q. When was that?

A. In 1928.

Q. To whom was that building first leased or rented by you for theater operations?

A. J. E. Halbert and Ted Colbert.

Q. Are there any business rooms in that building other than the theater, and were there at the time it was first erected; any store rooms in that same building?

A. Yes, sir, as I understand, the same building, built at the same time.

Q. And at the time it was built in 1928 you built a store room or two and a room to be used for theater purposes?

2823 A. Yes, sir.

Q. And leased it to Ted Colbert and John Halbert?

A. The theater part of it.

Q. Who equipped the building with the necessary equipment to operate a theater, with chairs, projection equipment, sound and other theater equipment?

A. Well, I didn't. I think Halbert and Colbert did.

Q. Your tenants did?

A. Yes, sir, I suppose they did.

Q. At any rate, you didn't equip it for theater purposes?

A. No, sir.

Q. How long did you lease that building for at that time to Colbert and Halbert?

A. I think that was a five year term.

Q. Did Colbert and Halbert operate a theater for any period in that building?

A. They operated for a while but just how long I don't know; it was not near to the end of the contract, though.

Q. Then what happened?

A. They sold the theater to Ray Berry.

Q. Did Berry operate a theater there?

A. Yes, sir.

Q. Do you know how long he operated that theater prior to his death, in that building?

2824 A. No, sir, I don't, but I judge around two years.

Q. At the time of his death what was the condition of the rentals on that property?

A. As I understand, you mean whether the rent was paid up?

Q. That is right.

A. It was in arrears some.

Q. Do you remember about how much?

A. No, I don't remember, but it wasn't so very much. I would think it would be in the neighborhood of $200.

Q. After Mr. Berry's death who operated the property first, the theater?

A. Mrs. Berry operated it for a while and later on Mrs. Vinnie Boldman operated it.

Q. Do you recall whether Mrs. Berry operated it until the end of the original lease which you had made with Messrs. Colbert and Halbert?

A. No, sir; from the business that I had with Millard Boldman, she didn't. Millard Boldman is Mrs. Berry's brother, and Vinnie H. Boldman is Mrs. Berry's mother. Now they change in there sometimes, and at the end of the

contract, as I understand, Vinnie H. Boldman and Millard K. Boldman were operating it as the Campus Theater.

Q. At the time Mrs. Berry discontinued the operation, what was the condition of the rentals as to whether she was behind with her rentals at that time?

2825 A. Well, none of them paid the full rent after Ray's death.

Q. But was there a time in there when you made a settlement of the rent and took considerable less?

A. Yes, sir, at the expiration of the contract when we were going to enter into another contract——

Q. You mean by that at the expiration of this first five year lease?

A. Or near about the expiration. I don't know just the exact date.

Q. How much was the rental behind at that time?

A. As I recall $1200 or $1300.

Q. How much loss did you take on that adjustment?

A. That is the amount of loss I took.

Q. With whom was that new contract made?

A. Millard K. and Vinnie H. Boldman.

Q. I hand you Defendants' Exhibit 102 and ask you if that is the lease contract that was executed with Mrs. Boldman?

A. Yes, sir.

Mr. Cochran. Shall I read this, your Honor, or just state the substance of it?

The Court. State the substance of it. You are introducing it in evidence.

Mr. Cochran. This contract was dated January

2826 13, 1933 between S. G. Ambrister, party of the first part, and Vinnie H. Boldman and Millard K. Boldman, co-partners, doing business under the firm name of Campus Theaters, parties of the second part, and describes the real estate and provides it shall be held from the first day of February, 1933, to the first day of August, 1934, and the payment of rent, $2167.50 payable $121.25 on the first day of February, 1933, and $121.25 on the first day of each month thereafter up to and including July 1, 1933, and the sum of $120.00 on the first day of each month thereafter, up to and including July 1, 1934. It provides further that the second parties are given an option to renew the lease for a period of two years after August 1, 1934, for a rental of $3360.00 payable $140.00 per month on the first day of each month.

It further provides the lease shall not be assigned or the premises, or any part thereof, sublet by second parties, either voluntarily or involuntarily, by reason of any action

at law or equity without the consent in writing of the first party.

We offer this exhibit in evidence, Defendants' Exhibit 102.

The COURT. It will be admitted.

Mr. KALLIS. If the Court pleases, I don't see how this lease is relevant to the Norman situation such as has been already received in evidence here. This is a lease
2827 between Mr. Ambrister as the owner of the property and a Mr. Boldman and his mother, and the only testimony with respect to the Campus Theater in Norman relating to Mrs. Juanita Berry, and there isn't any connection shown here, therefore we are objecting to the reception of it.

The COURT. They are all in the same family. I don't know that it would be material except in her testimony, as I recall, she stated she was operating the theater.

Mr. COCHRAN. She testified that there had been a lease contract and after that lease contract expired that she continued to occupy it without another lease being executed on a year to year basis until she was notified to vacate in August of 1937, and we are introducing this as the lease contract which was executed and as the last lease contract that was executed, so far as we know.

The COURT. It will be admitted. Exception allowed.

By Mr. COCHRAN:

Q. After that contract was made with the Boldmans, did they operate the theater for awhile?

A. Yes, sir.

Q. And what was the condition so far as the rentals were concerned during the time the Boldmans operated it?

A. They paid for it by depositing it in the First National Bank to my credit.

Q. Paid the rent promptly?

2828 A. Yes, sir.

Q. Later what happened relative to the operation of that theater?

A. Mrs. Berry operated it later on. Just when she started, I don't know.

Q. At the time that she started to operating it, had there been any request made for an assignment of this lease contract to Mrs. Berry?

A. No, sir.

Q. Do you know just when she did start to operating it?

A. No, sir, I do not.

Q. I hand you Defendants' Exhibit 103 and ask you to state what that is.

A. This is the exercise of the option given in the lease to Millard K. and Vinnie H. Boldman.

Mr. Cochran. We offer in evidence Defendants' Exhibit 103.

Mr. Kallis. No objection.

(Hereupon Defendants' Exhibit 103 was received in evidence and read by counsel.)

By Mr. Cochran:

Q. Going back to the time when Mr. Berry was operating the Campus Theater, will you please state whether after he had commenced the operation of the Campus he commenced to operate another theater in the town of Norman?

2829 A. I think he did. It is my recollection that he did.

Q. What was that theater? Do you recall?

A. I don't know the name of it now. The Oklahoma is the theater now that was being operated where that theater was, and that might have been the name of it.

Q. At any rate, it was the same theater which is now known as the Oklahoma?

A. Yes, sir.

Q. What did Mr. Berry do with any of the property which you had erected in connection with the Campus Theater Building at the time he started operating the Oklahoma?

A. He moved it down to the building which is now the Oklahoma Theater.

Q. What did he move?

A. The pent house for one thing.

Q. The pent house?

A. That was what the fan was in; the ventilating fan.

Q. Had you constructed that pent house?

A. Yes, sir.

Q. In this building known as the Campus Theater Building?

A. Yes, sir.

Q. He moved that down to the Oklahoma?

A. Yes, sir.

Q. Did he have your consent to make that removal?

A. No, sir.

2830 Mr. Kallis. I don't see the relevancy of this.

The Court. It would not be at all, except for the testimony of Mrs. Berry. The government offered her testimony for the purpose of showing that her failure to operate the theater was because she couldn't get these pictures from the distributors. Now if they can show other conditions there——

Mr. Kallis. This is not in connection with Mrs. Berry.

The Court. Mrs. Berry testified she operated that theater 16 years.

Mr. COCHRAN. We are trying to show the entire relations between Mr. Ambrister, after he started to leasing to this family, to show from the very inception, the connection of Ray Berry with this theater down to the very time he finally got them out, that the only satisfactory tenant he had was Mrs. Boldman, and finally resulting in him stating to Mrs. Berry he would not rent the property to her under any circumstances.

Mr. KALLIS. I don't see how the removal of a pent house by Mr. Berry could possibly be charged to Mrs. Berry. As a matter of fact, there is no evidence in the record by this witness at all that when this incident occurred Mr. Berry was married to the lady who later became Juanita Berry.

2831 The COURT. Overruled. It may not be material at all but let's get along. Exception allowed.

By Mr. COCHRAN:

Q. Was Juanita Berry Ray Berry's wife at that time?

A. Yes, sir.

By the COURT:

Q. Let me understand just a moment. Your first lease was made to Ray Berry?

A. The first lease was made to J. E. Halbert and Ted Colbert.

Q. That was then transferred to Ray Berry?

A. Yes, sir.

Q. Or to Ray Berry and his wife?

A. I don't think there was any written transfer but I consented to transfer it to Ray Berry. I don't know whether his wife was in it at that time. I couldn't say.

Q. Did you ever make a lease to Mrs. Juanita Berry?

A. No, sir.

By Mr. COCHRAN:

Q. After this option had been exercised by Boldman, what then took place?

A. I would like to correct this last statement. You asked if I ever made a lease contract to Mrs. Berry. I might have made an oral lease but there is no written lease.

Mr. COCHRAN. Read the question.

(Question read as follows: "After this option had been exercised by Boldman, what then took place?")

2832 A. As I recollect, they continued to operate the theater and pay the rent.

Q. Until what time?

A. I don't know exactly what time that they quit operating the theater and Mrs. Berry began to operate it.

Q. But there was a time when Mrs. Berry did commence to operate the theater?

A. Yes, sir.

Q. And who paid the rent from that time on? That is if the rent was paid.

A. Mrs. Berry, and I had a fellow by the name of Leatherman.

Q. Leatherman was manager for a time of Mrs. Berry's theater. Is that right?

A. Yes, sir.

Q. After Mrs. Berry started to operating that theater was the rent deposited in the bank as had been by Mrs. Boldman?

A. As I recall, it was for awhile.

Q. Then what happened?

A. She began to default in the rent.

Q. What did you do after she commenced to default in the rent?

A. Well, I would try to see her and get her to pay it, sometimes I would get some money and sometimes I didn't.

2833 Q. What difficulties did you have in regard to seeing her?

A. Well, she was pretty hard to see. I would call to try to get an appointment with her, and sometimes I would call for several days. Then I would get an appointment and when I finally did get an appointment and go down there she would not be there; have some excuse.

Q. When you did get to see her did you get your money?

A. Sometimes and sometimes not.

Q. What did you tell her, if anything, about renewing the lease on the property if conditions continued as they were?

A. After I had made several trips down there, or unsuccessful trips to get money, I told her that this contract was going to be up for renewal and that if she didn't pay up and keep paid up that I was not going to even consider her.

Q. What was the condition along in July of 1938 with regard to the rental on that building during Mrs. Berry's occupation of it?

A. That was her last year. It was in arrears between three and four hundred dollars.

Q. What conversation did you have with her at that time?

A. I don't really know. When the lease expired at the end of this option I was in the hospital at Temple,

2834 Texas. I was there from August until November, and I don't know exactly what was done on that

contract, but there was undoubtedly some understanding about the extension of it because I know I always figured this expiration date as two years later.

Q. That would be about what——

A. In 1938.

Q. So in July of 1938 you were considering that period she had, whether it was under verbal extension or not, that it expired on the last day of July, 1938?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. So prior, sometime prior to that expiration date, just tell the court what steps you took in connection with these rentals, and any discussions with Mrs. Berry.

A. Well, I had continued to try to see her and collect these rents, but I had not been successful in doing it, and I had told her time and again if she didn't pay up and keep paid up that I just sure wouldn't consider her to rent to her again.

Q. Well, prior to July 1, had you advised her that you would not under any circumstances renew the contract?

A. Yes, sir, I had.

Q. You definitely advised her?

2835 A. Yes, sir.

Q. And was that the way you really felt about the matter, you did not intend to lease to her again?

A. Yes, sir, I wouldn't lease to her at all.

Q. Was that the situation prior to the time that you contacted anyone else in regard to renting that property?

A. Yes, sir.

Q. Suppose that you had not been able to find a tenant for the theater, I mean for the use of that building for theater purposes, in the event you did not continue to rent to Mrs. Berry, what was your intention?

A. I was intending to vacate it and take my chances, and I believe I could have rented it.

Q. If you had not rented it for theater operation, did you intend to convert it into some other operation?

A. Well, I hadn't gone that far with it because I thought I could rent it for a theater.

Q. But you at that time had not contacted anyone about renting it?

A. No, sir.

Q. Then did you commence to look around for someone as a tenant for that building?

A. Yes, sir.

Q. Did you contact several different parties?

A. No, I really didn't. I saw Mr. Chatham.

2836 Q. Mr. Chatham was the Norman manager at that time for Griffith Amusement Company, wasn't he?

A. Yes, sir.

Q. Did you make any request of him?

A. Well, I don't know just exactly what I said but I wrote a letter later on to the office here so he must have said he didn't have anything to do with it or to take it up with them or something.

Q. Well, did you contact the Griffith Amusement Company about renting the property?

A. Yes, sir.

Q. Then did you enter into a lease contract with the Griffith Company for that property?

A. Yes, sir.

Q. Was this claim you had against Mrs. Berry turned over to your attorney for collection?

A. Well, she gave a note at the time and the note had to later be turned over, yes, sir.

Q. Had the note been given though prior to the time you got her out of the building?

A. I believe she was out of the building when she gave me a note. There was only a few days in there anyhow.

Q. Tell us what condition she left the building in when she vacated.

Mr. KALLIS. I don't think that is material

2837 unless a showing is made as to the condition at the time she went in.

The COURT. It merely goes to the question as to whether or not she was an operator that would appeal to a distributor in selling her pictures. I don't know that it will be considered. Let us get along. We are taking lots of time on details.

A. Well, she tore up the floor down the aisle and pulled the wiring out there, pulled practically all the wiring out, including the wiring I had put in, and tore the pent house off and left it open to the weather and one of the rest rooms, the fixtures were torn loose.

By Mr. COCHRAN:

Q. You say that some of the things she destroyed and moved consisted of property you had installed and put in that building?

A. The wiring, yes, sir.

Q. And tile flooring?

A. Well, they had a brass rail out in front set up in the tile floor and they took a blow torch and set it off, and of course the heat from the blow torch cracked those tiles or busted them.

Q. This pent house had been replaced on this building after it had been removed, had it?

A. Yes, sir, in a way.

Q. And she tore that down?

2838 A. Yes, sir.

Cross-examination by Mr. KALLIS:

Q. As nearly as you recall, isn't it about 1928 when Mr. Berry began operating the Campus Theater?

A. I would judge that it was later than that because I recall I built the building in the summer of 1928, and I think Halbert and Colbert operated the theater for nearly a year, and I would say it would be 1929, as near as I would think it would be.

Q. I understood you to say that you did erect the building in 1928, and you think Colbert and Halbert were in there for about a year?

A. That is just a guess.

2839 Q. Then the next tenant was Raymond Berry?

A. Yes, sir.

Q. Do you recall whether at the time he began operating the Campus Theater, he was married?

A. Well, now it was just about that time that he was married, as I recall.

Q. Then he died shortly afterwards, that's right, isn't it?

A. Some two years, as I recall.

Q. After he died, his wife, Mrs. Juanita Berry, continued the operation of the theater, did she?

A. Yes, sir.

Q. You say that at the time Raymond Berry died he owed you about $200 in rent?

A. Something like that.

Q. And Mrs. Berry paid that $200 in full, didn't she?

A. No, sir.

Q. Is it your story now that that money that was owing as rent by Mr. Berry at the time of his death was never paid to you at all by Mrs. Berry?

A. No.

Q. Or anyone else?

A. Nor anyone else.

Q. What was the condition of Mr. Berry's estate, if you know, when he died?

2840 A. I don't know.

Q. It is your understanding that he was insolvent, isn't it?

A. No, sir.

Q. Do you know of any assets that he left at the time of his death?

A. No sir, I do not; I suppose the show, though.

Q. Then Mrs. Berry took over the operation, and how long did she continue it?

A. Now, I don't know, because I wasn't there all the time; I was out of town a lot of the time.

Q. Mr. Berry died about 1932, didn't he?

A. I would judge that is pretty close.

Q. You say you were out of town a lot?

A. Quite a little, yes, sir.

Q. Over what period of years?

A. From, mainly from '34—now, it wasn't so much before '32, but from '34 on to '40.

Q. How long would you be gone?

A. As high as three months at a time.

Q. How many trips of three months or less did you make during the year, on an average?

A. Oh, it would average around four a year.

Q. Four trips a year, and some of them were as high as three months; what was the duration of the other

2841 trips, on an average?

A. I couldn't average them because maybe I would be out for a week, or maybe I would be out for four or five weeks.

Q. And did you go a considerable distance from Norman?

A. Well, about three or four hundred miles.

Q. Then, you say, this exhibit which is now in evidence, Defendants' Exhibit 102, is the lease which you made with Mr. Boldman and his mother?

A. Yes, sir.

Q. What is the relationship between Mrs. Juanita Berry and Mr. and Mrs. Boldman?

A. Mrs. Boldman is Mrs. Berry's mother, and Millard K. Boldman is Mrs. Berry's brother.

Q. How old, approximately, is Mrs. Boldman?

A. Well, I don't know. Do you mean now?

Q. Now?

A. I judge she is 65 years old.

Q. And what is Mr. Boldman's business now?

A. I don't know what his business is now, but he was running the Sooner State Oil Company when he made this lease.

Q. Was he devoting his full time, as far as you know, to that business?

A. As far as I know.

2842 Q. Now, after this lease was executed, Defendants' Exhibit No. 102, do you have any knowledge of your own, Mr. Ambrister,—is it Mr. Ambrister?

A. Ambrister.

Q. As to who hired the help for the Campus Theater?

A. As I understand the question, who hired the help after I signed the lease?

Q. Yes, sir.

A. Mrs. Boldman, I think.

Q. Do you have any knowledge?

A. No, sir.

Q. Of your own?

A. No, sir.

Q. Do you know who actually entered into the contracts for the licensing of the film for the Campus Theater?

A. No, sir.

Q. Do you know who did what has been described here in the last few weeks as the booking of the pictures for the theater?

A. I know nothing of the operation of the theater at all.

Q. During the time that you were in town did you see Mrs. Berry at the theater during its operation?

A. I attempted to.

Mr. KALLIS. Will you read the question?

2843 (Question read by the reporter.)

A. I attempted to see her, but didn't always see her.

Q. Sometimes you did see her?

A. Yes, sir.

Q. And then, calling your attention to the period of 1938, you say that you notified her orally that you would not renew the tenancy when it expired, is that right?

A. Yes, sir.

Q. Now, about Christmas of 1937, Mrs. Berry made rather extensive improvements on the Campus Theater, didn't she?

A. I don't know.

Q. Well, do you know whether or not she painted the exterior of the theater?

A. I do not.

Q. At the time, from the time that her husband died until the time she vacated it?

A. Well, she painted it because I know I didn't think much of it, because I had nice tile out in front and she went and painted that.

Q. Your answer is that you do know she painted the exterior, is that right?

A. Yes, sir.

Q. As nearly as you can recall, and I am not pinning you down to any specific dates, as they are pretty hard to

remember, when did she paint the exterior of the theater?

2844 A. I don't have any idea.

Q. You don't recall at all?

A. No, sir.

Q. Do you know whether or not she painted the interior of the theater?

A. No, sir.

Q. Do you know whether or not she installed a new screen in the theater?

A. No, sir.

Q. During all of this time, did you ever make any repairs on this building?

A. I think the only thing—my contract specified only the roof and that is all I made repairs on.

Q. There was a leak in the roof, wasn't there?

A. When they tore the penthouse off, yes, sir.

Mr. KALLIS. If the Court please, I move that that be stricken.

The COURT. Well, if that is a fact, it would be the fact.

Mr. KALLIS. If the Court please, unless I am mistaken, I think it can be answered "Yes" or "No."

The COURT. Answer the question: Was there a leak in the roof?

A. Yes, sir.

By Mr. KALLIS:

Q. You had a discussion with Mrs. Berry concern-

2845 ing that, didn't you?

A. About the leak?

Q. Yes.

A. I don't think so.

Q. You don't recall?

A. No.

Q. Well, to refresh your recollection, do you recall having any discussion with her in which she told you that there had been considerable damage to some of the equipment in the theater which belonged to her?

A. No, sir, I don't recall.

Q. You don't recall anything like that at all?

A. No, sir.

Q. For a time there were some gas radiators in the theater, weren't there?

A. Yes, sir.

Q. And they belonged to you, didn't they?

A. Yes, sir.

Q. And you were charging her extra for the use of those, weren't you?

A. They were supposed to pay, but they never paid.

Q. But the understanding was that she was going to pay you extra for those gas radiators, wasn't it?

A. That deal was made with Halbert and Tolbert, and was a part of that rent, yes, sir.

2846 Mr. KALLIS. Repeat the question.

(The last question read by the reporter.)

A. That's right.

Q. And you removed those gas radiators, didn't you? Answer "Yes" or "No," if you can answer it "Yes" or "No."

A. Yes, sir.

Q. And she then installed stoves of her own in the Campus Theater in order to heat the building, didn't she?

A. Yes, sir.

Q. You made reference to the fact that money was deposited in the First National Bank of Norman. You say both before and for a time after the lease as reflected in this Defendants' Exhibit No. 102 expired, is that right?

A. Will you repeat the question?

(The last question read by the reporter.)

A. Yes, sir.

Q. You were not present, were you, Mr. Ambrister, when this money on these various occasions was deposited in the First National Bank?

A. No, sir.

Q. Between the time that Mrs. Berry took over the operation of her husband's theater, and the time that Defendants' Exhibit No. 102 was executed, Mrs. Berry paid all of the rent on the theater, didn't she?

A. No, sir.

2847 Q. For the time that she remained in occupancy?

A. No, sir.

Q. What did you say the amount was?

A. $142.50.

Q. That is for what period of time?

A. From '28 to '33, I believe that is the time of that first lease.

By Mr. COCHRAN:

Q. You mean that was the monthly rental?

A. Yes, sir.

Q. He wanted to know how much she was behind with her rent?

A. At what time?

By Mr. KALLIS:

Q. At the time that this lease, Defendants' Exhibit 102, was executed?

Mr. COCHRAN. Tell him what Exhibit No. 102 is.

A. Twelve or thirteen dollars; at the time of this lease, twelve or thirteen dollars she was behind.

By Mr. KALLIS:

Q. How much of that was paid back?

A. None.

Q. Before they vacated in 1938?

A. We just agreed to forget it.

Q. After she vacated, she vacated August 1st, 1938, didn't she?

A. Near about it.

2848 Q. And then after she moved, she voluntarily gave you a note, didn't she? "Yes" or "No," if you can answer the question that way.

A. She voluntarily gave it to me?

Q. Yes, is that right?

A. I would say, "No." I received a note.

Q. You didn't hold a club over her head when she gave it to you, did you?

A. Oh, no, but I think she gave it to the attorney.

Q. Do you mean the attorney who was acting in your behalf?

A. Yes, sir.

Q. You say that note was eventually paid?

A. Yes, sir.

Q. Now, Mr. Ambrister, after Mrs. Berry vacated the Campus Theater, was it opened immediately by the Griffiths; "Yes" or "No," if you recall?

A. I would say, "No."

Q. As a matter of fact, Griffiths closed it and kept it closed continuously for two or three years, isn't that right?

A. I don't know. I was out of town a good part of the time.

Q. Sir?

A. I was out of town.

2849 Q. When it was reopened, Griffith reopened it under the name of the Boomer Theater, is that correct?

A. I would say it was, because that is the name I could see there.

Q. Mr. Ambrister, do you know when you made the lease with Griffith, was it before or after, or when was it, as nearly as you recall?

A. It was about the expiration of the contract, or two years after this extension here expired.

By the COURT:

Q. Had Mrs. Berry vacated the building when you made the lease with Griffith?

A. I can't recall. There was a short space in there and it could have been before and it could have been afterwards, but it was within thirty days, I am satisfied of that.

By Mr. KALLIS:

Q. When Mrs. Berry vacated the premises, you had already made the lease with the Griffiths, is that right; that's right, isn't it?

A. I would say positively; it could be, but I wouldn't say positively that I had. If I had the contract, I could find out from that when it was acknowledged.

Q. Do you have a copy of that lease that you made with the Griffiths?

A. No, sir, I don't have it with me, no, sir.

Mr. COCHRAN. We will produce it; we don't have it here, but we will produce it.

2850 By Mr. KALLAS:

Q. Do you know what Mrs. Berry did with the equipment that was in the Campus Theater after she removed it?

A. I don't know, but I understood she stored it.

Q. And so, you say that she removed the wiring?

A. Yes, sir.

Q. You didn't see her do that, did you?

A. I saw her help, yes, I was there at that time and seen it.

Q. You saw her do it?

A. No, I saw her help do it.

Q. Who?

A. The fellow she had working for her.

Q. What else did you see her remove?

A. Well, I seen the floor was torn up.

Q. With respect to the trips that you made to her theater to collect the rent, where did you go?

A. I went to her office upstairs over the theater.

Q. Did you ever stop at her apartment?

A. Well, in her apartment.

Q. She doesn't live on the second floor of the Oklahoma Theater Building, does she?

A. That is my understanding, I think she did.

Q. Wasn't there an apartment on the third floor where she lived?

2851 A. There isn't a third floor there.

Q. You say there were no stairs leading from the second floor up to the third floor?

A. There is no third floor.

Q. What is there?

A. There is no third floor.

Q. Where is the apartment where she lives then?

A. On the second floor.

Q. Did you stop at her apartment to try to find her?

A. This office was in the apartment, she had a desk in the apartment.

Q. That's right; but there is no partition in that front room, is there?

A. No.

Q. And no bed in that front room?

A. No, sir, I don't think so.

Q. Well, did you try to see her at the apartment in back?

A. I tried to see her when she told me to see her.

Q. When did you try to see her, during the day or evening?

A. Both.

Q. And she was away a good part of the time, was she?

A. That was the report.

Q. Do you know whether or not she was in Oklahoma City trying to license films?

2852

A. No, sir, I don't know.

Q. You don't know where she was.

A. No, sir.

Mr. KALLIS. That's all.

Re-direct examination by Mr. COCHRAN:

Q. I hand you Defendants' Exhibit No. 104 and ask you if that is a letter which you addressed to the Griffith Amusement Company to try to interest them in renting this property?

A. Yes, sir.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 104.

Mr. KALLIS. There is no objection.

Mr. COCHRAN. "Griffith Amusement Company, 11½ North Lee, Oklahoma City, Oklahoma, Gentlemen: I have been contemplating changing renters on my show building on Asp Avenue here in Norman. I am getting tired of dealing with one who is harder to see than Governor of the State. The present lease expires August 1, and I would thank you to let me know if you would be interested in leasing the property. Thanking you to let me know at your very earliest convenience, I am, Very truly yours, S. G. Ambrister."

(Defendants' Exhibit 105 was then marked for identification.)

2853

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 105 and ask you if that is the reply which you received to that letter?

A. Yes, sir, that is a copy of it.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 105.

Mr. KALLIS. If the Court please, your Honor will see——

Mr. COCHRAN. Do you object?

Mr. KALLIS. I object.

Mr. COCHRAN. We will withdraw the offer. In other words, you object on the ground that it is a self-serving declaration?

Mr. KALLIS. That's right.

Mr. COCHRAN. We think the objection is probably well taken on that ground.

Q. Now, Mr. Ambrister, was the $1,200 that you told us was due on rent at the time the contract was executed, from Mrs. Berry, at the time the contract was executed between you and Mr. Boldman and Mrs. Boldman, was that ever paid?

A. No, sir.

Q. No note was given for any part of that?

A. No, sir.

Mr. COCHRAN. That's all.

2854 Re-cross-examination by Mr. KALLIS:

Q. Mr. Ambrister, you have mentioned the figure of $1,200. Is that based upon any records in your possession?

A. In my files, yes, sir.

Q. And when did you look at those files?

A. I don't recall when; it has been some little while, though. But it isn't just exactly $1,200; approximately, is what I said.

The COURT. Anything further?

Mr. KALLIS. That's all.

The COURT. You may stand aside.

(Witness excused.)

The COURT. At this time you may recess Court until 10:00 o'clock tomorrow morning.

(Whereupon, Court was recessed until 10:00 o'clock a. m. on September 21st, 1945.)

2855 PROCEEDINGS

September 21st, 1945, 10:00 o'clock a. m.

Mr. GRIFFING. May it please the Court, we would like permission to open and publish the depositions of certain witnesses.

Mr. KIME. Your Honor, is this procedure of reading these a local Oklahoma custom or Your Honor's preference? I never encountered it before.

The COURT. Of reading the depositions?

Mr. KIME. Yes, sir. We always agreed that they be considered as read, except the questions that are objected to.

The COURT. Well, ordinarily, a deposition is read in Court, is our procedure, unless you stipulate that it just be submitted and considered as read.

Mr. RICE. Shall I omit the caption?

The COURT. Yes, just begin with the name of the witness.

(The Depositions as read into the record, together with remarks of counsel in connection with objections interposed and the rulings of the Court on said objections, are as follows:)

2856 "GRADWELL SEARS, was called as a witness on behalf of the defendants and, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your place of residence and present position, Mr. Sears?

A. I live in Harrison, New York, and I am vice-president of United Artists Corporation, in charge of distribution.

Q. How long have you held that position?

A. I have had my present position for about three and a half years.

Q. Prior to the time you went with United Artists Corporation what positions did you occupy with Vitagraph, Inc.?

A. I was president of Vitagraph, Inc.

Q. During what period?

A. From about 1936 to 1941 or thereabouts. I have forgotten the exact date that I was made president of Vitagraph, Inc., but it was in the late 30's.

Q. Prior to that, what position did you have with Vitagraph, Inc.?

A. I was either western sales manager or general sales manager of Vitagraph.

Q. When were you first made western sales manager?

A. I was western sales manager of First National
2857 Pictures, Inc., in 1929, and First National and Warner Brothers Pictures were combined—the exchange systems were combined—along in 1930 or 1931 or thereabouts, and I became western sales manager for the combined exchange system.

Q. And continued in that capacity until you became general sales manager?

A. Until I became general sales manager; that is correct.

Q. When you were western sales manager of First National and later of the combined companies of First National and Warner Brothers Distributing Company, which I be-

lieve was Vitagraph, Inc., was Oklahoma, Texas and New Mexico in your territory?

A. It was.

Q. Is it a fact that, after the merger of First National and Warner Brothers Pictures, Vitagraph, Inc. was a distributing company for the pictures produced by First National and Warner Brothers?

A. That is correct.

Q. How long were both First National and Warner Brothers pictures produced after that merger; I mean under the names of First National and Warner Brothers?

A. Oh, I would say until 1940 or thereabouts. It was an arbitrary classification of pictures to fulfill some prior contractual obligations that necessitated pictures being
2858 identified according to brand or trademark. Also there were certain situations where the product had been split between two competing exhibitors; First National had been sold to one and Warner Brothers pictures had been sold to the other. Consequently it was necessary at the studio to put a brand identification on each picture. It would either be a First National picture or a Warner Brothers picture.

Q. Then after that merger all pictures were actually produced by Warner Brothers Pictures, Inc., but they had these different labels, for the particular reasons or practical reasons that you have stated?

A. That is correct.

Q. And, except where contractual relations required a picture to be sold otherwise, the First National and Warner Brothers pictures after the merger were handled as a unit?

A. That is correct.

Q. And licensed as the product of the same producer?

A. No, that is not exactly true. They were licensed separately, as I told you previously, because of certain contractual obligations. For a number of years, as the contracts with Warner Brothers will show, there was a First National contract and there was a Warner Brothers contract, even though the pictures were made in the same studio by the same technicians. When those pictures were sold they would be sold, so many Warner Brothers
2859 pictures and so many First National pictures, by contract and so identified by contract.

Q. When did you first enter the motion picture business?

A. Around 1915.

Q. In what capacity?

A. I was a motion picture operator and general all-around flunky in a theater in northeast Missouri.

Q. Has your connection with the industry continued from that time down to the present time?

A. Well, yes, with the exception of the time I spent in the last war, and I had several other positions before I went into the Army and immediately after I came out, after the war, I started with the World Film Company here in New York at 130 West 46th Street in June of 1919, and I have been in the motion picture business continuously ever since.

Q. When did you first become connected with the sales department of any motion picture company?

A. In June, 1919.

Q. With what company was that connection?

A. The World Film Company.

Q. When did you first become connected with the licensing of pictures in the Southwestern territory, including Oklahoma and Texas?

A. In the early spring of 1929.

Q. Did you become acquainted with R. E. Griffith
2860 and L. C. Griffith about 1929?

A. Yes.

Q. And have you been acquainted with their operations since then?

A. Yes, I have.

Q. During the entire time that you have been connected with the sales departments of First National and, later, of Vitagraph, were those companies or have those companies been national distributors of motion pictures? That is, was First National until its merger, and has Vitagraph since that time been national distributors of motion pictures?

A. That is correct.

Q. Did those companies maintain branch exchanges in the United States?

A. They did.

Q. How many branch exchanges did Vitagraph have during the period from 1933 up to and including 1939?

A. In the United States?

Q. Yes.

A. Thirty or 31; I don't remember the exact number.

Q. Was an exchange located in Dallas, Texas, and another one in Oklahoma City?

A. That is correct.

Q. What authority did the managers of the branch exchanges and salesmen operating out of those ex-
2861 changes have in the matter of the licensing of pictures?

A. What authority did they have?

Q. Yes; how did they proceed in the matter of licensing pictures in their respective areas?

A. Well, a salesman or a branch manager would make a solicitation on a particular exhibitor and, after a certain amount of negotiation, an application for pictures would or would not be submitted to the New York office for approval.

Q. Did either the salesman or the branch manager have any authority to consummate a contract for the licensing of your product?

A. Well, by consummating a contract I take it that you mean approval of the application. The salesman or the branch manager, as I explained to you previously, would submit an application, and that application would only become a binding contract once the New York office lent its formal approval to it, and without the formal approval of the New York office, no application submitted by a salesman or a branch manager or district manager is binding upon the company or the exhibitor, and it so states in the contract.

Q. Contracts with the larger exhibitors were sometimes handled in a somewhat different way, were they not, so far as the matter of soliciting the licensing of pictures was concerned?

A. I think you had better define what you mean
2862 by in a somewhat different way.

Q. Well, was it always true that a salesman went out to solicit the sale of products when it was a larger account, or was that matter handled by some representative from the New York office?

A. Well, if the business was important enough or considered important enough by the New York office, the New York office might see fit to send a sales manager or a district manager, or the general sales manager himself might solicit the particular piece of business at hand, for one reason or another, governed entirely by the dictates of what the general sales manager considered good business.

Q. Were the contracts sometimes negotiated in New York with the exhibitors?

A. They were.

Q. But in any event the license agreements would not become binding contracts until approved by a representative of the home office; is that correct?

A. That is correct. I think you should define, rather, instead of a representative of the home office, that they

would not become binding until they were approved by the general sales manager.

Q. By the general sales manager, who was the representative having authority to finally close contracts and give his approval?

2863 A. That is correct.

Q. During the period of 1933-34 up to and including the season 1940-1941 were the pictures which were distributed by Vitagraph licensed to exhibitors prior to the production of such pictures?

A. Yes, sir.

Q. Can you explain how the licensing of those pictures, prior to the time they were produced, was accomplished?

A. Yes, I can.

Q. Do so, please.

A. Well, usually one or more of the chief sales executives of the company would go to the studio early in the spring of the particular year that we will use for an example and, after a determination by the studio and the sales department of the number of pictures which it was considered expedient for the company to produce for the coming year, the sales executives would return to New York and outline these particular plans at a convention, a sales convention, at which place maybe all the sales people would be present; or it might be just the branch managers, division managers and sales managers, but in any event the accepted practice was to hold a convention and outline the forthcoming product and the proposed sales policy for the coming year and, after the convention was over, the branch managers, district managers, salesmen, bookers and what

2864 not would return to their respective territories and go out and solicit the exhibitors, bearing in mind the sales policy that had been outlined to them by their chief sales executives. Then applications would be taken from the exhibitors and these applications would be submitted to the New York office for approval or rejection and, if the contracts were approved, they would be marked "Approved" and returned to the exhibitors within a certain number of days and, if not, they were notified that the contracts were rejected and that there would or should be some resolicitation with the idea of improving the terms in connection with a particular sale.

Q. How were the prices and terms upon which pictures would be licensed in a particular situation or with a particular exhibitor determined?

A. Well, the prices on a season's product would usually be determined by a negotiation as close to the national sales

policy as it would be possible to apply that national sales policy to a particular theater or group of theaters.

Q. Well, in each and every instance was it a matter of bargaining between the distributor and the exhibitor?

A. Yes.

Q. Did those negotiations frequently consume or cover a considerable period of time?

A. In some cases those negotiations might be very protracted and take place over a period of weeks, days
2865 or months on various occasions, or in some instances they might take only an hour or two. You never knew exactly what course the negotiations were going to take. The exhibitor always offered the worst and the distributor always hoped for the best.

Q. When was that policy of licensing pictures in advance of production discontinued by Vitagraph?

A. Well, there were certain pictures which were so-called special pictures, which were licensed individually after screening, along in the late 1930's, but with the advent of the Consent Decree the practice of selling a year's product in advance was abandoned in its entirety by all of the consenting companies and most of the non-consenting companies.

Q. You are now vice-president of United Artists, which was not one of the consenting companies in U. S. versus Paramount. It is a fact that United Artists had at all times distributed its pictures in a manner different to that of the other companies?

A. I can only speak for United Artists, Mr. Cochran. Since I have been there United Artists has sold their pictures separately and on the merits of the particular picture in question, and not in any sort of groups or blocks or season's product or any other way. I might add that it is not necessary, with United Artists, to buy another pic-
2866 ture to get any picture that we are selling. In other words, each picture stands on its own and there is no question of tie-in sales.

Q. During the period 1933-1934 when Vitagraph had the policy of licensing its pictures in advance of production, was it the further policy of that company to endeavor to license its entire prospective season's production to the exhibitor of its choice in each town for first run exhibition in that town?

A. I am sorry, you will have to repeat that question.

Q. (Question repeated by the reporter.)

A. I would suggest, if I might be so bold, that you rephrase the question, because it is completely repetitious. I don't know just exactly how to answer that question.

Q. You have mentioned the fact that, so far as United Artists is concerned, it licensed its pictures separately. I am now requiring if it was the policy of Vitagraph during this period prior to the Consent Decree, when it went out to license its pictures in a particular town, to endeavor to license its entire prospective season's pictures in one contract to the exhibitor of its choice in that particular town.

A. That is correct.

Q. In determining the customer to whom you
2867 would endeavor to license that product, what were the factors which entered into and determined what customer you would sell to or endeavor to sell to?

A. Well, there were a great many factors that would enter into such consideration, and I will attempt to set forth a few of such considerations. I would say that revenue would be the prime consideration in all instances. That would be the first consideration. The second consideration would be the ability of the exhibitor in question to complete his contract. In other words, his stability and moral character would be a factor; his ability as a showman, his advertising and exploitation ability, his housekeeping—there are a thousand and one items that unconsciously come to mind because of your experience in selling pictures to a great many types of people and a great many types of theaters. I cannot answer any more definitely unless you give me a concrete example of why on such and such a date I made such and such a contract, but generally it is your experience and knowledge of all types of pictures. There are so many considerations of that kind that I just can not answer it in more detail.

Q. Did your acquaintance with a particular exhibitor and your prior experience with him enter into your consideration?

A. Yes, I would say that was very definitely a con-
2868 sideration. In other words, if you had had trouble with a man in the past and he would not pay his bills or he wouldn't get the most out of a picture, or he would agree to do one thing and then turn right around and do another, all of those factors would give consideration to whom you sold a picture to.

Q. Would the fact that one exhibitor in a certain town had been a satisfactory customer of yours over a long period of time enter into the matter?

A. Naturally.

Q. Would the type of theater be one factor that you would consider, as between that theater and competing theaters, if there was competition?

A. Well, yes, that would be a consideration. As I say, it might in one town be a prime consideration, and in another town it might be of little or no consideration.

Q. That brings me to this question: You said that revenue was a prime consideration, and then you spoke of the fact that the type of operation or the character and type of the house in some town might be the prime consideration. Is it not a fact that, taking into account the things which you have mentioned and numerous other things which you have not mentioned, any one of those things might have been a determining factor in a particular situation, depending upon just what the situation was at that place?

2869 A. That is a very simple question to answer, and I can illustrate is very graphically. Easily the finest theater, from the standpoint of everything that appeals to the American public, is Radio City Music Hall—a very luxurious theater and well run in every respect—and yet it may be possible to take a picture—and it has happened to me—to take a picture right here on Broadway and play it in a theater that in no way, as an attraction, could be compared to Radio City Music Hall, and get from that particular picture much more revenue than I could obtain from Radio City Music Hall, because in Radio City there might be a run, but the length of the stage show and other factors would mitigate against any opportunity of getting the sort of revenue that I could get from a theater which in no wise could compare with Radio City Music Hall as a show place.

Q. In that situation what would be your choice, from the standpoint of revenue: to license your picture for first run at Radio City Music Hall or in another theater such as you mentioned?

A. I made the statement at the outset, Mr. Cochran, that I consider revenue to be the prime consideration, or of prime importance, rather. I consider the amount of revenue that you can get out of a particular theater or a particular town to be the prime consideration. I think

2870 that other factors will be somewhat dwarfed in comparison to the amount of revenue obtainable. You can stomach a lot of other considerations if you are getting a lot of money.

Q. So far as exhibition at Radio City Music Hall is concerned, is it not a fact that a number of the distributors do run their product first run there in order to have the advantage of that show place?

A. Well, let us say that a number of distributors run their product at Radio City Music Hall. Period. I cannot tell you the considerations that enter someone else's mind. In other words, I might think it would be a very fine thing

to play a picture in Radio City Music Hall. Today, as far as I am concerned, a showcase is of doubtful value. The War Production Board has proved, I think, that everybody has plenty of customers.

Q. That is, under present-day wartime conditions?

A. Well, it is under the present market.

Q. Going back to this period 1933–1939, at the time you were with Vitagraph, at that time was Vitagraph licensing its pictures first run in New York City at Radio City Music Hall?

A. Within that period they did license some pictures to Radio City Music Hall, but I can remember also that during that period Radio City Music Hall was not the show-
2871 case that it is right now, and we probably did not get any more money out of Radio City Music Hall then than you would get out of any other theater.

Q. In the matter of the selection of your customer in a particular town and the factors which you take into consideration in determining that customer, was your policy the same when a circuit of theaters was involved as it was when there was an exhibitor operating only in one town? In other words, did you make a determination according to the same factors regardless of the fact that one of the exhibitors might belong to a circuit?

A. I would say that the same general considerations would apply, and again I repeat that revenue is a prime consideration.

Q. Did you negotiate the contracts with Griffith Amusement Company; Consolidated Theaters, Inc.; R. E. Griffith Theaters, Inc., and Westex Theaters, Inc. during the period 1933–1939?

A. In the main I would say that I conducted the majority of those negotiations personally. I will amplify that by saying that other of my people, such as our Divisional Sales Manager, my assistant Carl Lesserman, and our Southern District Manager probably sat in with me, and in some instances some of the branch managers, but in the main I conducted those negotiations between Mr. R. E. Griffith
2872 and/or Mr. Horace Falls and Mr. L. C. Griffith and Mr. H. J. Griffith.

Q. During that period was there any agreement by Vitagraph with the defendants that Vitagraph would not license its product second or subsequent run to any competitor of the defendants or either of them?

Mr. WRIGHT. That question is objected to as to form, on the ground it calls for a conclusion which the witness could not possibly draw.

Mr. COCHRAN. I will restate it.

Q. State whether or not there was any agreement by Vitagraph with the defendants during the period that I have mentioned of 1933–1939 inclusive, that Vitagraph would not license its product second and subsequent run to any competitor of the defendants or either of them.

Mr. WRIGHT. The same objection, as calling for a conclusion the witness is not competent to draw."

Mr. WRIGHT. It obviously is a conclusion for your Honor to draw, rather than the witness. He is attempting to say in effect that they have not been guilty of a conspiracy to prevent the independents from getting second run films, which we have charged them with.

The COURT. The Court has ruled on that question. The objection is overruled for this reason: This witness is in position to know the facts. The Court can only know

2873 it from the evidence on the witness stand.

Mr. WRIGHT. This calls for a conclusion more than it does for facts. The conclusion may be drawn from the facts.

The COURT. Read the question again.

(The question was read again.)

The COURT. The objection is overruled and an exception allowed. That can be followed up on the cross examination. I will say further, in this connection, because this has been discussed in Mr. Wright's absence, that the allegation is in the complaint that there was an agreement. Now, that can only be approached in the same manner as it was plead. Of course, you can go more into detail on the cross examination, if necessary, but I think the question is proper.

"A. None that I know of.

Q. State whether or not there was any agreement between Vitagraph and any of the defendants or their executives or representatives or employees not to deal with any competing exhibitor or to restrict the terms of your company's dealings with any such competitor.

A. None that I know of.

Mr. COCHRAN. You may take the witness.

2874 Cross-examination by Mr. WRIGHT:

Q. You are familiar, are you not, with the written agreements that were made during this period you have just referred to under which the Warner Brothers and First National Pictures were sold to the Griffith companies?

A. I am.

Q. And you did not mean to suggest by your answer to Judge Cochran's last question, did you, that such restrictions as might appear in those agreements did not actually

exist as the terms by which you could do business with Griffith competitors?

A. I would not suggest that anything that appears in those contracts was not binding on the company.

Q. That is, in so far as you know, these agreements you made with the Griffith circuit during that period were, in so far as Vitagraph was concerned, performed as written?

A. I believe they were. There may have been instances of so-called violations or breaches, but offhand I am not familiar with whether they were breached in any way or not. It is my belief that they were fulfilled.

Q. During that period it is a fact, is it not, that you did not actually sell any second run accounts in opposition to Griffith in the towns where they operated; isn't that true?

2875 A. I don't know whether that is true or not, actually. The contract with Griffith would generally be negotiated between myself, as I previously stated, and others of our sales executives familiar with the territory involved, and after that contract completed, the places, if any, for runs in the various Griffith towns would be submitted to our New York office by the local people and no particular emphasis would be placed upon whether such business was approved or rejected.

Q. I will call your attention specifically to the provision in the agreement that you made with the circuit dated September 29, 1933, which I believe is in evidence as Exhibit W-3. That agreement covers your 1933-1934 season's product and in Paragraph 5 the circuit agrees to play the picture as licensed first run prior to December 15, 1934, and second and subsequent runs prior to February 15, 1935. Now, is it not a fact, as long as the circuit had that length of time in which to play the pictures that you licensed there first run, you could not sell a current second run of that season's product to an opposition account?

A. No, I do not believe that follows.

Q. How could the pictures be made available to the opposition, second run, during the 1933-1934 season, if Griffith did not have to play the first run during that

2876 season?

A. I believe I can explain that satisfactorily.

Q. Go ahead.

A. This particular deal, signed by me here and dated September 28, 1933, was a deal for all Warner Brothers pictures. That is what we referred to as a sort of bushel-basket deal, which included everything we had, and it was on a weekly payment basis. We would get our money on

a weekly payment basis, and we had to have some sort of a governing clause that would not stretch out the playing of these pictures beyond what we considered reasonable limits.

Ordinarily with this type of deal we got our money in twelve equal payments and then we gave the exhibitor a certain amount of time after the expiration of his last payment to play off his following runs; so consequently, in that clause which you read, you had to take the last available date as your outside date to play off your contract. In the mean time, however, a picture which might have been played early in the spring, a subsequent run would be available within thirty days or so immediately following the playing of that particular picture. The fact that the outside date calls for the playing of all the product does not mean that subsequent runs had to wait until all the product had been played before anything could be played subsequent run.

2877 Q. You have the agreement there in front of you, have you not?

A. Yes.

Q. In so far as that agreement is concerned, there is nothing in there which requires the exhibitors to play, let us say, the first picture you released during that season first run in any particular town at any particular time at all prior to that December 15, 1934 date, is there?

A. Yes.

Q. Well, where is it?

A. Well, the fact that they were paying $1,923.08 a week was going to guarantee that the Griffith Amusement Company was going to play those pictures. That was the best guarantee that we had from that particular standpoint—the fact that they are paying each week for these pictures, and that is the basis the deal was made on.

Q. I will ask the reporter to repeat my question, because I don't think you understood the question.

(Question repeated by the reporter.)

Q. It is a fact, is it not?

A. Let him also read my answer.

(Question and answer repeated by the reporter.)

Q. It is a fact, is it not, that what you have said is merely that the fact you have made weekly payments there assures you of a certain volume of use of your product over

2878 the circuit at weekly or monthly intervals; isn't that right? It does not assure you that any particular picture you release will be played at any particular time in any particular town prior to that date fixed in Paragraph 5; isn't that correct?

A. Just a minute, until I examine the document. I want to see exactly what that language is. I haven't seen that document in a great many years.

Q. All right, read it carefully.

A. Well, amplifying my previous answer, Mr. Wright——

Q. Well, can't you answer this question first, and then go ahead and amplify your answer?

A. I would like to hear the question again, please.

Q. (Question repeated by the reporter.)

A. Essentially that is legally correct, if I am in any position at all to interpret the technical aspects of the question. I am not a lawyer, so I say legally correct; I don't know, but I would say that from a practical standpoint the fact that payments begin on November 30, 1933, and that in Paragraph 3 it is set forth exactly how pictures will be made available, as and how the exhibitor will be notified.

Q. Well, let us get down to a practical example. Suppose, let us say, that you have another account in Ada, Oklahoma, that may be interested in a second run
2879 for that town. You will notice in the schedule of this agreement you sold only a first run picture in this town to the McSwain and the Ritz. Now, exactly what kind of a season second run deal for that town could you offer to that theater at the beginning of the season and still operate under this agreement?

A. When you say "that theater" you mean a particular second run theater in Ada, Oklahoma?

Q. Yes, it is an opposition theater in Ada, Oklahoma. This agreement covers only first run at the Griffith McSwain or Ritz.

A. You could offer the second run theater in Ada a second run contract with X number of days availability after first run, and you could sell the entire season's product on that basis and, as the first run in Ada played off ,within X number of days after first run, second run would become available and a second run theater in Ada could play second run.

Q. Will you tell us just exactly how those pictures would be made available under the terms of this agreement? That is, suppose you were operating a theater in Ada; just how would you book the Warner Brothers picture second run that was supposed to be made available second run, and when and how would Warner Brothers give the second run theater second run pictures to be shown there second run?

2880 A. They would notify them in much the same manner that they would notify any second run theater that was playing off a first run. As soon as the first run in a town had set a date, the second run would be notified of the play at the McSwain or Ritz within the dates which had clearance the picture would be available for the second run in Ada, Oklahoma.

Q. In this particular case, at the time that particular exhibitor in Ada made his contract, he would not have any assurance that any particular Warner Brothers release would become available to him at any particular time during the 1933-1934 season; isn't that right?

A. No, that is purely a technicality.

Q. Just answer whether that is a correct statement or not.

A. It may be my opinion, Mr. Wright; I am only giving you my opinion of your question, and my answer is no, that is not correct.

Q. Well, it is correct, is it not, that in so far as what pictures he got and when, that would be entirely determined under this agreement by how the Griffith Amusement Company determined to play the pictures first run in the particular license; is that correct?

A. That is correct.

2881 Q. And whether he got the first picture that you released that season within thirty days of the release date or a year afterward would depend, under this agreement, entirely on when Griffith chose to take that picture in the first run house; is not that correct?

A. I don't believe that is entirely correct. Under Exhibit A, which is usually attached to these particular contracts, in the event a second run had been sold in Ada, Oklahoma, and a product was being unreasonably held or withheld—in Schedule A attached to these contracts there is a very definite provision for the performance by Griffith to insure the second run whatever pictures had been sold to him.

Q. Where is this schedule that you are talking about? Can you find it in that agreement?

Mr. COCHRAN. You are talking about the standard form of contract?

A. The standard form of exhibition contract covers provisions enforcing the playing and availability of pictures.

Q. I take it that, in so far as this particular deal is concerned, as and how pictures may be made available the standard form is superseded, is it not, by this typewritten agreement?

A. Let me hear that question again, please.

Q. (Question repeated by the reporter.)

2882 A. If you will refer to Paragraph 7 of this agreement, it states 'except as hereinotherwise to the contrary specifically provided, you shall exhibit the motion pictures, scores, trailers and short subjects licensed hereunder under the terms and conditions of the form of agreement attached hereto, made a party hereof and marked "Exhibit A" and the term "exhibitor" as therein used shall be deemed to refer to all or any one or more'—

Q. Just a minute. That agreement, I take it, is the normal agreement under which you license your films; isn't that correct—the standard form?

A. It is the standard form, Exhibit A.

Q. Yes, and that is the one that you customarily employed during that season in licensing exhibitors generally; isn't that right?

A. I would say that in the majority of cases it was used, yes.

Q. And that agreement, in so far as availability is concerned, provides that the pictures are to be played in the order of release?

A. Right.

Q. And, if they are not available, the right to exhibit is waived; isn't that correct?

A. I think the best answer to that is that the document speaks for itself.

2883 Q. Well, you are familiar with the general terms, are you not, and isn't that correct?

A. Yes, I am familiar with the general terms of the agreement, but I don't want to say something in my deposition here that might not be entirely correct, when the document speaks for itself.

Q. That is, in the standard form deal you make the pictures available to the exhibitor in the order in which they are released, and then he plays them in that order, does he not?

A. Yes, and it is also stated in this particular instrument of September 28, 1933 exactly how pictures shall become available, as well as in Exhibit A.

Q. Yes, I understand that. I am talking now about your standard practice. So where you simply use your standard form for your first run deal, and you make a second run deal at the same time, the second run account actually knows, when he buys the second run from you, that pictures will be made available to him as they are re-

leased, within a certain specified time after release; isn't that correct?

A. That is correct.

Q. Now, under this deal that you made with the Griffith circuit you could not make a second run contract which would give that exhibitor, the second run exhibitor, a deal where he would be able to play or know that he would
2884 get a second run of your pictures in the order in which they were released during the season in which they were released; isn't that right?

A. I don't believe that is true, no.

Q. Well, he could not possibly have such a deal unless you had an agreement with the first run which compelled the first run to either play or reject pictures for first run exhibition as they were released: isn't that right?

A. Yes, I had such an arrangement with first run, in that I had a starting date on which payments were to be made and—

Q. I think you had better hear the question again.

(Question repeated by the reporter.)

Q. That just calls for Yes or No, and then you can go ahead and explain it.

A. I am not sure that it calls for Yes or No. I think my answer is in order, but I may be wrong. Now, if you will read as much of my answer as I made—

(Answer repeated by the reporter.)

The WITNESS. And an agreement covered by Exhibit A, which specifically set forth how pictures would be made available first run.

Q. Well, am I incorrect in assuming that Paragraph 3 of this agreement does not do what it purports to do, and that is set forth the terms on which pictures are to be
2885 available first run?

A. How did you start that question?

Q. (Question repeated by the reporter.)

A. I don't believe you are incorrect, but I do not believe you take into consideration Exhibit A, which is also attached hereto.

Q. What is there in Exhibit A that determines the availability of first run films to the circuit there, which is different from or not included in this Paragraph 3? That is, what provision are you talking about?

A. I believe I would have to read the contract—that is, read the two clauses in question and compare them. I can not answer that from memory.

Q. Well, what clause are you referring to?

Mr. COCHRAN. I do not have that standard contract here. It is the ordinary availability clause.

(Discussion off the record.)

Q. I take it that, if you were satisfied with the ordinary availability clause in the standard form, it would not have been necessary for you to write up and negotiate this Paragraph 3 agreement at all, would it?

A. I don't know exactly why that was done, Mr. Wright. One of our attorneys at Warner Brothers at the time approved this Clause 3 to provide for this particular agreement, and the same attorney is the one who inserted
2886 Paragraph 7 which I read earlier.

Q. You do not know why Paragraph 3 was put in there at all, then?

A. No, I am not familiar with that, as to why he made a specific reference to availability under this contract, rather than allowing the availability under the standard form to prevail. Obviously, he had some reason in mind; otherwise he would not have done so.

Q. Obviously, you and the people who negotiated the deal had something in mind; otherwise you would not have asked him to negotiate this deal?

Mr. COCHRAN. That is objected to as calling for a conclusion."

The COURT. Overruled, and exception allowed.

"A. As far as the business people as differentiated from the legal people, we know from a business standpoint that, once this man starts to make these payments each and every week beginning the 30th of November, we are not going to have any trouble in getting our pictures played off and we know we are going to get paid.

Q. Your legal people did not negotiate this deal with Griffith, did they?

A. No.

Q. I take it, it was negotiated by you?

A. It was negotiated by me; correct.

2887 Q. And you say now that you have no knowledge of why this particular availability arrangement was made?

A. I have no recollection as to why this additional availability clause was inserted in this particular document.

Q. Now, when you say that you use the same criteria in dealing with an independent as you do with a circuit in a particular town, you mean you determine the choice on the basis of what the circuit and the independent can give you in the particular town—and you are talking about revenue?

A. No, I am not talking about revenue exclusively, although I believe I laid particular emphasis on the fact

that revenue was my most important consideration. However, I believe there are a great many others.

Q. Confining yourself to revenue for a moment, in balancing the revenue consideration, do you attempt to determine what the independent with one theater in the town can pay you for the exhibition of a particular run of pictures there as against what you might get from the circuit theater for the same run, or do you consider what you are getting from the circuit on the entire deal you are making as against what the independent would pay you for that particular run?

2888 A. I consider the over-all revenue from the entire transaction.

Q. So that in so far as the particular independent is concerned, even if he were prepared to give you a deal which would yield substantially more in that particular town than what the circuit was giving you there, you would reject that deal in favor of the circuit if it meant losing the circuit deal; is that right?

A. I would have to take into consideration the expense involved in soliciting all of these particular opposition accounts and see whether or not I was going to get all of them as against the one sale to the particular circuit.

At the time of this particular deal in question, September 28, 1933, Warner Brothers were in a very precarious financial position, and I had to make deals and be assured of a sufficient amount of fixed revenue from the pictures which we proposed to distribute for the coming year and keep Warner Brothers in business, and the fact that we were able to do so I believe is now history. There might have been individual theaters in this or other towns in opposition to circuits which, for those particular towns, might have paid me more money for the particular one town or the other than I could get from the circuit, but I was concerned mainly with the amount of national gross that I was going to take out for Warner Brothers for the coming year.

2889 Q. In considering the amount of gross that you could take out of that area in which Griffith operated theaters, you say you were compelled to balance the gross that you would get from Griffith against what you could get by selling all of the independent opposition in the area; is that correct?

A. I believe I paid particular attention, Mr. Wright, to the sales expense involved.

Q. Well, then, let us say net profit rather than gross.

A. Yes, that would be my chief consideration during the particular period involved.

Q. Now as to the revenue you can get out of any particular theater in any particular town, that to some extent depends, does it not, on what other product the house might have?

A. Well, to varying degrees, yes.

Q. That is, I take it you get the most revenue out of any particular theater when you get the most playing time; isn't that right?

A. Not always. You might be in a theater where you got a majority of the playing time and, if there was no other representative product playing with your product—a variety for the people—the general patronage might not be as good on your product. That is easily conceiva-
2890 ble, that you might play a theater with two or more products playing, and you might get less playing time and more money. That very often happens, where you get all the playing time and less money.

Q. That is dependent upon the gross receipts that come in?

A. That is right.

Q. Where you have two theaters, one of which has got six or seven major companies and the opposition only one; you can generally of course make more money, can you not, than by having your sole reliance on the theater which buys your product?

A. I didn't understand the last part of that question. Having sole reliance on what?

Q. Let me put it more clearly. Suppose you find a situation where one theater has six major companies and the opposition has one other. Is it not a fact that normally you can get more playing time and better gross returns out of the latter than by putting your pictures in the other theater, other things being equal.

A. Well, all other things would not always be equal. If that happened to be a particular company which for a year had a wide variety of plays and players, it is conceivable that you might get a lot of money; but if that one major company was one which had indifferent success for
2891 that particular year, even though your playing time might be much greater, you might not get as much revenue as if you played where the wider variety of entertainment prevailed.

Q. That is one factor you consider along with size and others which might yield more revenue?

A. That is right; playing time is a big factor, because it ultimately reduces itself to money.

Q. And I suppose that is particularly important when you consider Saturday and Sunday preferred time available?

A. That is correct.

Mr. WRIGHT. That is all.

Re-direct examination by Mr. COCHRAN:

Q. In talking about playing time, do you refer to the number of days a particular picture will run in a particular theater? Is that what you speak about when you refer to playing time?

A. Yes, playing time has to do with the number of hours that a picture is exhibited on the screen of a particular theater.

Q. Then in these Oklahoma and Texas towns where they had a regular policy of three changes of programs a week, if the theaters played according to that policy and
2892 each of the competing theaters made the same number of changes every week, that would be the same amount of playing time, would it not?

A. That being the case, offhand I would say it would be the same.

Q. So the chance for a preference for one over the other would depend principally upon preferred playing time; that is, days a week, providing you were playing on percentage?

A. That is correct.

Q. This weekly payment plan that you spoke about: who was responsible for the initiation of that type of contract for your company?

A. I was.

Q. Was that connected in any way with your then condition or the condition of your company in regard to the box office attractiveness of your stars?

A. Well, yes.

Q. As well as the matter of your desire for revenue generally?

A. Again, this weekly payment plan was a product of necessity, you might say. There was considerable delinquency in various parts of the country, particularly in the South, on Warner Brothers pictures. Warners had made a type of picture that up to that time had not been
2893 particularly successful in the southern part of the United States, with Edward G. Robinson and Jimmie Cagney, and the slam-bang type of picture that they did not seem to relish down South.

I remember that we made a picture called Public Enemy, in which Jimmie Cagney pushed a grapefruit in a woman's

face, and the South didn't take to that at all. It was very difficult, until Cagney got on the side of law and order, so to speak, to sell his pictures in representative theaters down South.

There were quite a number of pictures that were delinquent, and it was a very trying time for Warner Brothers. I felt that I should be assured of a certain fixed revenue, and I knew that when an exhibitor was going to pay on a weekly basis he was going to play the films; that he could not help creating a future market for our stars and, if he kept on playing them, he would therefore enhance their value.

Q. I take it from what you say that this form of contract was not just a contract with the defendants in this case, but it was a contract which you were using particularly in the South in the licensing of your pictures?

A. I made the first one of those contracts either with the Sparks outfit in Florida or the Interstate Circuit; I don't recall just which one it was, but it was made
2894 with one or the other and, for the reasons that I have mentioned, there were considerable unpopular pictures in the South. We were meeting with indifferent success with our pictures, and I had to be sure that out of each particular section of the country I was going to get a fixed amount of revenue or at least revenue that was as bankable as I could make it.

Q. Did you make weekly deals with independent exhibitors where you could?

A. I do not recall offhand making any weekly payment deals with independents. Warner Brothers records would speak for that. I can remember only the larger deals, so far as I am concerned.

Q. At any rate, you initiated the plan, so far as these weekly payment deals were concerned?

A. In connection with the Southern district or division manager, we collaborated on it. Whether it was his principal idea I don't know, but it suited my purposes.

Q. The point I am making is that it had nothing to do with the exhibitor?

A. Oh, no, the exhibitor had nothing to do with that, other than making the payments and playing the films.

Q. Mr. Wright has called your attention to this clause which provides, in paragraph 5, that

'You agree to play all motion pictures, short sub-
2895 jects and trailers licensed hereunder first run prior to December 15, 1934, and if made available, all second and subsequent runs prior to February 15, 1935.'

and in his questioning has intimated his view that that clause constitutes a license for the exhibitors in that contract to take all the time and any time that they want to play any picture covered by this agreement up to the date limits fixed therein.

As I understood your answer to Mr. Wright, you take the position that that provision must be considered along with the clauses in Exhibit A, which is the standard form of contract, as well as the other clauses of this particular contract, in regard to the play-off of pictures; is that correct?

A. Yes, sir.

Q. Regardless of what anyone else may contend is the effect of that provision, did you construe that provision as giving the exhibitors under this contract the license to delay playing each and every picture under this contract to the last day mentioned in the contract, if they paid you for the pictures?

A. Certainly not.

Q. I notice that there is nothing in this Griffith agreement which authorizes the playing of the pictures out of order of release, and your printed form of contract
2896 carries the clause that the pictures shall be played in the order of release, as and when available. Did you or do you now consider that this clause in Paragraph 5, which provides that the exhibitor will play all of these pictures prior to December 15, 1934 first run and all second run and subsequent runs prior to February 15, 1935, is in conflict with the clause in your printed form which required the playing of the pictures in the order of release?

A. I do not.

Q. Mr. Wright mentioned the situation where you might desire to license your product second run after the Griffith first run under this contract, and inquired about how you would set up a contract of that kind, and you told him. Do you consider that, if you had made a second run contract in the manner you have indicated, you could have, under the terms of this contract and the printed contract form which was attached as Exhibit A, required the dating of pictures in the same manner that you would have if the contract had been written in your ordinary printed form?

A. I think so, yes.

Q. What was your experience with the Griffiths under this type of contract as to whether you had a more prompt and complete liquidation of the contract than you ordinarily had with exhibitors to whom the product was licensed under the printed form of contract?

2897 A. It was certainly much more prompt and complete.

Q. In other words, your thought that this type of contract would not only give you the advantage of the weekly payment of money but would insure a good and prompt liquidation of the contract, proved to be a correct opinion?

A. That is correct.

Q. Something was said in your cross examination about a person having a second run theater, a first run opposition house, to whom the product was licensed under the terms of the printed form of contract, being assured as to the time when he would be able to get a particular picture to play second run, and I understood you to tell Mr. Wright that under that kind of a situation this second run man would be able to know just when he was going to have a particular picture second run prior to the time the picture was actually played by the first run house. Now, did you mean to say that?

A. I believe, and the record will show, that I testified that a second run in a town such as Ada, Oklahoma, could be sold—a second run theater could be sold a second run contract, as available so many days after first run, and when a first run booking was set by Griffith in the Ritz or McSwain theaters, the second run would be notified that Griffith had dated the picture on such and such a date and it would become available to him within the limit of his clearance
2898 and a request for a play date would accompany such notice.

Q. All right. Did Griffith under this contract have the right to delay the dating of pictures first run at their pleasure, or did you have the privilege and the right under your contract to set up its availability, in the event Griffith delayed dating that picture?

A. Under our contract we had the means to prevent the unreasonable withholding by Griffith of first run dates in order to deprive second and subsequent runs of such pictures.

Q. Was there any difference in that regard under the terms of the ordinary printed agreement and this agreement with Griffith to which you have referred?

A. Naturally not, because the printed agreement was a part of this particular contract.

Q. And you do not consider these terms which have been referred to by Mr. Wright in any manner conflict with the terms of your general contract which you make?

A. No, sir.

Q. Well, ordinarily where a product is licensed to an exhibitor under the terms of your printed form of agree-

ment, are the pictures played in the strict order of release as available?

A. No, sir.

Q. What was, during the period involved, the gen-
2899 eral practice in that regard?

A. During that period the general practice was to allow for booking facility because of the economy in housekeeping as regards print, and also facility in running and operating a theater, where pictures come out of Hollywood more or less in sequence and stars and feature players are loaned from one studio to another and a great many free-lance players who play in important pictures, if you are going to hold them to the strict order of release, you will have a great many complications as to the type of picture and the people that are in them, with competing theaters, and preceding or subsequent pictures and, consequently, you never have a certain booking facility, and you only use the strict order of release when you want to enforce the full and exact performance of your contract by using all the provisions of the contract available to you.

Q. What was the purpose of that clause providing for the playing of pictures in the order of release, as available? What did the distributors have in mind in inserting that clause in the contract?

2900 A. I can not tell you what the distributors had in mind. I can only tell you what we had in mind.

Q. That is your own company. All right.

A. We had in mind that that sequence of release clause would insure the performance of the contract with an exhibitor better than any other instrument in the contract, because ultimately you were going to come onto one or more very valuable pictures, to the exhibitor, and he would immediately request a date on that particular picture and you would say "Now, just a minute; we have a slight delinquency here and, if you will arrange to take care of that, we will be very happy to book you with this picture, but all preceding pictures must be taken care of before we will book you with the picture you request."

Q. Under the terms of your written agreement, he could avoid the payment for that picture in the order of release by paying for the picture then on hand?

A. That was done at one time or another. I don't even know that that was accepted, and I question whether that was the cure-all for that. In some cases, where there were any subsequent runs involved, you might accept a payment —I should say if no subsequent runs were involved you might, but if there were other runs involved, you would

insist that the man go through with the performance of his contract and play the picture and establish a first
2901 run so that the normal runs could follow.

Q. If an exhibitor who was accustomed to playing his contracts in a satisfactory manner, and there were no subsequent runs that were being held back by reason of the playing out of order of release, was it customary to give considerable leeway in the playing of pictures out of order of release with all of your customers who were in good standing and for the reasons which you have stated, in order to take care of a more profitable booking of pictures?

A. It was.

Q. At the time that this contract of September 28, 1933, was entered into, were these exhibitors who made this licensing agreement with you your established customers in the towns covered by this contract?

A. They were.

Q. Had these companies been your customers over a number of years?

A. Yes, a number of years; to my knowledge from 1929 on.

Q. Were you with Vitagraph at the time it started to distribute talking pictures?

A. No.

Q. That was in 1929, was it not?

A. No, that was in 1926. This is my recollection of when talking pictures first came out.

2902 Q. Talking pictures were still in the pioneering stage as late as 1928, were they not?

A. In 1928 most of the companies went through the transition from silent to sound. Warner Brothers had had a full year of talking pictures in 1927, and as early as 1926 had had some pictures with sound effects. They called them at that time pictures that had been scored. That is what you now call sound effects.

Q. Had most of the exhibitors in the Southwestern part of the country changed from the exhibition of silent pictures to sound pictures by the beginning of 1929?

A. I don't believe all of them had. There were quite a few instances where silent pictures in little towns were still used. You say the Southwest. I don't know whether that was true of Oklahoma or not. I think probably by 1929 they had all changed over. We used to have pretty nearly every kind of equipment that you could examine.

Mr. COCHRAN. You may examine.

Re-cross-examination by Mr. WRIGHT:

Q. With reference to this plan of order of release, is it not a fact that you can not have any structure of first, second and third run deals except where you do play at least in the approximate order of release? Isn't that the way you normally do business?

2903 A. In the approximate order of release, yes.

Q. That is the only way that your second or third run operator is in any position to book at all, is it not?

A. That is right, so you can be reasonably sure of the approximate order of release.

Q. As to how these particular agreements were actually liquidated and carried out that were negotiated by you during this 1933–1939 period, are you familiar with what was done? Do you know how they were performed, with reference to when and how the pictures were made available?

A. Only in a general way, by hearsay. In practically every instance our branch managers and district managers and divisional sales managers had meetings in the home office, and they discussed how much better their play-off was since they instituted this particular type of instrument.

Q. And the only people who would know actually how the play-off was handled in particular competitive situations I suppose would be your branch or district managers? You don't know that I take it?

A. I wouldn't know except in a general way. If you were to ask me as to a particular town and say 'How did that particular town play off during the 1933–1934 season?' I would have to confess ignorance, but I do know that this particular type of deal was much better.

Q. As to when and how these pictures which Grif-

2904 fith did not use were actually made available to competitors, you don't know anything about that?

A. I wouldn't have any first hand knowledge of that; no, sir.

Q. Do you also know whether or not, after or before these agreements with Griffith were made, such independent opposition as existed was actually solicited by Warner Brothers for first and second run?

A. If you asked me to cite a specific instance, I could not do it.

Q. Well, do you know whether or not there were any?

A. I could think, offhand, of a town that I urged Griffith to go into, or something of that sort, because we were not getting the kind of revenue out of the town that we thought the town ought to produce; or we were always having a lot

of trouble selling and we asked them 'When you are in that particular town, why don't you go to such and such a town?'

Q. I was referring to opposition accounts in the same town.

A. I don't know anything about that.

Q. You don't know whether there was any such solicitation as that?

A. No.

2905 Q. I gathered from what you said about the selling expense of independent solicitation at the time you made these deals that, at least so far as you were concerned, you did not contemplate solicitation when you made these contracts; is that right?

A. That is right.

Mr. WRIGHT. That is all.

Re-direct examination by Mr. COCHRAN:

Q. Mr. Sears, was it customary for your company, both with respect to independent accounts as well as circuit accounts, to negotiate or attempt to negotiate a deal with your customer of the preceding season before in any manner negotiating with any opposition account, if that prior customer or your established account was a satisfactory account?

A. Yes.

Q. In other words, during that period was there any practice of going around and seeing one exhibitor and negotiating a while with him, and then going over to see another one and see if you could not better the proposition; that is, going around to see if you could not play one against the other, regardless of whether it was an independent or a first or second run operator?

A. No, we would not put our pictures on the auction block in a situation of that sort, if we had a satis-

2906 factory customer.

Mr. COCHRAN. That is all.

Re-cross-examination by Mr. WRIGHT:

Q. One thing more on this question of sequence of run. Ordinarily where you sell a sequence of runs you provide a certain admission price restriction and then a clearance in the first run agreement, do you not?

A. Yes.

Q. And the admission price restriction that you provide is ordinarily one which requires whoever gets the first run to charge a higher price than the price you would require the second run operator to charge; isn't that correct?

A. That is correct.

Mr. WRIGHT. That is all.

Re-direct examination by Mr. COCHRAN:

Q. Is that invariably true, that a subsequent run will be exhibited at a price less than a prior run?

A. It is not inviolate, if that is what you mean. There are exceptions.

Q. Speaking about the clearance clause, it appears that in these contracts that you had with the defendants—at least in some of them, and probably in all of them—
2907 there is nothing said about clearance in towns in which there were competing theaters. Are you familiar with the situation in Oklahoma and Texas during that period as to whether there were any clearance schedules set up, as there were in some other parts of the country?

A. With reference to particular towns and particular clearances or in general?

Q. Town against town, and theater against theater in a particular town.

A. No, clearance schedules were usually worked out locally by people who were more familiar with local conditions than the national executives.

Q. All right. Now in speaking about the clearance clause being inserted in a contract, if you sold a first run exhibitor in a particular town where there was a competing theater and that exhibitor did not request a specified clearance against the opposing theater, was it customary in those situations for you to insert in that first run contract a clearance clause to cover that situation or would the customary clearance in that particular town be used by your company?

A. Well, you are again asking me a general question as regards clearance, and I assume you refer to the Southwestern part of the country in the Oklahoma, Texas and New Mexico territory. I can not call to mind a par-
2908 ticular situation involving clearance, because clearance would be left, as I said before, to our local people. I can not, without examining the particular contracts, tell you exactly what the procedure was as regards clearance for a particular group of theaters.

Q. Well, take this contract to which you referred a while ago, dated September 28, 1933, where it licensed pictures in a number of situations, in some of which there were opposition theaters, and nothing is stated in this contract about the first run exhibitor having any clearance over any opposing theater in the event you desired to sell that theater. Do you know whether no clearance was inserted in that contract, and what is the practical effect of that?

A. Well, this contract states here 'Oklahoma City, Oklahoma, Rialto (Reno to follow Rialto) 1st after all Warner & Publix theaters, if played there).'

Q. It does state clearance in Oklahoma City, but that is the only place. Take Ada, Oklahoma, for instance, where there is an opposition theater; there is nothing said there with regard to clearance. In situations of that kind did they leave your company free, in selling second run pictures to the opposing house, to fix a clearance according to your own judgment?

A. It would seem to indicate that.

Q. That is what you think it indicates?

2909 A. It would certainly so indicate.

Mr. Cochran. That is all.

Mr. Wright. That is all.

(Subscribed and sworn to by the witness.)

2910 Afternoon session

(Met pursuant to adjournment at 2:00 P. M.).

Ned E. Depinet, was called as a witness on behalf of the defendants and, being first duly sworn, testified as follows:

Direct examination by Mr. Cochran:

Q. What is your residence and present position?

A. My residence is Greenwich, Connecticut, and my present position is president of RKO Radio Pictures, Inc.

Q. When did you come to that position with RKO and what positions did you occupy with RKO prior to that time?

A. I became president in June 1942. Prior to that, since 1933, I had been vice-president of RKO Radio Pictures.

Q. Since 1932 and until you became president did you have any other official position with RKO?

A. I was vice-president in charge of distribution, which made me head of distribution. Sometimes I used 'general sales manager,' but during most of the time I had a general sales manager under me, so if you say vice-president in charge of distribution, that covers it.

Q. During that period from 1933 up to and including 1939 were you familiar with the sales policies prevailing in RKO?

2911 A. Yes, I approved all of the sales policies that were used by RKO. I naturally helped in their formation, and probably was more responsible for them than any other person.

Q. During all of the period I have mentioned, was RKO a national distributor of motion pictures?

A. Yes, sir.

Q. When did it become a national distributor?

A. Well, RKO became a national distributor when it bought out FBO, I guess before I joined them. I do not know just when that was, but it was some years prior to the time that I went with the company.

Q. That is some years prior to 1932?

A. Yes.

Q. In distributing its pictures nationally did RKO have a number of branch exchanges in the United States?

A. Yes, RKO had the customary number of branches, located strategically throughout the country, for the convenience of our customers. There were 32 or 33 of them. We have 32 now, and I think that during some of the time we had an office in Jacksonville, Florida, which was closed, so we may have had 33 during a good part of the period of time that you mentioned.

Q. Did it have exchanges in Oklahoma City, Oklahoma, and Dallas, Texas?

2912 A. Yes, we had exchanges there during that entire period.

Q. Who was in charge of all the exchanges?

A. I don't know what you mean.

Q. I do not mean the person, but was there a branch manager in charge of each exchange?

A. Yes, each exchange has a branch manager; then a small group of exchanges have district managers, and then a small group of districts have divisional managers.

Q. And Oklahoma City and Dallas, during that entire period, each of those exchanges had a branch manager?

A. Oh, yes.

Q. Then out of each exchange were there several salesmen working in the territory under the supervision of the branch managers?

A. Yes, sir.

Q. Did either the salesmen or the branch managers have authority to finally complete a contract or agreement in regard to the licensing of pictures in their respective territories?

A. Well, the salesmen and the managers solicited license agreements from the exhibitors along lines that were in accordance with our various policies, and submitted them to the home office for approval. There may have been times when, in certain situations, the manager

2913 had the right of approval, if he got certain terms, but generally speaking, the authority of the manager or the salesman was simply to solicit the license agreements and submit them to New York for approval.

Q. Was it also true during that period that, if there were any agreements negotiated with any exhibitor which departed in any way from the national policy or the national terms, if there were such, said agreements had to be submitted to the home office for approval before they would be effective?

A. All agreements had to be submitted to the home office for approval, regardless of their contents.

Q. During that period did RKO license pictures prior to the time the pictures had actually been produced?

A. Yes, for a number of years RKO licensed what we called the season's product at that time, whenever possible. We did that up until the so-called consent decree, but since then we have been selling our pictures individually and in small groups.

Q. Can you or will you explain how your company set about to license its prospective production for a particular season prior to the time it had produced any of those pictures?

A. Well, we did not at any time, to my knowledge, license our pictures before any of them were produced,
2914 except in the case of a license agreement that extended longer than one year. Each year a motion picture company planned a certain number of pictures, arranged the budget or the money with which to produce them, and bought stories, hired the actors and produced their annual program. The production of that annual program took a year, and it started well in advance of the releasing season. By the time that sales got under way, as a rule, a percentage of those pictures had already been produced, another percentage were in the course of production, and the balance would be made during the remainder of the year.

Q. But only a small percentage of the pictures, as a rule, had been actually produced prior to the time that the license season had come around?

A. When it started, that is correct.

Q. So it is true that, during that period, a majority of the pictures were actually produced after license agreements had been made?

A. Well, yes, of course, if you didn't sell most of them until the end of the season, but the bulk of our selling probably occurred at the beginning of the season, so I think it is correct to say it was before a large percentage of them were actually made.

Q. Under that method of licensing was it the policy of your company to endeavor to license its entire season's

2915 product to the customer of your choice in any particular town that you might have under consideration?

A. Yes.

Q. What was the purpose of attempting, in one agreement, to license all of your pictures to this customer of your choice?

A. Well, the purpose was, first, to give us a steady market and, second, to give the exhibitor a steady supply of pictures.

Q. Was that a policy which your company had adopted for its own ends and own particular purposes?

A. Well, it seemed to us to be the best policy at the time, because it gave us some assurance that, when we invested millions of dollars in the production of pictures, we would have some customers to play them. On the other hand, we always took the position that it was better for the exhibitor who owned the theater, because it assured him a product throughout the year.

Q. Was that policy applied both to circuits of theaters and to exhibitors operating only in one town?

A. It was applied to all the exhibitors to whom we could sell, regardless of whether it was an individual exhibitor or what you might call a circuit of affiliated theaters. It was our purpose to try to sell to the theaters of America the largest possible number of our products.

2916 Q. And that practice continued until you became a party to the consent decree that was entered in United States versus Paramount?

A. Yes.

Q. Since that time it has been abandoned and you have been selling your pictures in accordance with the consent decree?

A. Since that time the practice has been abandoned and we have been selling our pictures in small groups, not over five in a group.

Q. In the matter of terms and prices for your product in a particular town, tell us how those terms and prices were arrived at between your company and the exhibitor.

A. Well, they were principally arrived at through trade and barter. We have a historical knowledge of each community in America, in fact each theater, and we attempt to secure the largest amount of money which we can from the theater, leaving for the exhibitor his expenses plus a reasonable profit. That is our purpose, and that is what guides us in our negotiations for the rental of our pictures, the licensing of our pictures.

Q. Do those terms and prices customarily vary from situation to situation?

A. Well, prices vary in almost every situation. If
2917 you license your pictures for a percentage of the box office receipts, they vary in proportion to the amount of business the theater does.

Q. Is that true even though the theater may be operating in a town that has approximately the same population as some other town?

A. Oh, yes.

Q. Those will vary with towns of the same population?

A. Yes, they will vary not only with towns of the same population, but if you have individuals involved who run the theaters the same way, you will have showmen who go out and work, and you will have some who are lazy and do not. There is a great deal involved in the human equation in every theater.

Q. How does that work out where you license your product for flat rentals?

A. Well, it is relatively the same result, but we prefer to sell our pictures for a percentage of the receipts. Some exhibitors prefer to take them on a flat rental basis. Our policy is flexible, and we will accommodate the fellow who wants to pay for flat rentals, but in arriving at what we think is the fair flat rental, we apply in our minds a certain percentage of the receipts we believe that theater should produce, and we know enough about the
2918 operation of the theater to give us a good idea of what the theater will gross, what it should cost the exhibitor to operate, and how much he can afford to pay us and at the same time leave for himself a reasonable profit on his investment.

Q. So I take it that it would not be at all unusual to have theaters in two towns, each having a population of say 10,000 inhabitants, where each of your customers was licensed on a flat rental basis, for the flat rental of your pictures to vary in those two towns of the same population, just as it would if you had a percentage arrangement? In other words, as I understand it, you are thinking in terms of percentage, even when you license your pictures to an exhibitor for a flat rental?

A. That is what I said, Mr. Cochran.

Q. During the period I have mentioned did your company have a printed form of license agreement?

A. Yes.

Q. After negotiations had resulted in reaching an agreement for the licensing of your pictures on certain terms and

with a certain play-off and certain rentals, was it unusual that you would have to write into that printed form of contract provisions which would take care of deviations from the printed form and otherwise take care of the agreements which had actually been reached as a result of that bargaining you had gone through?

2919 A. No, it was not unusual. There was a place provided for that in the schedule on the front of the contract for the listing and clarified description of what was agreed to when the proposition was submitted.

Q. Was that sometimes done by a supplemental or separate instrument attached to your standard form of contract?

A. I suppose so, and it was probably done in separate agreements that were drawn up and annexed to it. I don't know all the different ways it was done, but whatever was submitted and finally agreed to was outlined there on the face of the license agreement or on a separate form.

Q. What were the factors which you took into consideration in determining the customer in a particular town who was the customer of your choice for a particular season?

A. Well, naturally the first customer that you consider in every locality is the first run customer, so I would have to apply my answer to the first run customer. I think it would be obvious to anyone to understand that we attempt to find a customer who was an honest fellow with a good reputation—a man who is a good showman and a good live-wire, who has a theater that is well-located, well-appointed and easy to get to, and an exhibitor who is willing to advertise and to offer the pictures for what benefit that will do in the surrounding territory—the theater

2920 that we think can throw off the largest rental to us and be successful and stay in business, and continue to be a good customer for a long time.

Q. Is the question of the revenue which you expect to get out of the theater another factor which should be considered?

A. I think I said that. By the amount of revenue the theater can throw off, I mean the amount of revenue he can pay to us.

Q. I believe in that connection you stated that you gave consideration to the amount you might expect for a period of time; that is, the stability of the account and whether it would prove to be a good customer over a period of years.

A. Yes, that would certainly be an important factor.

Q. And, in connection with the fact that honesty and reputation were important factors, your acquaintance with

a particular exhibitor and your past experience with him?

A. Well, that is about the best way I know of to find out if he is honest and apt to be on his toes—by doing business with him.

Q. How long have you been acquainted with the several Griffith organizations, or, rather, the men interested in those organizations?

2921 A. Why, I have been acquainted with L. C. Griffith and his deceased brother R. E. Griffith for more than 20 years; maybe as long as 25 years.

Q. Mr. H. R. Falls; how long have you been acquainted with him?

A. I have known Mr. H. R. Falls nearly as long. I can not say exactly, but I am sure I have known him for 25 years. If it is not 25, it is close to it, and it may be longer.

Q. What was your position at the time you first became acquainted with Mr. R. E. Griffith and Mr. L. C. Griffith?

A. I was the Southern District Manager for Universal Pictures, and my home was in Dallas, Texas. At that time I had supervision over the Southern States for Universal. The two Griffith brothers were working in a film company there in Dallas as salesmen when I first met them.

Q. Was that the same company for whom you were then working?

A. No, they were always working for some other company.

Q. How long did you continue to live down in Dallas or in the Southwestern country?

A. I left there in 1924.

Q. And came to New York?

2922 A. I moved to New York, yes.

Q. Did your acquaintance with these men continue throughout the years?

A. Yes, my acquaintance has continued right up until today. I later met the younger brother, whom I did not know in the earlier days.

Q. That is H. J. Griffith?

A. Yes. I didn't know him when I met his two brothers at the beginning of our acquaintance.

Q. From your experience with those men and the companies they represented, will you state what you found as to their honesty and integrity, good showmanship and aggressiveness in the matter of exhibiting motion pictures to the fullest extent of the possibilities in that territory?

A. Well, it has been my experience over all these years that the Griffith brothers are honest and of high integrity. They are certainly live-wire, aggressive showmen, and

they worked their way up from film salesmen to whatever they own now by good hard work, axle grease and effort.

Q. During the time that they have been customers of RKO what has been their standing with your company, as to whether they were satisfactory accounts, when they have carried accounts with your company?

2923 A. They have always been satisfactory accounts. It is true we haven't always agreed, but they have been satisfactory accounts.

Q. You speak of not having always agreed. Do you recall that in the season 1934-1935 you did not make an agreement with the defendants for the licensing of your product during the early part of the 1934-1935 season and that your company did license its product to opposition theaters in some of the towns in which Griffith was operating theaters for that season?

A. Yes, I know that we did not license them that year.

Q. Can you tell us whether, prior to licensing those pictures for that season to opposition theaters, your company endeavored to license its product to Griffith in the situations in which they had been your established account?

A. Yes, we did.

Q. Why wasn't an agreement made with them?

A. Because we couldn't get together with them.

Q. You mean on terms?

A. On terms.

Q. Do you recall that later in the season you did enter into a contract with the defendants whereby the 1934-1935 product or some part thereof was licensed to them in towns in which you had not sold the opposition theaters?

A. Well, my memory does not run back to whether
2924 that is true or not. I know that we failed to get together with them on a deal for that season, and whether they later picked our product in some of their towns for that season or not I wouldn't know. I suppose the records will show that better than my memory.

Q. Do you recall that along in 1935 you entered into a three-year deal with the defendants for the licensing of your product for the seasons 1935-1936, 1936-1937 and 1937-1938?

A. Yes.

Q. I hand you a document which has been identified as Plaintiff's Exhibit RKO 44, and ask you to state if that is the three-year deal which you have in mind.

A. Yes, sir.

Q. It appears by that instrument that you licensed your product for that period to the defendants in certain towns

in which you had licensed your 1935-1936 product to the opposition theaters. I believe some of those towns are Ada, Norman and Stillwater. Having licensed your product to the opposition theaters in some of those towns for the 1934-1935 season, would not that establish those opposition houses as customers of your choice in those towns?

A. Well, it did for the period that I made a deal with them, but not permanently. I had prior to that been serving the Griffith brothers, who were the customers
2925 of my choice but, when I couldn't get together with them, I sold to whoever I could sell.

Q. But in those towns where you sold to the opposition for that season, I believe you have already stated that you did negotiate with the Griffiths but you could not make a deal with them?

A. To the best of my knowledge, we tried to sell the Griffith brothers, but could not.

Q. Were they still the customers of your choice in those locations?

A. I think I said that a minute ago.

Q. So for the next season, when you started to sell your product, you again attempted to sell to the customer of your choice, and were able to do so; is that right?

A. It must be right, yes.

Q. This document that has been referred to as Plaintiff's Exhibit RKO 44, and which is a three-year deal; do you commonly refer to that as a franchise agreement?

A. Well, it is a franchise agreement or a three-year agreement. Any way you call it, it is the same thing. We say right here on the front page that it is an RKO franchise—a three-year deal or a franchise. I think that is strictly technical. It is a three-year deal or a franchise. There is nothing in the word 'franchise' that means anything more than a deal for a period beyond 12 months.

2926 Q. That is the way you are referring to it, anyhow?

A. That is the only way we ever considered it. I don't know what other people consider it.

Q. During this period 1933–1934, up to and including 1939, how many franchises did RKO have with exhibitors in the United States?

A. I wouldn't know that. We had quite a number, but I couldn't tell you how many.

Q. Did they cover various and varied periods?

A. Why, we have had what you might call long-term deals or franchises, extending from two years to as long as ten years, with almost every type of exhibitor located in every section of America. Now, how many we had at

that time and just what they were, the records are there. I don't remember, but I know that we had a number of franchises or long-term agreements during that period with a number of exhibitors of every type—independent, affiliated or whatever you want to call them.

Q. I assume, then, that you would not be able to tell us offhand what percentage of your franchises were with so-called independent exhibitors—meaning by 'independent exhibitors' an exhibitor operating in only one town—and those with circuits, meaning those operating in more than one town?

A. I haven't the slightest idea.

2927 Q. Do you know how much of the revenue of RKO during the period mentioned came from the first run exhibition of your pictures as compared with second and subsequent runs?

A. I don't how the percentage, but I know that a very large percentage of our revenue, then and now, comes from the exhibition of pictures in first run theaters.

Q. During this period from 1933–1934 up to and including the season 1939, did RKO have any agreement with the defendants that it would not license its product on second and subsequent runs to any competitor of the defendants?

Mr. WRIGHT. That is objected to as leading and calling for a conclusion that the witness is not competent to draw."

The COURT. Overruled. Exception allowed.

"A. No, sir.

Q. State whether or not all of the agreements which RKO had with the defendants are reflected in the written license agreements under which your product was licensed to them.

Mr. WRIGHT. The same objection."

The COURT. Overruled. Exception allowed.

"A. Yes, sir.

Q. State whether or not during that same period there was any agreement by RKO with any of the defend-

2928 ants or their executives, representatives or employees not to deal with any competing exhibitors, or to fix or restrict the terms of RKO's dealings with such competitor other than the terms which may appear in the written license agreements which you made with the exhibitors.

Mr. WRIGHT. The same objection."

The COURT. Overruled. Exception.

"A. No, sir.

Mr. COCHRAN. You may take the witness.

Cross-examination by Mr. WRIGHT:

Q. Mr. Depinet, did I understand you to say that you negotiated the deals made with the Griffith circuits yourself?

A. No, I did not say that, Mr. Wright.

Q. Who did negotiate them?

A. They were negotiated by our managers, our district managers and our general sales managers.

Q. Then they merely came up to you in their final form for approval or disapproval; is that right?

A. Not just that. During the course of the negotiations I was consulted and informed and, on some occasions, I did talk with the Griffith brothers—not entering into the details, but possibly urging the Griffiths to loosen up a
2929 bit.

Q. But, in any event, the deal as finally made was one which had been negotiated as to terms by these other people that you mentioned; is that correct?

A. That is correct.

Q. Then you yourself, I take it, had nothing to do with the actual supervision of the performance of the details of the contracts or the deals?

A. Only in so far as instructions as to how our business was to be conducted, and assuming that our people carried out our general policies.

Q. Yes, I understand that you of course generally supervised the performance of the contracts and issued instructions, but I am referring specifically to the actual manner in which the Griffith deals were carried out by the Oklahoma exhibitors.

A. I haven't talked with all of our exhibitors, or with all of our customers. I think the answer is that I didn't enter into the details of the carrying out of the contracts.

Q. The men, then, who know how and in what manner those deals were actually performed are the exchange managers, I take it, or the district managers perhaps?

A. Our branch managers, district managers and general sales managers; but of course I knew whether or not
2930 they were living up to their agreements because, if they were not, it would eventually reach my desk.

Q. And you, I take it, had nothing to do with the negotiation of the deals which were made with the independent exhibitors in the years in which you say you sold away from the circuit?

A. Yes, I don't believe that I negotiated any of those deals.

Q. And, when you made the three-year franchise, did you yourself undertake to make any comparison of the per-

formances, in the particular towns involved, of the independents which had used the RKO product in the 1934–1935 season, with the terms of the performance under the new deal?

A. I cannot remember whether I did or not, but in a transaction of that size I certainly would have had before me information supplied by my associates as to what the situation was in the places that were sold away from them, in so far as they had played the product up to that time.

Q. I will show you this photostat of a letter that has been identified as RKO Exhibit 21, which is addressed to you and signed by an exhibitor named Mahone, and ask you if you recall having received that.

A. Yes, that letter has a ring of familiarity about it. I imagine that I received it. In fact, I know that I received it, or my office did.

2931 Q. Do you recall ever having answered it?

A. No, I don't believe I ever answered it."

Mr. COCHRAN. We have no objection to him using that letter as a basis of interrogating the witness, but we object to the admission of the document itself.

The COURT. It is between members of the same firm?

Mr. COCHRAN. No, it is between Mahone and the RKO Distributing Company, to which the defendants were not parties.

The COURT. Objection sustained. That is the same theory on which I excluded the other.

Mr. WRIGHT. I think we are on a little different basis here. I want to call your Honor's attention to the prior examination of Mr. Depinet, which I think makes this competent on other grounds. He had testified here that ordinarily in selling to accounts generally, the established account was the customer of their choice; that they offered him pictures before they offered them to anyone else. That is part of his testimony on direct examination. It appears from Mr. Mahone's testimony, that the pictures had not been offered to him, and it appears from this exhibit that they were about to be sold away to Griffith, which was expressly called to Mr. Depinet's attention, and Mr. Depinet admits receiving the letter, and that he did nothing

2932 about it. He also said in his previous answer here that he certainly would have before him information supplied by his associates as to what the situation was, and the places that were sold away from it, so in his testimony here he says he knew what the situation was there; that he had been told by his associates. It appears from the letter the fact that there was a sale-away was called to his attention by the exhibitor. The exhibitor complained about

it, yet he made no answer to this exhibitor, and we think that is a significant fact, and the only way the fact can be established is, of course, by the admission of the letter in evidence.

The COURT. The objection is sustained and exception allowed, but the letter is in the record. As stated before, Mr. Wright, there are a great many of these letters, exhibits that have been excluded with this condition, that if after the Court examines these records he is of the opinion that the letters are competent, they will be admitted.

Mr. WRIGHT. You have the question of impeachment here in addition to conspiracy. The letter and his failure to answer it is inconsistent with the witness' testimony, and I think we are entitled to have it admitted on that ground.

The COURT. If it is material at all, it is material as a matter of impeachment, but the question is, is that
2933 binding on these defendants, because there is a reference to the defendants? Can a communication between a distributor and an independent exhibitor be binding upon these defendants?

Mr. WRIGHT. I was assuming that if it did not bind the defendants it would still be admissible for the purpose of impeaching their witness.

The COURT. We will reserve the ruling on that feature of it until we examine them more carefully.

"Q. You yourself, I take it, are not now and were not then, I suppose, familiar with the particular individual competitive situations that were involved in that area?

A. I was familiar then with the competitive situations, as explained by our representatives. I don't believe that I was in those towns at the time and saw for myself, but our salesmen send in pretty comprehensive reports on the situations throughout America, and we have a pretty complete record of what goes on in each place. I would say that I wasn't in the town, Mr. Wright, and I certainly didn't know from first-hand on-the-spot information.

Q. You do not have any present recollection as to the situation there in Hobart; is that correct?

A. No, other than the fact that we sold back to Griffith, and that he wanted to buy the product again. That is all I can remember about it.

2934 Q. I think you said that the preceding year, in attempting to negotiate a deal with Griffith for the 1934–1935 season, you attempted to sell Griffith in all the situations where they were your established account before you sold the independents. Now, is it not a fact that your negotiations were not limited by the situation where they happened to be your established account?

A. That question is not clear to me.

Q. What I am trying to get at is that I suppose, for the 1934–1935 season negotiations with Griffith, your negotiations were not limited, were they, just to the Griffith situations where you happened to have sold them before? When you negotiate with them you negotiate for all of the situations for which they will buy; isn't that correct?

A. Well, I would assume so. You mean that they may have added some theaters between those years?

Mr. COCHRAN. No, he means they may have some theaters in locations where you have not established an account.

The WITNESS. I don't just understand what you mean, Mr. Wright.

Q. There was a limitation in Mr. Cochran's question that I don't think you perhaps were quite aware of, when he said you negotiated for——

2935 Mr. COCHRAN. Mr. Wright, this franchise does not cover such towns as Sapulpa.

(Discussion off the record.)

Q. What I am getting at is with respect to your negotiations generally; when you negotiate with a circuit you negotiate with respect to all of the towns in which the circuit is interested in buying your pictures; isn't that right?

A. Well, that would all depend upon the situation. Sometimes you negotiate with a circuit for part of their towns, because you sell to someone else in other towns they operate in. I don't think there is any set rule on that, Mr. Wright.

Q. Of course it would be impossible for you to recall at this time what towns were or were not included in specific negotiations you had with Griffith for the 1933–1934–1935 season; is that correct?

A. No, I cannot recall the towns. I don't know whether there were any new towns added that year as against the previous year or not.

Q. But there would be nothing in your policies that would prevent you from negotiating with them with respect to all towns in which they were interested in your pictures; isn't that right?

A. No, I don't think there would be anything in our policy to prevent that, unless we had reason to want to

2936 continue to do business with someone else in some particular spot.

Q. Well, if you did that I assume that would take the form of a—that is, you would exclude the town from the contract finally made, but I am talking about at the negotiation stage, negotiating with them as to all towns in which they were interested.

A. I think you are right; at the negotiation stage that would come up and we would say 'We want to talk to you about our product in those towns.'

Q. When you referred to the Griffith circuit as the customer of your choice, did you mean that you would automatically choose Griffith as your customer in any situation, regardless of what the opposition was?

A. Oh, I don't know that I would go that far. They had been our customer, and naturally we tried to sell them again. We didn't succeed, so that particular year we sold to what opposition we could find.

Q. When you say customer of your choice, all you mean is the particular customer that you choose to do business with at any particular time in any particular town; isn't that right?

A. Well, yes, I think that holds true of any customer to whom you sell.

Q. And that, of course, I assume varies from year
2937 to year, from town to town, and theater to theater, in accordance with the circumstances?

A. Oh, yes; I think the records will show that we weren't married to any particular customer, because there were times when we couldn't get with Griffith and sold to opposition theaters.

Q. Except when you had that three-year franchise that has been referred to?

A. Yes, but then we got together.

Q. So that during the three-year period they would be the customer of your choice?

A. When we got together then, we did it at one time instead of three different times.

Mr. WRIGHT. That is all.

Mr. COCHRAN. That is all. Thank you, Mr. Depinet.

(Subscribed and sworn to by the witness.)

ABRAHAM MONTAGUE, was called as a witness on behalf of the defendants and, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your place of residence and present occupation?

A. 160 Central Park South, New York City. I am the general sales manager.

2938 Q. Of what company?

A. Columbia Pictures—vice-president and general sales manager.

Q. When did you come to that position and what position did you occupy with Columbia Pictures prior to that time?

A. I came to that position in February of 1933.

Q. What positions did you occupy with Columbia prior to that?

A. For one year prior to that I was assistant to Jack Cohn, the executive vice-president, and prior to that district manager in charge of distribution for Columbia in New England.

Q. Does that cover your entire connection with Columbia Pictures?

A. No, my first connection with Columbia Pictures was in 1923, when I had a franchise with them and acted as state-rights distributor for them.

Q. You speak of a franchise from Columbia to act as state-rights distributor. Was that prior to the time that Columbia became a national distributor of motion pictures?

A. Yes, Columbia became, I believe, a national distributor in 1929.

Q. Prior to the time it became a national distributor how were Columbia pictures distributed?

A. Why, various exchange owners bought the film
2939 from year to year for certain territories throughout the United States. It was all divided up.

Q. Then those exchange owners, who were commonly referred to as state franchise holders, would contact the exhibitors and make license agreements for Columbia pictures; is that correct?

A. Yes, in the various territories where they had franchises.

Q. When Columbia became a national distributor of motion pictures, instead of using these various individual exchanges or exchange owners who operated independently of each other, Columbia established branch offices throughout the United States through which it distributed its own pictures; is that correct?

A. Correct.

Q. How many of those branch offices do you have in the United States?

A. Thirty-one.

Q. And are there exchanges located at Oklahoma City, Oklahoma, and Dallas, Texas?

A. Yes, sir.

Q. Who has charge of those exchanges? That is, what is the official title of the man who has charge of them?

A. Well, Dewey Gibbs is manager of the Oklahoma City branch, and Jack Underwood is the district manager.

2940 Q. Who is the branch manager at Dallas, Texas?

A. Jack Underwood. He acts as branch manager

in Dallas and district manager of the Dallas territory, the Oklahoma territory and the Memphis territory.

Q. When did you first become connected with the motion picture industry?

A. 1908.

Q. In what capacity?

A. As the owner of a little dance hall and motion picture house in Weirs, New Hampshire.

Q. When did you first become connected with the distribution of motion pictures?

A. In 1923.

Q. In what capacity and for what company?

A. I organized my own little state-rights company called Certified Screen Attractions.

Q. And did you continue to distribute pictures through your company until you became connected with Columbia, as you have heretofore indicated?

A. Yes, until we sold out to Columbia and then joined up with them.

Q. In addition to having a manager at each of your state exchanges, are there salesmen who operate out of each territory and who cover the territory in attempting to negotiate contracts?

2941 A. That is right.

Q. Do those salesmen or those branch managers have any authority to complete a contract; that is, to make it a final and binding agreement, so far as negotiation is concerned?

A. The policy is in most cases no, but in some cases yes.

Q. In what causes would you say yes?

A. Well, if we have a district manager or, in some cases, a branch manager go out on a particular assignment and he gets a deal that is satisfactory—a prearranged deal, we will say—he has the right of approval.

Q. In other words, if the terms have been given to him for a particular deal, and he goes out and is able to consummate it in accordance with those prearranged terms, then he can close it without further submission?

A. That is correct.

Q. But where he attempts to negotiate a season's deal with a customer, what is the practice that he follows?

A. The practice is to negotiate and send in a recommendation along with the contract, and the approval is vested in the home office.

Q. The salesmen and the branch managers do not have the power of approval then?

A. No, sir.

2942 Q. During the period 1933 up to and including 1939 were the pictures of Columbia licensed prior to the production of the pictures generally?

A. I did not understand that question.

Q. Did you execute contracts licensing your pictures for a particular season, say 1933–34 or 1934–1935, prior to the time those pictures were actually produced?

A. Yes.

Q. Does that policy still continue, so far as Columbia is concerned?

A. Yes.

Q. Columbia was not a party to the consent decree in United States versus Paramount?

A. No, sir.

Q. And for that reason you have continued to license your pictures prior to production and trade showing?

A. Yes, sir.

Q. Explain how your company goes about licensing its pictures prior to production.

A. You mean——

Q. Just explain in a general way how that is accomplished.

A. Well, say some time in January, or prior to a certain program, we meet with the studio officials and we lay out a comtemplated program. That program is usually

2943 priced, and we know approximately the proposed negative cost. We then formulate a policy of sale. The district managers are then called in and, in some cases, the branch managers are called in to consult with as to policy. Sometimes it is slightly changed. Then, if the policy holds up, meetings are held either with the salesmen and branch managers, or it is conducted by the district managers, at which the articles of policy, prices and terms are worked out. Salesmen are then sent out to the various zones and negotiations start.

Q. Did your company, during the period 1933 up to and including 1939, have a fixed price or fixed terms for its product for each town and each theater?

A. No, sir.

Q. How are terms arrived at between your company and an individual exhibitor or a circuit of theaters?

A. Well, we have what we call a policy-of-asking-price, but really they are arrived at by negotiation.

Q. What is sometimes referred to as horse-trading?

A. That is right, horse-trading.

Q. In other words, it is a bargaining proposition?

A. A negotiating and bargaining proposition. We try to get as much as we can, and the exhibitor tries to get it as cheap as he can.

Q. And that generally resulted in having varied prices and terms for your product in various towns even of
2944 comparable size?

A. When you talk about towns, prices do change quite a bit between towns of comparable size. It depends a great deal upon the type of house in the town, the type of exhibitor, and many other factors.

Q. Does it also depend a great deal upon what you consider the grossing possibilities of a particular theater?

A. Yes, the grossing possibilities, the integrity of the account, the possibility of the exhibitor staying in business; all those things are taken into consideration.

Q. In the matter of the selection of a customer with whom you desire to do business in a particular town, just tell us what are the factors that are given consideration by you which enter into a determination of the customer of your choice in that town.

A. Well, in most cases the customers of our choice are so-called long time customers, customers that we have had on the books for a number of years. It doesn't matter very much with us whether he owns one theater or owns hundreds of theaters. The district manager usually and in most cases gives the branch manager a list of the accounts that he wants to sell. He wants to sell accounts that he feels he can continue to go back to, and he does go back unless he may have some reason for discontinuing to sell the account. Our policies vary a great deal in Okla-
2945 homa. We have been known as national distributors, and we really call our policy such, but we give a great deal more authority to district managers in choosing accounts than most other companies.

Q. Right at that point: You state that there are towns in the United States where there is only one operator in the town and where you make no effort to license your product at all?

A. Yes, there are several hundred situations in the United States where there is only a single theater. I don't say that we make no effort. We always try to negotiate, but often they will offer a deal to us that we will not accept, and so we stay out and do not sell our product there at all.

Q. In other words, unless you can obtain a contract which you consider fair in the situation, you decline to make a contract, regardless of who the exhibitor is and whether there is competition in the town or not?

A. Our records will prove that.

Q. And that is correct?

A. Yes.

Q. You mentioned the fact that you like to deal with customers of long standing and with whom you have had satisfactory dealings over the years. Will you state whether you were acquainted with R. E. Griffith during his
2946 lifetime, and are acquainted with L. C. Griffith and Horace Falls?

A. Yes; it is a very desirable account, a very good friend of our organization.

Q. And have the various companies which were and are represented by those men been satisfactory customers of your company for many years?

A. Yes, I believe they have been satisfactory customers of our company for at least as long as I have been there, and that is back in 1933.

Q. From the history of your company, do you understand it to be a fact that they were customers of your company in many towns prior to 1933, before you came with the organization?

A. I believe the year before I came with the organization they were not our customers; that Columbia did not do business with them in 1932.

Q. My question was whether they had been customers of your company prior to that time.

A. Prior to 1933?

Q. Yes, and prior to this one season that you have mentioned.

A. I believe they had been customers.

Q. And since that time have the several companies been your customers in numerous towns in Oklahoma,
2947 Texas, and New Mexico?

A. Yes, they have been our customers in numerous towns, but I think there are a few towns where we do not sell them.

Q. During the period 1933 up to and including 1939 has there been any agreement between Columbia and the defendants to the effect that Columbia would not license its product, second and subsequent run, to any competitor of the defendants or either of them?

Mr. WRIGHT. I object to the form of the question, due to the fact that it calls for a conclusion which this witness is not competent to draw."

The COURT. Overruled. Exception allowed.

"A. No.

Q. During that same period has there been any agreement between Columbia and any of the defendants or either

of them, their representatives or employees, not to deal with any competing exhibitor, or to fix the terms and conditions of your company's dealings with any such competitor except under the terms of a written franchise agreement that you made with the Griffith organization?

Mr. WRIGHT. The same objection."

The COURT. Overruled.

"A. No.

Q. During that same period has Columbia had
2948 selective contracts, first, second and subsequent runs, with numerous exhibitors throughout the country?

A. Yes.

Q. What do you mean by selective contracts?

A. A selective contract is one in which the exhibitor does not license all of the pictures that we offer at one time.

Q. It appears in evidence here that some of the distributors during that period 1933–1939 inclusive endeavored to license their entire season's product to the exhibitor of their choice. Did Columbia have a more liberal policy with the exhibitors than what you understand to be the policy of some of the distributors in that regard?

A. Well, Columbia's policy has been to offer a group of pictures, which are a total group, for sale at one time. About 80 per cent of our contracts throughout the United States are selective.

Mr. COCHRAN. You may take the witness.

Cross-examination by Mr. WRIGHT:

Q. Of course as far as you are concerned, Mr. Montague, the less selective they are, the better; isn't that right?

A. Oh, we would like to sell them all that we offer.

Q. You always try to get them committed to take
2949 all; is that right?

A. Yes, we would like to sell them all.

Q. And that, I take it, was your policy throughout this 1933–1939 period, too?

A. We have tried, ever since 1933 and up to the present time, to have the exhibitor get playing time for all of them. Of course we often find out that it is not to our advantage to sell all, if there is not sufficient time to play all, and in such cases we negotiate a selective contract.

Q. Of course if he can not perform, he can not perform, no matter what kind of a contract you have?

A. We try to, and usually do, know that far enough ahead to make a contract accordingly.

Q. Then these contracts made between Columbia and Griffith, apparently signed by Rube Jackter—what was Rube Jackter's position?

A. Rube Jackter is my assistant, and he approves all contracts for the home office. He has a department under him that does the examining with respect to the contracts.

Q. Were these contracts negotiated by him or by someone under him?

A. No, most of the contracts, if you are referring to the Griffith contracts——

Q. Yes.

2950 A. Most of those were negotiated by one Sam Moscow, who has since passed away.

Q. He was your Southern district manager?

A. Yes.

Q. And the exchange managers, I suppose, also sat in on those negotiations?

A. The exchange manager in Oklahoma City and also Dallas, I think in some cases, not in all.

Q. Was there a division manager there also?

A. Well, that was Sam Moscow.

Q. Oh he was the division manager?

A. Yes.

Q. Then was there a division manager between Mr. Moscow and the exchange managers in that area?

A. No, Mr. Moscow was the division manager, and then in each branch there was a branch manager. He had charge of the branch managers in six offices in the Southwest.

Q. Of course the actual performance of the contracts was something that did not come to your attention particularly?

A. No, not unless there was some point of great importance which might be brought to my attention and which they did not feel they could settle otherwise.

Q. The actual booking of the pictures was something that was handled by the exchange managers?

2951 A. By the bookers and exchange managers.

Q. Did you have anything to do with the negotiation of independent accounts in that area at that time; I mean the small operators who operated in opposition to Griffith?

A. You are speaking of the area that Griffith operates in?

Q. Yes.

A. No.

Q. Those activities were all under the supervision of the exchange managers?

A. Or district managers or both.

Mr. WRIGHT. That is all.

Re-direct examination by Mr. COCHRAN:

Q. Mr. Wright has been using the words 'district manager' and 'division manager.' Did you have both a division manager and a district manager?

A. Under our operation the district manager and the division manager are one and the same thing. They are called either one.

Q. So that during this period Sam Moscow, now deceased, occupied the position you referred to, whether called division manager or district manager?

A. Yes.

2952 Q. In other words, he was the manager?

A. Yes, sir.

Q. Then the other parties who might have participated in some of the negotiations were the managers of the Dallas branch and the Oklahoma City branch?

A. Correct.

Q. Called branch managers?

A. That is right.

Q. The next man in line above Mr. Moscow was your assistant, Mr. Jackter?

A. Yes, sir.

Q. And then you were ahead of them, at the top?

A. Correct.

Mr. COCHRAN. That is all.

Mr. WRIGHT. That is all.

(Subscribed and sworn to by the witness.)

FRANK J. A. MCCARTHY, was called as a witness on behalf of the defendants and, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your residence and present occupation?

A. I live at 117 Harmon Avenue, Pelham, New York. I am Southern and Canadian sales manager of Uni-

2953 versal Pictures.

Q. Are Oklahoma, Texas and New Mexico in your territory?

A. Oklahoma, Texas and New Mexico are all in my territory.

Q. When did you get to be Southern and Canadian sales manager for Universal?

A. I would say that was about five years ago.

Q. Prior to that time what positions did you occupy with Universal?

A. Eastern sales manager, which also controlled Canada and the South.

Q. Including Oklahoma and Texas?

A. Including Oklahoma and Texas.

Q. How long did you hold that position?

A. Oh, about 14 years.

Q. Then during the entire period from 1933 up to and including the present time you have been sales manager for the territory which includes Texas, Oklahoma and New Mexico; is that correct?

A. That is correct.

Q. When did you first become connected with the motion picture distribution business?

A. In 1918, I believe.

Q. In what capacity?

A. Student.

2954 Q. And when did you first have a position with some motion picture distributor?

A. In 1919, as acting manager for Pictures Film Corporation, Buffalo office.

Q. When did you first become connected with Universal?

A. 1930, I believe.

Q. In what capacity?

A. Manager of their Boston office.

Q. During the entire period that you have been sales manager for the territory which includes Oklahoma, Texas and New Mexico, have you been acquainted with L. C. Griffith and Horace Falls and, during his lifetime, with R. E. Griffith?

A. I have.

Q. Were you acquainted with them prior to the time you became sales manager for Universal?

A. No.

Q. During the period 1933 up to and including 1939 what motion pictures did Universal Film Exchanges, Inc. distribute for exhibition in the motion picture theaters in this country?

A. Well, they distributed feature motion pictures, news reels, shorts, and serials.

Q. I am particularly referring, Mr. McCarthy, to the product of what company and, as I understand it,

2955 Universal Film Exchanges, Inc. is the distributor for Universal Pictures; is that correct?

A. That is correct.

Q. That is, they distribute pictures which are commonly referred to as Universal Pictures; is that right?

A. That is right.

Q. And those pictures are produced by what company?

A. Well, as I stated, the corporate name is Universal Pictures, Inc., but we always figure everything under the head of Universal Film Exchanges, Inc.

Q. During that entire period was Universal a national distributor of motion pictures?

A. They were.

Q. Do you know when it first became a national distributor?

A. I really don't know.

Q. Has it been a national distributor during the entire time that you have been connected with it?

A. It has been.

Q. During that entire time has it had exchanges located throughout the United States, used in the distribution of its motion pictures?

A. Yes.

Q. How many such exchanges has it had?

A. Thirty-one.

2956 Q. During this entire period has it had exchanges located at Oklahoma City, Oklahoma, and Dallas, Texas?

A. It has.

Q. What officer or representative of the company has charge of the operation of the exchanges or branch offices? What is the title of the officer or representative?

A. From a sales standpoint?

Q. Yes.

A. William A. Scully.

Q. What is the title of the man who is locally in charge of the exchange?

A. Branch manager.

Q. He is not an official of the company?

A. He is not.

Q. Then out of each of these exchanges are there salesmen who travel over the territory and license or negotiate for the licensing of motion pictures in the territory?

A. Yes.

Q. What authority did these salesmen and these branch managers have in the licensing of pictures?

A. Their authority was limited to taking an application. The salesman took an application for pictures and submitted it to the branch manager and, if he felt that it might be an acceptable application, he forwarded it to New York for approval or disapproval.

2957 Q. Would those contracts be completed, as final contracts, unless and until they had the approval of the New York office?

A. Until they had the approval of the New York office, they were considered as only applications for a contract.

Q. Did those branch managers have any authority to make any agreements relating to the licensing of motion pictures or relating to the licensing of the product of any particular distributor without the approval of the New York Office?

A. No.

Q. During this period from 1933 up to and including 1939 did Universal license its pictures prior to the time those pictures were produced?

A. Yes.

Q. Does that practice still continue?

A. It does.

Q. How did your company negotiate the licensing of its pictures prior to the time that the pictures were in existence for that season?

A. Well, it varied. On one occasion, one year, prior to the sale of the product we would hold a general sales convention, which was attended by general sales managers, district managers, division managers, branch mana-
2958 gers, salesmen and bookers. On another occasion they would hold a meeting without the salesmen or bookers. On another occasion we held a meeting without even the branch managers and only division managers, district managers and sales managers. Usually at those meetings either the general sales manager or the general manager for production would outline the production program for the coming year, go over each individual picture as to the story, the writer of the story, the producer and cast, and the expectancy from that picture. After that had been done, usually on the following day, the general sales manager gave out the selling policy and——

Q. What do you mean by the selling policy?

A. The selling policy was the general policy presumed to be applicable to all types of selling, but it varied in the actual selling, to meet the conditions under which the product was sold and the individual situations.

Q. Then, after outlining that general policy, what was done next?

A. Well, the branch manager then went back to his branch, sat down with his salesmen and went over all the possibilities of his zone, discussed the prior deals, and based upon what was the type of deal wanted.

Q. With the larger customers what policy was followed?

A. Well, with the larger customers we usually con-
2959 sult our division manager, district manager or branch manager. There was usually a consultation in that regard between these three managers, division, district and branch, to try and set up the sales policy that was given out at the sales convention to meet the various conditions of the circuit sales.

Q. You spoke of those sales policies being established at the meeting. In the licensing of motion pictures does your company have a policy of placing rental terms on a picture

that would be the same for every theater throughout the country, or what was done with regard to that?

A. Yes, when it was originally set up, the idea was that the policy given out by the general sales manager should apply theoretically to every scale.

Q. You don't mean that, in dollars and cents, you would set a price on any particular picture that you would expect to obtain from a theater of your choice for first run of Universal, which would be the same as the price you would receive for the same picture in Ada, Oklahoma?

A. No, but the basic proposition might be the same, and you would get a straight percentage.

Q. After setting up that general policy, how were the terms on your pictures that Universal licensed to an exhibitor in any particular town for a certain season arrived at?

2960 A. Well, that usually came out of a discussion in the branch between the salesmen and the branch manager, and based upon their knowledge of the grossing possibilities of the pictures to be set up in the deal.

Q. Was that policy followed with the larger customers?

A. The same policy, in effect, carried right through, no matter who made the sale.

Q. No, I mean would the branch manager set up that deal with the larger customers?

A. No, that would be done in consultation with the district manager and the division manager and, if it happened that the general sales manager was in on the deal, he would be in the consultation also.

Q. I take it, from the statements you have made, that these motion pictures are not a fixed-price commodity?

A. No, sir, it is a variable-price commodity.

Q. Would the terms and conditions on which the product was licensed during a particular season to various theaters throughout the country vary a great deal?

A. Yes, sir.

Q. As you have stated, to meet particular situations and as a result of bargaining in connection with the negotiation?

A. That is right.

2961 Q. In towns in which there were competing theaters how did your company decide or choose the customer in that particular situation?

A. Well, there are a number of conditions that would enter into that—the type of operation of the house, how the exhibitor put over pictures, the admission charged, how the exhibitor usually liquidated his contracts, and how much trouble he was to us, if any.

Q. Would your knowledge and acquaintance with the particular exhibitor and his history with your company have anything to do with the matter?

A. Yes, that would have a bearing on it also. It would be one of the factors that would enter into it.

Q. In any particular situation, might one of those factors which you have mentioned, or other factors, be the determining factor in the choice; whereas, in another situation, some other factor might be the determining factor?

A. That is possible.

Q. You spoke of admission prices being a factor. Did your standard forms of contract have blanks for the insertion of admission prices?

A. They did.

Q. What was the policy of your company as to the amount which was required to be inserted in those blanks, if it had any such policy?

2962 A. Well, they usually inserted it in the contract at the time the deal was negotiated.

Q. In other words, if an exhibitor had a particular admission schedule in his theater at the time the deal was made, you did not attempt to require him to insert some other admission charge in your contract?

A. Generally no.

Q. But there have been exceptions to that rule, have there not?

A. Well, there have been exceptions, such as when we have a sell-away or a dumping from a class A account. We endeavor in such a case to have him change his admission, on all types of admission, but we don't always succeed.

Q. You mean by that, that is not an absolute requirement?

A. No.

Q. During any part of that period that I have mentioned before, did you have any requirement that the admission should not be less than a cetrain amount?

A. I don't remember now whether we did or not. I think the only thing we had in our contract was the stated admission charged in the theater at the time the contract was negotiated.

Q. Did your company follow the same policy in choosing its customer for a particular town, without regard
2963 to whether the theaters operating in that town were theaters operated by a person who operated only in one town, or whether the exhibitor might be one who operated a number of theaters in other parts of the country?

A. Will you repeat that question, please?

Q. (Question repeated by the reporter.)

A. I would say yes.

Q. In other words, the same factors which you have mentioned, and other factors to which you would give consideration, in determining the customer of your choice in a particular town?

A. There have been exceptions, but that is generally true.

Q. Just what do you mean by 'there have been exceptions?'

A. Well, in a situation, for example, like one when I was operating the Boston office, where we sold a house that was probably the poorest type of house, physically, that could exist, but a very smart manager exploited the pictures very well and it was a sell-away from the circuit; and afterwards we made a deal with the circuit, probably three years after, but we still continued to serve this account, and still do, I believe.

Q. By the term 'sell-away' there, you mean that the circuit had been your established account in that town?

A. That is right.

2964 Q. And you then decided on this theater that was not such a good house; you decided on that exhibitor as your customer?

A. Right.

Q. And sold your product to that customer, and have continued to do so since that time?

A. That is correct.

Q. You gave that instance as an example of the fact that during the period mentioned you had exercised your own judgment in regard to determining who your customer was to be in any particular situation?

A. We try to.

Q. And do you exercise that judgment?

A. Yes.

Q. Did you participate in negotiations for the licensing of your product to the Griffith Amusement Company; Consolidated Theaters, Inc.; R. E. Griffith Theaters, Inc., and Westex Theaters, Inc. during the years 1933 to and including 1939?

A. I believe I was in on the negotiations of all those deals.

Q. It appears from the evidence in this case that for the season 1935–1936 Universal licensed its product to exhibitors who were competitors of one of the defendant companies in quite a few towns, including, I believe, Ada,

2965 Stillwater, Norman, Shawnee, Duncan and perhaps Sapula, and the following season it again licensed its product to the particular defendant company which was operating in those respective towns. Will you explain why that was done?

A. Well, I would say that evidently, in the year that we didn't sell the Griffith Amusement Company, we could not get for our product what we thought was an equitable deal, and we decided then that we would do the best we could with our product.

Q. Did you negotiate and attempt to reach a deal with Griffith Amusement Company for that season?

A. Yes, sir.

Q. In those towns for that season, and in the other towns where there was a sale to the opposition exhibitor, if any, was the defendant company operating in that particular town the exhibitor of your choice for that particular season?

A. Yes.

Mr. WRIGHT. Will you let me hear that again, please?

(Question and answer repeated by the reporter.)

Q. In other words, it was your desire to sell to the defendant company operating in that town?

A. I think that is a little confusing, isn't it?

Q. All right; I will strike that out.

2966 A. Or probably I misunderstood it. I understood your question to be: Was it our choice and our decision to sell our account, our product, to whom we sold away from Griffith in that year, and I said Yes.

Q. You did sell away, but what I want to know is this: Whether your preference of account for that year was the Griffith company doing business there?

A. Yes, it was the Griffith company.

Q. But because you were not able to make a satisfactory deal, you did the best you could with your product and sold it to the competing account?

A. That is right.

Q. Having sold the Griffith competitor in this town, or in those towns, rather, for that one season, state whether or not you still considered the Griffith account in that town to be your established account?

A. Yes, we did.

Q. And the next season did you again negotiate with Griffith for the sale of your product?

A. We did.

Q. And were able to reach what you considered an equitable deal?

A. That is right. We got all we could get.

Q. In some of the Griffith contracts it appears that there was no provision relating to the admission which was
2967 to be charged by those theaters. Will you explain why the admission charges were not stated in those contracts?

A. Well, generally in negotiating and closing a circuit deal, we never enter the admissions in individual contracts. We consider that the admission that is charged at the time the deal is closed is the admission for that particular theater.

Q. Do you at the time have a copy of the admission schedules that are being charged by the various theaters?

A. We do.

Q. During the period 1933-1934, up to and including the present time, has there been any agreement by Universal with the defendants that Universal would not license its product, second and subsequent runs, to any competitors of the defendants or either of them?

Mr. WRIGHT. That is objected to as asking this witness to draw a conclusion which he is not able to make."

Mr. WRIGHT. I just want to add the same objection applies that I made before, that the conclusion in any event is for the Court only to draw.

The COURT. Will you read the question and answer again please?

(The question and answer was read by the attorney.)

The COURT. The objection will be overruled and exception allowed.

2968 "Q. You may answer the question.

A. No, sir.

Q. During that same period has there been any agreement between Universal and any of the defendants or their representatives, officers or employees, not to deal with any competitor of any of the defendants, or to fix terms and conditions with any such competitor, except such restrictions as may appear in the license agreements which were executed between Universal and the defendants?

Mr. WRIGHT. The same objection."

The COURT. Overruled; exception allowed.

"A. No, sir.

Mr. COCHRAN. You may examine.

Cross-examination by Mr. WRIGHT:

Q. Mr. McCarthy, when you said that you sold pictures in a particular town and you decided which theater to serve without reference to whether or not one theater was part of a circuit, you did not mean to suggest, did you, that the affiliation of one theater with a circuit was not one of the factors that you considered in determining the deal you would make?

A. No, sir.

Q. And whenever you deal with a circuit as a circuit you necessarily consider, do you not, the terms available

2969 in the entire circuit?

A. Yes, that might be part of the consideration.

Q. Is that correct?

A. Yes.

Q. So that in any particular situation where a circuit theater operates, it is not just a question of matching the circuit theater against a single independent theater in that town, is it?

A. No, sir.

Q. Or the circuit operator against the independent operator?

A. No, sir.

Q. When you say that in those towns where there was opposition to Griffith in the 1935-1936 season, Griffith was the customer you would have liked to have sold, is it not a fact that in several of those towns you actually got more out of the independent account than you had been accustomed to get from Griffith?

A. That is correct.

Q. And you say, notwithstanding that, that when it came time to negotiate a deal for the 1936-1937 season, instead of negotiating with the independent for a continuation of the runs to be sold that year, you again negotiated with Griffith?

A. That is correct.

2970 Q. And you gave the independents no opportunity to negotiate for a continuance of their run?

A. Well, I would say this, that we do not make any deal, in what we call a sell-away, without advising them it is a one-year deal anyway.

Q. You yourself, I take it, did not negotiate any of those deals that were made with independents; is that correct?

A. That is correct.

Q. Those were all, I take it, negotiated by the salesmen or the branch managers?

A. The branch manager, usually.

Q. And I suppose they would be the only ones who would know what was or was not said to the independents at the time the deals were made; is not that correct?

A. It is our policy in sell-aways——

Q. I didn't ask you that. Listen to the question again.

(Question repeated by the reporter.)

A. That is correct.

Q. There were many people through this period who negotiated deals with Griffith besides yourself, were there not?

A. Well, there were other people in on the ngotiations besides myself.

Q. Those would include the managers of the Oklahoma City and Dallas branches?

2971

A. Yes, and the district manager.

Q. Then there was Mr. Scully?

A. Scully never negotiated a deal with the Griffith companies, and he never sat in on them.

Q. He apparently signed the contracts, but that was, I suppose, on their recommendation?

A. That was our practice, as a matter of form.

Q. In so far as the actual performance of the contracts was concerned, making the pictures available to Griffith and the independent accounts in that particular territory, that is something that did not come to your attention?

A. No, that is under the branch managers.

Q. The branch managers were responsible for that?

A. Yes.

Q. I show you a letter here dated September 29, 1938, addressed to Mr. Olsmith by your Dallas exchange and apparently signed by you, which has been marked for identification as Plaintiff's Exhibit U–5–F, and ask you if that appears to be your signature.

A. What is the question, is that my signature?

Q. Yes.

A. Yes, that is my signature.

Q. Will you read the letter and tell me if that correctly sets forth the facts that are recited there as to a

2972

certain negotiation you had with Mr. R. E. Griffith shortly before?

Mr. Cochran. We object to the form of the question as not a proper method of proving the substance of the purported transaction. The witness is here for examination, and the letter is incompetent for the purpose of attempting to prove the substance of the statement."

The Court. Objection overruled, and exception allowed.

Mr. Cochran. We are still urging that objection, your Honor. That is the same type of examination, as I understand it, that has been attempted here, taking a letter, an inter-office communication or a letter that was written between this representative of Universal and some of their employees.

The Court. I thought the letter was written to Griffith or by Griffith?

Mr. Cochran. This is a letter dated September 28, 1938, addressed by this witness to Mr. Olsmith, the Dallas manager.

The Court. Well, I didn't understand the question. I thought it was written to Griffith.

Mr. GRIFFING. It is in regard to negotiations with R. E. Griffith.

The COURT. The objection will be sustained to the
2973 inter-office communication.

Mr. WRIGHT. If the Court please, it is a memoranda written by the witness himself, and I sumit we would be entitled to examine him on the memorandum, regardless of who it was addressed to.

The COURT. You may examine him in regard to his credibility, but it wouldn't be binding on the defendant.

Mr. WRIGHT. If the Court please, the question we asked him was whether or not the memorandum was a correct statement of the transaction. How that could possibly be objectionable on the grounds that the memorandum was not addressed to Griffith, is beyond me. What it was, it was a memorandum in his handwriting made at the time, and we asked him if it was a correct statement.

The COURT. Read that part of it again.

(The three preceding questions and answers were then reread.)

The COURT. I am inclined to think that is competent. He is asking this witness whether or not that, in effect, constitutes the negotiations with R. E. Griffith.

Mr. COCHRAN. I suggest we go ahead, then we will bring the exhibit up.

The COURT. The objection will be overruled, and an exception allowed.

"A. What is that last question in reference to this?
2974 Q. (Question repeated by the reporter.)
A. Yes.

Q. When you said that generally in circuit deals you omitted to include any specification as to admission prices, did you mean to say that, when you made a deal with a circuit, it was a matter of indifference to you what admission prices they charged for your product?

A. No, it is not, but we presume that the circuit is charging all that the traffic will bear under that situation.

Q. Well, don't you ordinarily attempt to see that at least the circuit is committed, with respect to your percentage deal, to charge certain minimum prices?

A. We know they do. It is our experience that tells us that.

Q. Well, did you know, as to this circuit, whether they fixed their prices which they charged in all of their theaters at the times they played your pictures?

A. Well, if I understand the question correctly, I will have to answer it this way: At the time that deal was negotiated, or when deals were negotiated during that pe-

riod, our deals with Griffith were on the basis of a flat rental deal, so it was not a matter of great importance what they charged for our pictures; but from our experience we knew that they were charging as much as the traffic would bear. That is from information we got
2975 from the branch managers, but we had no authority over the admission price charged on those pictures, because they were sold at flat rental.

Q. Of course where you sell a second or subsequent run following a senior, you ordinarily require the circuit, just like anyone else, to maintain a high enough admission price so that there is a proper differential there; isn't that correct?

A. Well, it comes down again to the fact that to my knowledge we don't put any admission prices on the circuit. We presume it would not charge an admission on the second run so low it would affect their first run return.

Q. You mean you rely in those cases on sort of an implied agreement that they will maintain the prices they were charging when the deal was negotiated?

A. Yes.

Q. What happens if they do not?

A. Then we go to them—if we think it affects our revenue return, we go to them and tell them what they are doing, and have it corrected, if possible.

2976 Q. Without any provision in your contract, whether or not they correct it, I suppose, is entirely up to them?

A. Well, if it affected us and they did not correct it, they wouldn't get any pictures, regardless of the contract.

Q. Well, under your contract, if there is no admission price specified, you mean you would breach the contract by holding up pictures, if the price didn't agree with your desires?

A. We assume that the price charged at the time of the negotiation of the contract is the fixed admission for that theater.

Q. So even though the price did not appear there, you say you would regard the circuit as having impliedly agreed to maintain the price?

A. That is right.

Q. Did you yourself, in connection with these Griffith deals—did it come to your attention that in many situations they were cutting prices very drastically and giving away free tickets, and all of that sort of thing?

A. I never heard that.

Q. Is that such a thing as would normally come to your attention, or who would know that?

A. It would come to my attention throught the branch manager.

2977 Q. And in this case it never did; is that right?

A. Free tickets? No, sir.

Q. You say that, had it been brought to your attention, you would have suspended service?

A. No, sir.

Q. Well, perhaps I misunderstood you.

A. Let me ask you this: Would that be a situation where there would be an opposition theater, with opposition following them as a sub-run?

Q. I am talking about a case where there was opposition.

A. On a flat rental deal?

A. Not necessarily opposition to your pictures; I mean where opposition theaters were being——

Q. No, where you are selling Griffith and there was an opposition house and there was a price war, let us say.

A. We wouldn't be deeply concerned about that, if we were not selling the other account.

Q. As far as you were concerned, they could charge any price they pleased, as long as you did not have a second or subsequent run account in opposition?

A. Oh, no, I wouldn't say that—not any run, because that would affect the whole territory.

Mr. COCHRAN. When you said run, you meant price?

2978 The WITNESS. No, not any run—any price.

Q. Well, just what would you have done had it been brought to your attention that Griffith was cutting its prices and giving away free tickets in that territory?

A. Well, if we figured that was affecting us, we would stop supplying our pictures.

Q. How would you determine whether it was affecting you or not? You say you had a flat rental deal?

A. That would come from the branch manager. He would say 'You are selling pictures to Griffith, and he is charging so and so.'

Q. So far as you know, that situation was never brought to your attention?

A. Not in the Dallas territory or the Oklahoma territory.

Mr. WRIGHT. That is all.

Re-direct examination by Mr. COCHRAN:

Q. Referring to your testimony in regard to admission prices and what action you would have taken had it been called to your attention that the defendants were charging admission prices which you considered were detrimental to your company's interests, would you also have done something about that when it came time for the next season's

deal, if it had been called to your attention that your
2979 customer had been charging terms and prices which you considered detrimental to your interests?

A. Very definitely, we would have.

Q. Now, through your branch managers did you keep informed as to the schedule of admissions and policies of the various theaters which were operating as your customers, did you not?

A. We have a complete record of that.

Q. And also your company has a history of the operations in that particular town by your customers from year to year?

A. Yes.

Q. You said that you considered that there was an implied agreement that the exhibitor would continue his admission price policy which was in effect at the time this particular contract was made. Do you mean by that, that you considered, when there was no reference made to the admission price in the particular contract, the custom was that the prices for the prevailing season would remain as the price policy or the admission policy under that particular contract?

A. The admission that they were charging at the time the contract was negotiated we considered the admission price for the contract.

Q. And that was the custom?

2980 A. Yes, so far as we were concerned.

Q. And still is?

A. Yes, we still have them that way.

Q. Are there instances in which memorandum contracts are drawn up with so-called independent operators, in which the admission prices are dealt with in the same way?

A. Yes, sir.

Q. Now, speaking of memorandum contracts such as have been referred to in this case as master agreements for the season's product, just explain how those agreements compare with your ordinary printed form of contract.

A. They usually supplement the printed contract.

Q. In other words, it is simply a supplement and not an exclusion of the printed form of contract?

A. No, sir.

Q. Your answer is that it does not exclude the printed form of contract?

A. That is right.

Q. Do you find it necessary, in every contract you draw, to either interline or add by way of supplement or rider to the printed provisions of the contract, in order to correctly

reflect the agreement which is reached after negotiation with a particular exhibitor?

A. That is generally true on circuit deals.

Q. Isn't it true of every deal or any deal? Don't you frequently find, on the face of the printed form of contract, statements as to when the play is to commence, and things like that?

2981

A. Yes, we have supplemental agreements right in the contract itself.

Q. Isn't it necessary, in each and every instance, to have supplemental riders written in?

A. Practically every contract has them.

Q. You mentioned the fact that it is customary for circuits to charge, as an admission price, all that the traffic would bear. Now, has it been your experience that in the matter of admission prices to be charged by a theater, regardless of where is may be, the matter of determining the admission price is largely a matter of finding a price which will bring in the most customers in competition with other forms of entertainment?

A. I could answer that is apparently the basis upon which they do it. I don't operate the theaters, but I presume that is the basis on which they set up their admission prices.

Q. Beginning with the season 1938-1939, R. E. Griffith Theaters, Inc. and Westex Theaters, Inc. negotiated their deals for your product entirely separate from Griffith Amusement Company and Consolidated Theaters, Inc., did they not?

2982

A. I know they were separate, but I am not sure what year. If your records indicate that, I would say yes.

Q. Your attention has been called to this Plaintiff's Exhibit U-5-F, in which there is a statement about R. E. Griffith not agreeing to the 60-day limitation clause. I will ask you if you don't know it to be the fact that that was the season when R. E. Griffith separately negotiated for the theaters of R. E. Griffith Theatres, Inc. and Westex Theaters, Inc., and Horace Falls negotiated separately for the theaters of Griffith Amusement Company and Consolidated Theatres, Inc.

A. I would say that the records would indicate that. I know there was a separate year, but the records would indicate that.

Q. I call your attention to the document which is identified as Plaintiff's Exhibit U-6-A to D, and ask you to state if that is not the agreement or contract with the Griffith Amusement Company and Consolidated Theatres, Inc. for the 1938-1939 season.

A. Yes.

Q. And I call your attention to a clause which reads: 'The exhibitor agrees to notify the distributor of pictures to be eliminated within 60 days after release.'

A. Right.

Q. I also call your attention to a document which is
2983 identified as Plaintiff's Exhibit U-5-A to G, and ask you to state if that is the contract with R. K. Griffith Theatres, Inc. and Westex Theatres, Inc. for the season 1938–1939.

A. It is.

Q. Now, can you state whether, for that season, those deals were separately negotiated?

A. The record indicates that we negotiated separate deals with R. E. Griffith for his circuit, and with Horace Falls for the Griffith Amusement Company.

Q. You distinctly recollect that, beginning back about that time, there were separate negotiations for your product?

A. Yes.

Q. And since that time Horace Falls has negotiated the deals for Griffith Amusement Company and Consolidated Theatres, Inc., and R. E. Griffith or someone representing R. E. Griffith Theatres, Inc. has negotiated the deals for R. E. Griffith Theatres, Inc., Westex Theatres, Inc. and other companies that R. E. Griffith was operating?

A. Yes.

Q. Can you tell us whether, after this 1938-1939 season, this clause providing for a 60 day elimination was also inserted in the R. E. Griffith contracts?

A. I wouldn't know that, unless the records would
2984 show it.

Mr. Wright. I think the documents speak for themselves.

Q. Do you recall whether at that time it was a custom of your company, in deals which were generally made with so-called independent exhibitors, to insert a provision requiring that elimination should be made within a certain number of days from the release date?

A. Not to my knowledge.

Q. You stated that in negotiating contracts with the circuit it was customary for you to take into consideration the fact that it was a circuit deal and involved revenue from more than the one situation in which you were selecting a customer. Will you please amplify that statement as to what consideration was given by you?

A. Well, that is a difficult question to answer, because you have to consider whether the circuit was a customer of yours regularly and continuously or whether they were merely intermittent customers, or whether the circuit was—

Q. You mean in that particular town?

A. Yes, that is right—or whether they were fair in their negotiations. Generally you would get more money out of the circuit because we, as a distributor, played up the fact that it was a circuit and tried to get more money

2985 from the circuit.

Q. But in the event of a particular situation where you had an established account with an independent, was it your policy to sell away from that account just because you had a circuit operating a theater in that town and more revenue could be obtained from the entire circuit than you could obtain from an independent operator in that particular town?

A. No, sir.

Q. I believe in the beginning of your testimony you gave an illustration of a situation where you continued to sell an established account as against a circuit, even though the circuit probably could have paid you more money in that town.

A. Yes, much more.

Mr. Cochran. That is all.

Re-cross-examination by Mr. Wright:

Q. In that Boston situation you referred to, in the Boston exchange territory, that was a situation where you were able to continue to sell an independent account and also the circuit in the rest of the towns in which the circuit operated?

A. Not for three or four years. We didn't sell the circuit for three or four years.

2986 Q. When you finally did sell the circuit, you were still able to sell the circuit and also the theater in that particular town?

A. Well, it is a matter of booking of the top pictures in the preferred time over the circuit. It is customary for the circuits to block out their preferred time in all their key situations so that they will follow either simultaneously or they will follow consecutively in the various houses, and so that the companies we are selling completely for the entire circuit have an advantage over the company that doesn't, in so far as getting the preferred time on their top pictures in concerned. Do I make myself clear?

Q. Well, I don't know. Are you talking about circuits generally or this particular Boston circuit?

A. Well, generally that is true. Of course there are some circuits that book just the opposite to that. They will take the small towns first and then go into the key towns. That happens in some of the Southern circuits.

Q. It is not quite clear to me just what this was supposed to illustrate, or what you had in mind.

A. Well, that is the only way I can answer the question.

Mr. WRIGHT. All right, that is all.

2987 Re-direct examination by Mr. COCHRAN:

Q. As I understand that last answer of yours, basically it goes back to your proposition that the rentals which you receive under your contract, whether flat or percentage, are rentals which, in the final analysis, are what you consider a percentage of the gross from a particular house; is that correct?

A. That is correct.

Q. And when pictures would be booked to advantage from a preferred playing standpoint—that is, the pictures of your company—you would expect the exhibitor to obtain a greater gross from those pictures than if they could not be booked to the greatest advantage from a preferred standpoint?

A. I don't understand that question.

Q. (Question repeated by the reporter.)

A. I still don't understand it.

Q. All right, strike it out. Do not try to answer a question if you don't understand it. By preferred playing time what do you mean?

A. Preferred playing time, to us, means the days of the week on which the pictures gross the most money.

Q. Then the greater the number of your pictures which an exhibitor can book on preferred playing time, the
2988 greater the gross you would expect to be received on those pictures?

A. Yes.

Q. And, consequently, the greater the amount of rental you would expect to receive from the exhibitor?

A. Yes.

Q. In your negotiations with the defendants was there at any time any threat that, in the event the theater of theaters of a particular defendant in a given town were not selected as against the opposition, your product would not be licensed for other towns?

Mr. WRIGHT. I object to the form of the question. He can testify to what the negotiations were, but I don't think he is competent to characterize those negotiations in terms of whether there was or was not a threat."

The COURT. I think it is leading and suggestive. Sustained.

Mr. COCHRAN. I believe the objection was not made on the basis of being leading and suggestive at that time.

The COURT. Well, it is calling for a conclusion in addition. I have permitted you to ask questions now with reference to agreements or understandings because those are the words that are used in the pleadings, the allegations in this case and gives an opportunity for
2989 opposing counsel to go into the question of agreements in more detail in determining whether the acts themselves constitute an agreement, but you are asking about threats. I think it is objectionable.

Mr. COCHRAN. Very well.

"Q. You may answer.

A. No, sir.

Mr. COCHRAN. That is all.

Re-cross-examination by Mr. WRIGHT:

Q. Now, as a mater of fact, in the season in which you were out of the circuit you were out for all of the towns, were you not?

A. That is correct.

Q. Both towns in which there was no opposition, as well as where there was opposition; is that right?

A. That is correct.

Q. And when you went back in for the 1936-1937 season you did not negotiate, did you, on the basis of simply going back into the closed towns and staying with the independents in the opposition towns?

A. No, sir.

Q. It was a question of getting back into the circuit as a whole or not at all, was it not?

A. No, sir, that was never brought up.

2990 Q. Well, what was brought up?

A. Do you want me to give you an example?

Q. Just tell me what the actual negotiation was.

A. We negotiated for the circuit.

Q. As a whole?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. There was no specific part given to you, was there—no specific opportunity to sell the competitive situation in opposition to Griffith and still sell the Griffith situation where there was no opposition; is that correct?

A. We never gave that consideration.

2991 Q. Can't you answer my question?

A. Let me hear it again.

(Question repeated by the reporter.)

Mr. WRIGHT. Strike that out.

Q. Was a deal offered to you by the circuit for that 1936-1937 season whereby you could continue to sell the independent theaters in opposition to Griffith and at the same time sell the closed towns in the Griffith circuit?

A. We didn't negotiate on that basis.

Q. Can't you answer that Yes or No?

A. No, I can not.

Q. (Question repeated by the reporter.)

A. Well, in the first place——

Q. Just a minute. I want an answer to that question. Can't you answer it?

A. No, I can not answer that question, because that intimates that I asked for their approval and they turned me down, and I can not answer that question Yes or No.

Q. There is no intimation at all. Just take the question literally and see if you can not answer it Yes or No, and then you can cover the intimations or explanations later, but I do think you can answer the question, if you listen to it carefully.

(Question again repeated by the reporter.)

A. No.

2992 Mr. WRIGHT. That is all.

Re-direct examination by Mr. COCHRAN:

Q. Don't you recall, Mr. McCarthy, that in the town of Hobart your established account at that time was the opposition theater?

A. That is right.

Q. And did you negotiate this deal with the defendants for various towns without including the town of Hobart?

A. That is right; we sold Hobart away from Griffith.

Q. All the time?

A. That is right.

Q. These other towns which you included in your deal and negotiations for the 1936-1937 season were towns where, as you have stated, the defendants were your accepted and established accounts?

A. Yes.

Q. Whereas in Hobart the opposition was your established account and your preferred customer?

A. Right.

Q. You stated a moment ago that you could not properly answer the question which was asked Yes or No because

there were certain intimations in it. Will you explain just what you meant by that?

A. Well, in the first place, if you are making a
2993 deal you must present the deal yourself, and we presented the deal to the Griffith Amusement Company and we did not ask for any privilege of sell-aways.

Q. In other words, you solicited the deal in connection with the towns that were included in the deal?

A. That is right; where Griffith had been our regular customer.

Q. And you excluded such towns as you desired to exclude and negotiated in the rest of the deal?

A. Correct.

Q. As you said, according to your idea, what was thought of the deal in connection with opposition theaters in certain towns was not an acknowledgment that those exhibitors would be your established accounts at those places?

A. Correct.

Q. In 1935-36, when you did not sell Griffith—and you stated you did not sell them in any of the towns?

A. To the best of my knowledge we did not sell them in any of the towns.

Q. Was your failure to reach a deal with the defendants for that season to their insistance that you license no theater in a particular town where you desired to license the opposition?

Mr. WRIGHT. That is objected to on the ground it calls for a conclusion which this witness can not properly
2994 draw. I have no objection to his stating what the negotiations were."

The COURT. Overruled; exception allowed.

"A. No, sir.

Mr. COCHRAN. That is all.

Re-cross-examination by Mr. WRIGHT:

Q. Your failure to reach a deal was simply due to the fact that you could not get together on the actual terms of all kinds on which you wanted to do business; isn't that correct?

A. Correct.

Q. And you could not single out any one factor above all the others as being responsible for the failure in any event; isn't that correct?

A. That is correct.

Mr. WRIGHT. That is all.

By Mr. COCHRAN:

Q. In that connection, did you mean failure to get together on rental terms?

A. Rental terms."

(Subscribed and sworn to by the witness.)

"Mr. WRIGHT. In connection with that exhibit U-5-F, I asked Mr. Kime to see if he could locate it. We, apparently, don't have a copy of it, but I want to reoffer
2995 it at this time.

Mr. COCHRAN. May we just hold that up. I have a copy of it at my office, but I didn't bring it this morning. We will bring it up again at the afternoon session.

Mr. WRIGHT: I just want the record to show that it was reoffered by us.

Mr. COCHRAN: I think we will make no objection to it.

The COURT: You are offering it and the Court will withhold his ruling on the offer until the letter is presented.

Mr. WRIGHT. Very well, your Honor.

"WILLIAM F. RODGERS was called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your residence, Mr. Rodgers?

A. Rye, New York.

Q. What position do you hold with Loew's, Inc.?

A. I am general sales manager.

Q. When did you first come with Loew's Inc. or its predecessor?

A. Well, consecutively, I have been there since 1920. I commenced with the Goldwyn Company.

2996 Q. What motion pictures does Loew's, Inc. distribute?

A. The product that is made at the Metro-Goldwyn-Mayer studios.

Q. Commonly referred to as Metro pictures?

A. Commonly referred to, yes.

Q. Is Loew's Inc. a national distributor of motion pictures?

A. Yes.

Q. In the Oklahoma, Texas and New Mexico territory what sales representative does Loew's, Inc. have immediately under you?

A. Well, we have at this time a midwestern sales manager. I might say, however, that that has been recently changed and it is now what we call a Southern sales manager, who has charge of Oklahoma.

Q. And Texas?

A. And Texas.

Q. Then do you have a district sales manager?

A. Yes, we have a district manager under him.

Q. Are you familiar with the general sales policies of Loew's, Inc. in the United States prior to the time of the consent decree?

A. Yes.

Q. During that period were the pictures distributed by Loew's Inc. licensed prior to the production of the pictures?

2997

A. Yes.

Q. Since the consent decree has there been a change in the method of distribution?

A. Yes, we license them only after they are trade-shown, which means, of course, after they are produced.

Q. And you otherwise conform to the terms of the consent decree?

A. Entirely.

Q. What factors was it the general policy of your company to take into consideration in choosing a customer in a particular town prior to the time of the consent decree?

A. Well, for the most part, the majority of customers that do business with us and have been for many years. It is hard to say just what the practice was in that respect, but for the most part it is the people we do business with.

Q. I mean when you are choosing a customer in a town, what has been the policy which determined that, or some of the factors which determined it?

A. Well, the theater, the type of theater, its management, its locality, its ability to produce results and the type of patrons it is apt to cater to. A number of different factors are taken into consideration.

Q. Is the history of the exhibitor or exhibitors who are operating in that particular area an important factor in determining that matter—his history with your company?

2998

A. His history with us, yes.

Q. Has there been any agreement by Loew's, Inc. for the period in question—any agreement with the defendants that Loew's Inc. would not license its product second or subsequent run to any competitor of the defendants or either of them?

Mr. WRIGHT. That is objected to on the ground it calls for a conclusion which the witness is not competent to draw."

The Court. Overruled; exception allowed.

"Q. You may answer.

A. I know of no such agreement.

Q. Has there been any agreement between Loew's, Inc. and any of the defendants or their executives, representatives or employees not to deal with any competing exhibitor, or to fix or restrict the terms of its dealings with any such competitor, to your knowledge?

Mr. WRIGHT. The same objection."

The COURT. Overruled; exception allowed.

"A. No, sir.

Cross-examination by Mr. WRIGHT:

Q. Mr. Rodgers, during the period from, let us say,
2999 1933 to 1939 did you negotiate the Griffith deals?

A. No, I have never negotiated a deal with Griffith.

Q. Who did negotiate the deals with Griffith?

A. Well, in 1933 they were negotiated either by our southern district manager, who at that time was Mr. Kessnich, or Mr. Zoellner, who was then our branch manager in Oklahoma City, or Mr. Bickel, who was our branch manager in Dallas, or possibly Mr. T. J. Connors, who at that time was our eastern and southern sales manager.

Q. You yourself, I suppose had no particular occasion to observe the performance of the deals that were made?

A. None whatever.

Q. That would be supervised by—

A. Either one of those gentlemen I just mentioned, or the exchange manager.

Q. Did you have any negotiations with any of the independent accounts in that territory that were in opposition to Griffith?

A. Not to my knowledge. I don't believe I ever personally negotiated any such deals.

Q. And you don't recall that any of those deals were ever called to your attention in connection with the Griffith deals?

A. Other than the fact that they might have told me that they sold in opposition to Griffith, but the details
3000 I would not know.

Q. You have no specific knowledge?

A. No, I couldn't tell you specifically.

Q. Your only contact with the Griffith deals, then, was simply to give final approval to such deal as was finally worked out in each of those years; is that right?

A. No, I wouldn't even do that. I would merely be informed when they were closed. The details of the deal would be finally approved by Mr. Connors or one of our sales managers.

Re-direct examination by Mr. COCHRAN:

Q. Mr. Rodgers, in the selection of a customer in a particular town, was there any difference in policy and the factors considered when one of the competing exhibitors in the town happened to be a member of some circuit which operated theaters in a number of towns and the other happened to be an exhibitor who was operating only in that one town?

A. I can not answer that question unless you are more specific, because we have no formula in dealing with matters of that type. We take each individual situation and take all the factors into consideration. We do not do it by formula except to that extent.

Q. Would the same formula apply regardless of
3001 whether it was a circuit exhibitor involved or an independent exhibitor?

A. Positively.

Q. You would make no distinction in the application of your formula?

A. None whatever.

3002 Re-cross-examination by Mr. WRIGHT:

Q. What do you mean, Mr. Rodgers, applying the same formula?

A. Well, perhaps the word 'formula' doesn't mean the same to me as it does to Mr. Cochran. It is not so much applying a formula as it is observation. It wouldn't make any difference to me whether a man was a circuit man or an individual operator in deciding with whom I wanted to deal in a particular situation.

Q. That would depend upon the individual situation that was being considered?

A. Absolutely, it would depend upon the individual situation involved.

Q. The manner in which a deal in a particular town was or was not linked with other deals in circuit towns would have something to do with your decisions, would it not?

A. Not necessarily. Perhaps I don't understand the full meaning of your question.

Q. Well, in dealing with a circuit, I suppose normally you deal with respect to the circuit situation entirely? That is, when you make a circuit deal you make it with respect to the entire circuit situation?

A. Only in each individual area, as you go along. It would not interest me whether a circuit theater was in
3003 the same town with an independent operator. I can explain it in my own way, if you want me to.

Q. Go ahead.

A. Take a town where a circuit came in and was not located there before, and I have another customer in that town; I will think a long time before taking it away from that customer, just because the circuit was coming in there unless the customer happened to be an undesirable one.

Q. And whether or not the independent lost your product, if he happened to be a desirable customer, I suppose would depend to some extent, would it not, upon what if any circuit revenue it was going to bring you as a circuit member?

A. Not so far as the policy of my company is concerned; no, sir.

Q. Would you say that you yourself don't know of any situation where Metro film has been sold to a circuit, which was formerly used by a satisfactory independent customer in that town?

A. I do not know of any situation where we have taken pictures away from a satisfactory account. It might have happened, but I don't know of it.

Q. You would not say, however, that that has never occurred?

A. No, I wouldn't say.

3004 Q. And if it did occur, it would be contrary to the policy which you yourself try to enforce?

A. Definitely.

Mr. WRIGHT. That is all.

Mr. COCHRAN. That is all."

(Subscribed and sworn to by the witness.)

(End of depositions.)

3005 Mr. COCHRAN. During Mr. Kupper's testimony, reference was made to the Code of Fair Competition of the motion picture industry, which is referred to in several of those contracts. I stated at the time that I would endeavor to produce a copy of the Code of Fair Competition, and now have a copy of the same, and ask it be identified as Defendants' Exhibit 106, and we offer it in evidence.

Mr. WRIGHT. As far as I can see this appears to be a copy of a code. Its relevancy does not appear to me or what it is supposed to prove.

Mr. COCHRAN. There are one or two of the contracts Mr. Cooper referred to that were introduced in connection with his testimony, which referred to the Code of Fair Competition, and we offer it in connection with the testimony that the Court may consider it with that testimony and those contracts.

The COURT. Let it be admitted. I can't see that it would be prejudicial to either side. It may throw some light on the construction of the contract [illegible].

(Thereupon Government's Exhibit No. 106, being the document above referred to, was received in evidence and made a part hereof.)

3006 B. J. MCKENNA, was hereupon recalled as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?

A. B. J. McKenna.

Q. You are the same B. J. McKenna who was on the stand during the time the Government was putting on its testimony?

A. Yes, sir.

Q. When did you enter the employment of the Griffith Amusement Company?

A. In August, 1928.

Q. At that time what towns did the Griffith Amusement Company operate theaters in?

A. You wish me to name the towns?

Q. Name the towns at the time you became connected with the company.

A. Well, Borger, Texas; Duncan, Oklahoma; Earlsboro, Oklahoma; Elk City, Oklahoma; Enid, Oklahoma; Fairfax, Oklahoma; Guthrie, Oklahoma; Henryetta, Oklahoma; Hugo, Oklahoma; Norman, Oklahoma; Oklahoma City, Oklahoma; Okmulgee, Oklahoma; Pampa, Texas; Panhandle, Texas; Seminole, Oklahoma; Shawnee, Oklahoma; Stillwater, Oklahoma; Stinett, Texas; Tonkawa, Oklahoma, and I believe Wink, Texas.

3007 Q. During the year 1928, and after you had become associated with the company, were theaters acquired in any other towns by the Griffith Amusement Company during the year 1928?

A. Yes, sir; Bartlesville, Oklahoma, and Wellington, Texas.

Q. In 1929, state what additional towns, if any, the Griffith Amusement Company commenced to operate theaters in.

A. There was none in 1929.

Q. Did it cease to operate theaters in any town during that year.

A. Well, Stinnett, Texas, was destroyed by fire, and I believe it was about that time, I think—no, it was destroyed by fire in 1928.

Q. Anyhow, in 1929——
A. Stinnett, Texas, wasn't operating.
Q. You discontinued operating in Stinnett?
A. Yes, sir.
Q. And has the Griffith Amusement Company ever operated there since that time?
A. No, sir. It was destroyed by fire and never was rebuilt.
Q. How about Panhandle, Texas?
A. Panhandle, Texas, was a town that did not develop, but as I recall we were operating it in 1929.
3008 Q. Do you recall any other town that was abandoned in 1929?
A. We ceased operating in Earlsboro, Oklahoma, in 1929. It was a town that did not develop, and you might say it just folded up. It was located over here close to Seminole and we discontinued our operations.
Q. Was the theater sold or did you just discontinue it?
A. No, we just discontinued it and salvaged the building.
Q. What did you mean when you said the town didn't develop?
A. It was originally supposed to be a boom oil town, as referred to in this territory, and it just never materialized into a permanent business situation.
Q. In 1930, what town or towns did the Griffith Amusement Company go into and operate theaters which it had not previously been in?
A. They went into Chandler, Oklahoma, and acquired an interest in Chandler, Oklahoma.
Q. During that year did it discontinue operations in any town in which it had been operating?
A. Yes, sir, Tonkawa, Oklahoma.
Q. What was done at Tonkawa?
A. We sold the theaters in Tonkawa to Mr. E. H. Williams.
Q. How about Panhandle? Was that abandoned
3009 that year or later?
A. No, sir.
Q. When was Panhandle abandoned?
A. Panhandle discontinued operations in April, 1931.
Q. In 1931, did the Griffith Amusement Company commence operations of theaters in any new towns?
A. No, sir, I don't believe it did.
Q. You have already stated Panhandle was discontinued?
A. Yes, sir.
Q. What was done there?
A. Well, we discontinued the operations because the town had not developed along the lines of its original plan.

That is, it was supposed to be a boom oil town, the same as I spoke of Earlsboro awhile ago, but the railroad built into Borger, Texas, and Panhandle, Texas, didn't develop into a permanent business operation. We finally closed, about that date, close to that year. We sold the theater building to the American Legion.

Q. In 1932, did the Griffith Amusement Company enter into any new towns?

A. Yes, sir. It acquired Ada, Oklahoma, and Maude, Oklahoma.

3010 Q. Did you discontinue operations in any town in that year?

A. I don't think we did.

Q. Well, after the year 1932, down to and including the year 1939, state what additional town or towns Griffith Amusement Company commenced to buy theaters in?

Mr. WRIGHT. If the Court please, as I understand, this is all repetition of what is already in the record. We have the towns, and the theaters, that were acquired. I don't quite understand the purpose of it.

The COURT. I think there is a complete record.

Mr. COCHRAN. The interrogatories don't give the story of these acquisitions and discontinuances in a sequence that can be easily understood, and we are endeavoring to place that before the Court. You can pick out a part of this information from the interrogatories. It says they acquired a certain theater at a certain time, and so forth, but it doesn't show when they went into most of these situations.

The COURT. Very well; go ahead. I don't think it is very material. I think it is in the record, but if you want to put it in another way, go ahead.

Mr. COCHRAN. There is no admission of facts in the record.

The COURT. Proceed with the examination, gentlemen.

3011 Mr. WRIGHT. Mr. Kime tells me that we did incorporate this information in a proposed admission of facts.

The COURT. Go ahead.

Mr. COCHRAN. Read the question.

(The question read by the reporter.)

A. In 1934, they commenced to operate in Blackwell, Oklahoma; and in 1934 in Hobart, Oklahoma; and in 1936 Kermit, Texas.

By Mr. COCHRAN:

Q. All right. After 1934, did Griffith Amusement Company commence operations in any new town other than Kermit, Texas?

Mr. KIME. May I ask a question there?

By Mr. KIME:

Q. What do you mean by commence operations? Do you mean go into partnership with someone else, or acquire the property in the name of Griffith Amusement Company? Do you make a distinction?

A. Well, we mean to make a purchase of the theater equipment and leasehold.

By Mr. COCHRAN:

Q. Mr. McKenna, what I am inquiring about it the first time that Griffith Amusement Company commenced the operation of a theater in which it had an interest in the town, that is what I am inquiring about; is that what you are answering?

A. Yes, sir, that is what I am answering.

Mr. KIME. And not the acquisition of realty by
3012 Griffith Amusement Company in that particular town?

The COURT. Do you mean the entire ownership, or just an interest?

A. In some cases, your Honor, it was an interest; in other cases, it was 100 per cent ownership, which I explained.

Q. Didn't you go into Clinton, Oklahoma in 1934?

A. That was Consolidated Theaters, your Honor.

Mr. COCHRAN. I am trying to make a separation of the different companies.

Mr. KIME. As I understand it, the interrogatories of Griffith Amusement Company, in answer to Interrogatory No. 17, show that the first acquisition in Blackwell, Oklahoma was made on 12-1-35, and as I understand, the witness is now answering that they went into Blackwell in a partnership or some other arrangement aside from the actual ownership of the realty in 1934. Is that correct?

A. As I recall it, it was in August of 1934.

By Mr. COCHRAN:

Q. What year?

A. August of 1934.

Mr. COCHRAN. Let's have that interrogatory. We are talking about the same thing we were talking about in the interrogatory. Some of those dates in there are not exactly correct. I am trying to straighten it out.

The COURT. Go ahead with your examination, and I think we can save time.

3013 Mr. COCHRAN. Judge Kime, I intended after I had completed this examination to go back and take up

these individual situations where there appeared to be a discrepancy and try to deal with those.

Mr. KIMR. All right. I didn't understand the discrepancy, that was what was bothering me.

Mr. COCHRAN. Prior to the time that Judge Kimr asked his question, what was my last question?

(Question read by the reporter: "All right. After 1934, did Griffith Amusement Company commence operations in any new town other than Kermit, Texas.")

A. No, sir.

By Mr. COCHRAN:

Q. Did you answer that?

A. No, I didn't. The answer is "No, sir."

Q. How far is Kermit, Texas from Wink, Texas?

A. It is about nine miles.

Q. Can you tell the Court why it was that so few acquisitions were made by Griffith Amusement Company during the period around 1932 to 1939?

A. The Griffith Consolidated Theaters, Inc. was organized in May of 1929 and began doing business on April 27th, or thereabouts, 1930, and it——

Q. (Interrupting.) Just at that point?

A. Yes, sir.

Q. Why was Griffith Consolidated Theaters organized?

3014 A. Well, it was because of a disagreement that occurred between the Griffith Brothers, and the Universal Chain Theatrical Enterprises, Inc., that had been their partners in Griffith Amusement Company.

Q. Now then, what part of the stock of Griffith Amusement did this Universal Chain Theatrical Enterprises own?

A. They owned the Class B stock. Do you wish to know the number of shares?

Q. Well, there were two classes of stock, do you mean to say?

A. Yes, sir, there were two classes of stock, A and B, and Universal Chain Theatrical Enterprises, Inc. owned the B stock.

Q. Owned all of the B stock?

A. Yes, sir.

Q. Now, at the time that the agreement was entered into for the organization of Griffith Amusement Company, was there a written agreement between Universal Chain Theatrical Enterprises, Inc. and R. E. Griffith and L. C. Griffith?

A. Yes, sir.

Q. Under the terms of that agreement, what, if anything, was to be done by Universal in the matter of the advancement of certain money?

Mr. WRIGHT. If the Court please, I think the agreement is the best evidence here. We ought to have it.

3015 Mr. COCHRAN. We have it here for inspection. It is a lengthy agreement.

Mr. WRIGHT. Why don't you mark it and offer it? I suppose it would speak for itself.

Mr. COCHRAN. If the Court please, I didn't care to burden the record, but it is here for examination by counsel, and I have no objection, except that it is lengthy.

The COURT. Thus far there have been no limitations on the length of the record in this case.

Mr. COCHRAN. May it be understood that we will have a copy of this photostated and substitute it in lieu of the original?

The COURT. Very well, mark it for introduction, and you may withdraw it and have it photostated.

(Defendants' Exhibit No. 107 was then marked for the purpose of identification.)

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 107.

Mr. WRIGHT. We haven't seen it. I suggest you go ahead.

Mr. COCHRAN. You are asking for its introduction.

Mr. WRIGHT. No, I objected to him testifying to the contents of the agreement. I still don't know the purpose of it.

The COURT. I don't really see the necessity for

3016 going into all of these details.

Mr. COCHRAN. We will withdraw the offer of that exhibit, but we simply want to show the reason why Griffith Amusement Company didn't—they charged it was by agreement between these parties, that one won't operate against the other and so forth, and we are just trying to show the history of it.

The COURT. Very well; let the exhibit stay in. Go ahead.

By Mr. COCHRAN:

Q. Now, in this contract, it is provided that Universal shall make a loan to the corporation, to Griffith Amusement Company, at 10 per cent interest of certain money?

A. You are referring here to Universal Chain Theatrical Enterprises?

Q. To Universal Chain Theatrical Enterprises?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. You recall that provision?

A. Yes, sir.

Q. Now, after the organization of Griffith Amusement Company, did Griffith Amusement Company borrow from

Universal Chain Theatrical Enterprises under the arrangement provided here in this contract, money?

A. Yes, sir.

3017 Q. Now, state to the Court what happened after that arrangement had been in effect for a period, what happened in regard to the advancement of further money under the terms of this contract?

A. Well, after about two and one-half or three years, your Honor, the Universal Chain Theatrical organization decided that it didn't care to continue acquiring theaters, and they refused to make the loans which they had agreed to in their contract on the acquisitions that the Griffith Amusement Company had made in the period around 1928, I believe it was; they refused to accept the draft which was drawn on them for money to be advanced.

3018 By Mr. COCHRAN:

Q. What arrangement was then made in regard to the acquisition of additional theaters?

A. Are you speaking insofar as——

Q. So far as Universal and Griffith Amusement Company were concerned.

A. Well, the Griffith Brothers, as I recall, went to New York——

Q. Don't go into that detail.

The COURT. I don't care where they went. What did you do about this?

A. A new arrangement was made in which it was agreed that Griffith Brothers could acquire theaters in their own right, in their own name.

By Mr. COCHRAN:

Q. Then was the Consolidated Theaters organized?

A. Yes, sir.

Q. For that purpose?

A. Yes, sir.

By the COURT:

Q. Who organized the Consolidated?

A. Consolidated Theaters was organized by the Griffith Brothers, R. E. Griffith, L. C. Griffith and H. J. Griffith.

Mr. WRIGHT. May I inquire whether this arrangement was in the form of a written agreement or was an oral arrangement?

A. It is in the form of a written agreement, as I

3019 recall; I am not sure.

Mr. WRIGHT. We think we ought to have that agreement here rather than the testimony as to what it was.

Mr. GRIFFING. I don't think it is in the form of an agree-

ment. I think it was a result of negotiations. I will let Mr. Wright know after lunch.

By the COURT:

Q. Consolidated was organized by Griffith brothers?

A. Yes, sir.

By Mr. COCHRAN:

Q. After Consolidated was organized did it then proceed to acquire theaters?

A. Yes, sir.

Q. How long did the interest that the Universal Chain Theatrical Enterprises had in Griffith Amusement Company continue?

A. It continued until December of 1934.

Q. Then what happened?

A. Well, Universal Chain Theaters interest was purchased by a group of local Oklahoma people, and the Griffith Brothers also purchased part of it.

Q. From whom was it purchased?

A. It was purchased from the receiver of the Universal Chain Theaters, Incorporated.

Q. In other words, that company had gone into receivership?

3020 A. Yes, sir, it had.

Q. And since that time has the Griffith Amusement Company been owned entirely, the stock of that company been owned entirely by the Griffith Brothers and their associates?

A. Yes, sir.

By the COURT:

Q. Just in that connection, what per cent of the stock now of the Griffith Theaters Company is owned by Griffith Brothers?

A. 51 per cent.

Q. And the rest is owned by different people in Oklahoma?

A. Yes, all over the state.

By Mr. COCHRAN:

Q. After the acquisition of that stock interest which had been held by Universal Chain Theatrical Enterprises and by local interests, was there any expansion of Griffith Amusement Company other than the acquisition of Kermit?

A. No, sir.

Mr. WRIGHT. That calls for quite a conclusion there as to whether there was expansion. He can state what was done, and your Honor will judge as to whether there was expansion or not.

Mr. COCHRAN. I withdraw the question and answer.

By Mr. COCHRAN:

Q. After the time that Universal Chain Theatrical
3021 Enterprises disposed of its stock interests in the Griffith Amusement Company to Griffith Brothers and their associates, what new towns, if any, did Griffith Amusement Company commence to operate or did it have an interest in?

A. Kermit, Texas.

Q. Is that all?

A. Yes, sir.

Q. You mean that is the situation down to the present time?

A. Yes, sir.

By the COURT:

Q. I understand that the Griffith Amusement Company has made no acquisitions of additional theaters then, since 1934?

A. Except Kermit, Texas, yes, sir.

By Mr. COCHRAN:

Q. Since that time it has acquired, and in some instances built, additional theaters in towns in which it was already operating?

A. Yes, sir.

Q. And has abandoned some?

A. Yes, sir.

Q. But so far as going into new towns is concerned, Kermit is the only town?

A. Yes, sir.

Q. Did you state why it was you went into Kermit?

A. We had been operating in Wink, Texas. In
3022 fact, we owned the property in fee there, and it was a boom oil town and the oil operation shifted in about 1936 to the county seat town of Kermit, so we built a theater in Kermit, Texas, which is just nine miles from Wink.

Q. Do you know why the Griffith Amusement Company didn't expand any further after that date?

A. Yes, sir, I do.

Q. Why?

A. Well, the gentlemen who purchased the interests that we spoke about awhile ago from Universal Chain Theatrical Enterprises were, as I said, a group of men living in Oklahoma, and in some cases at the time they made this purchase, in fact, in most cases, they went out and borrowed the money in order that they could buy the class B stock of the Griffith Amusement Company, and they just definitely indicated they didn't care to participate in any kind of acquisition or expansion——

Mr. WRIGHT. This testimony, it seems to me, is wholly incompetent, about what a group of men definitely indicated——

By the COURT:

Q. You can answer this question. Was it satisfactory to the stockholders to expand by going into new towns? I don't know how you could prove it except by those who were interested.

Mr. WRIGHT. Your question, I don't think is ob-
3023 jectionable.

By the WITNESS:

A. Was it satisfactory to the new stockholders?

The COURT. Yes, to expand by going into a new town and acquiring property in new towns.

A. The new stockholders did not care to go into new towns.

Mr. WRIGHT. That calls for a yes or no answer.

By the COURT:

Q. Was it satisfactory to the stockholders?

A. No.

By Mr. COCHRAN:

Q. In 1923, when you went with the Griffith Amusement Company, which of the towns that you have listed as being towns in which the Griffith Amusement Company was operating, was there competition?

A. Well, Enid, Oklahoma; Guthrie, Oklahoma; Henryetta, Oklahoma; Norman, Oklahoma; Oklahoma City, Oklahoma; Okmulgee, Oklahoma; Pampa, Texas; Seminole, Oklahoma; Shawnee, Oklahoma; Stillwater, Oklahoma, and Wink, Texas.

Q. Then in 1924, which of the towns in which Griffith Amusement Company owned and operated theaters or interests in theaters was there competition, in April, we will say, of 1924?

A. Ada, Oklahoma, Duncan, Oklahoma, and Elk City, Oklahoma.

3024 The COURT. You mean there was no competition?

Mr. COCHRAN. There was competition.

By the WITNESS:

A. There was competition.

The COURT. The list you just mentioned——

By the WITNESS:

A. That is at the time I went to work.

Mr. COCHRAN. I first had him give the time. Now I am asking about the commencement of this lawsuit. You have Ada, Duncan and Elk City.

A. And Enid, Oklahoma; Norman, Oklahoma; Oklahoma City, Oklahoma; Okmulgee, Oklahoma; Shawnee, Oklahoma; Stillwater, Oklahoma. I believe that is all.

Mr. WRIGHT. If the Court please, I don't see why the witness should have to rely on his memory for this. He could just submit a list and develop this information. If they will just give us a list of that I am sure we can agree on the towns and dates. I think this is taking up a lot of time.

The COURT. I think so. I think it is a good suggestion.

Mr. COCHRAN. We can make them up a list. We will do that during the noon hour. This witness is thoroughly familiar with it.

The COURT. I know he is but it just takes up time.

Mr. COCHRAN. Very well.

3025 By Mr. COCHRAN:

Q. Mr. McKenna, I want the situation in 1934, I want the situation in 1939——

A. (Interrupting.) Do you want the situation relative——

Q. (Interrupting.) —to competition in the towns in which there was competition to Griffith Amusement Company.

The COURT. '28, '34, '39?

By Mr. COCHRAN:

Q. '39 and the present time.

A. Do you want the 1928, your Honor?

Mr. COCHRAN. Your Honor please, I think maybe this witness has a list of theaters. Will it be satisfactory if he will note opposite those so he can take that and read it into the record promptly? He will try to draw up a list during the noon hour.

The COURT. I should think he could make up a little table, with notations opposite each one. He can make it up.

Mr. COCHRAN. All right.

By the COURT:

Q. Who are the officers of Griffith Amusement Company?

A. President, L. C. Griffith; I am Vice President—no, I am not the Vice President, I am Second Vice President; Mr. McSwain of Ada, Oklahoma is the First Vice President; and the Secretary is Mr. Henry S. Griffing; the Treasurer is Harry Lowenstein of Ardmore, Oklahoma.

Q. Who constitutes the Board of Directors?

3026 A. The Board of Directors is L. C. Griffith, Henry S. Griffing, Foster McSwain of Ada, Oklahoma, A. R. Powell and Harry M. Lowenstein and myself.

Q. Who are the officers of Griffith Consolidated Theaters?

A. L. C. Griffith is the President, I am the Vice President, B. J. McKenna, and Henry S. Griffing is Secretary and Treasurer.

Q. Who are the Board of Directors?

A. The Board of Directors are L. C. Griffith, W. T. Spears of Altus, Oklahoma, Harry M. Lowenstein of Ardmore, H. R. Falls of Oklahoma City, C. B. Akers of Oklahoma City, B. J. McKenna and Henry S. Griffing.

Q. Consolidated, as I understand it, doesn't own any theaters in any town in which Griffith Amusement Company owns them?

A. No, sir, it does not.

The COURT. Well, we will adjourn this hearing until 2:00 o'clock. You may recess Court until 2:00 o'clock p. m.

(Whereupon, Court was recessed until 2:00 o'clock p. m. of this same date.)

3027 PROCEEDINGS

September 21, 1945, 2 o'clock p. m.

B. J. MCKENNA, was recalled and further testified as follows:

Direct examination (continued) by Mr. COCHRAN:

Q. Mr. McKenna, just before adjournment the question was asked about present officers and present directors of the Griffith Amusement Company and Consolidated. Since this suit has been filed has there been some change in the officers and directors of those companies?

A. Yes, sir, there has.

Q. What has happened to R. E. Griffith?

A. R. E. Griffith died in November, 1943, I believe.

Q. At the time of his death did he personally own some stock in the Griffith Amusement Company?

A Yes, sir, he did.

Q. Was he an officer at that time, in 1943?

A. No, sir.

Q. Was he a director?

A. I don't recall.

Q. Will you check that for us?

A. Yes, sir, I will.

Q. Now since his death, do you know to whom that
3028 stock has passed?

A. No, that stock is in the estate of R. E. Griffith.

Q. He left a wife, did he?

A. He left a wife and two children, I believe.

Q. Did R. E. Griffith also own some stock individually is Consolidated at the time of his death?

A. No, sir.

Q. When this suit was filed I believe H. J. Griffith was a stockholder and possibly an officer of the Griffith Amusement Company, was he?

A. Yes, sir.

Q. In the Griffith Amusement Company?

A. In the Griffith Amusement Company, yes, sir.

Q. Is he at this time a stockholder in that concern?

A. No, sir.

Q. To whom has that stock passed?

A. The stock is owned by his children.

Q. Is he at this time an officer or director of the corporation?

A. No, sir.

Q. Did H. J. Griffith own any stock in Consolidated Theaters, Inc.?

A. Yes, sir, he did.

3029 Q. In whose name is that stock at this time?

A. It is in the treasury of the Griffith Consolidated Theaters.

Q. Do you mean the company purchased that stock, acquired that stock from H. J. Griffith?

A. Yes, sir.

Q. Is he at this time an officer or director of Consolidated Theaters, Inc.?

A. No, sir.

Q. Just before adjournment you were going to prepare a list of towns in which there were, in which there was competition on certain dates. Do you have that list?

A. Yes, sir.

Q. Do you have a copy of it?

A. Mr. Griffing has a copy.

(Defendants' Exhibit No. 108 was then marked by the reporter for identification.)

Q. I hand you a document that has been identified as Defendants' Exhibit No. 108, and ask you to state if that is a list which you have prepared?

A. Yes, sir.

Q. Now, this shows three columns.

The COURT. What does it show, that list, what is that list?

Mr. COCHRAN. This is a list showing competitive

3030 towns of Griffith Amusement Company.

By Mr. COCHRAN:

Q. You have three columns headed August 28th, 1928, April 28th, 1934, and April 28th, 1939?

A. Yes, sir.

Q. Was there competition in the towns listed in the first column on August 28th, 1928?

A. There was.

Q. And in the towns listed in the second column, there was competition on April 28th, 1934.

A. There was.

Q. And in the column headed April 28th, 1939, there was competition in the towns listed under that heading?

A. Yes, sir.

Q. I believe I inquired about competition at the present time, and you don't show a column on that. You evidently didn't cover that. I think you have covered that situation partly in your testimony when you were examined by Mr. Wright. And as I recall, you testified that in Bartlesville in 1939 a Mr. Crown was operating a theater, is that correct?

A. That is correct, yes, sir.

Q. And you told us that he is no longer operating there?

A. Yes, sir, that's correct.

Q. My recollection is also that your testimony was somewhat indefinite about the length of time that Mr. Crown operated in Bartlesville. Can you refresh your
3031 memory, or have you refreshed your memory?

A. Yes, sir, I have.

Q. Can you tell us about when he opened a theater there, and when it was discontinued?

A. He opened a theater in May of 1937 and it was destroyed by fire in January, 1940.

Q. The Griffith Amusement Company did not acquire Mr. Crown's theater in Bartlesville?

A. No, sir.

Q. You also testified, I believe, that in 1939, Mr. Crown put in a theater in Borger, Texas. Is that right?

A. '39? No, sir.

Q. He did put in a theater there, whether it was in '39 or not?

A. Yes, sir. He has a theater there.

Q. Can you tell us now when that theater was put in by Mr. Crown?

A. About, I think in November of 1937.

Q. What happened to that theater?

A. Well, he closed sometime in the summer of 1942, I believe. That is, possibly around August or September, 1942.

Q. Didn't it burn?

A. At Borger, Texas?

Q. Yes, sir.

3032 A. No, sir.

Q. He closed it. Go ahead.

A. He closed it.

Q. Did you acquire it?

A. We later on did, yes. We made a lease; not from him, though.

Q. Was the theater operating at the time you acquired it?

A. No, sir, it was closed.

Q. And had not been operating for sometime?

A. That is right.

Q. It was not operating as a theater or equipped as a theater when you rented the property, was it?

A. No, sir, he had moved his equipment out of there, and I think he had it in storage in Oklahoma City.

Q. You also testified that Mr. Crown operated a theater for a time in Pampa, Texas. Is that correct?

A. That is correct.

Q. And can you tell us when it was he opened the theater in Pampa?

A. He opened that theater in November of 1936 and operated it until, I believe, October, 1942.

Q. What happened at that time?

A. When we purchased the theater equipment and leaseholded the theater from him.

3033 Q. What was the occasion for acquiring that theater from Mr. Crown in Pampa?

A. Well, we felt like we could make money with it in operating it.

Q. Did you acquire it for the purposes of operating it?

A. Yes, sir.

Q. And did you operate it?

A. Yes, sir.

Q. State whether Mr. Crown approached your organization for the disposal of that property or whether your organization approached him?

A. He approached us.

Q. What was the occasion of his desire to dispose of that property, if you know?

A. I don't know what the occasion was. He just wanted to sell it.

Q. He had operated theaters in the towns of Bartlesville, Borger and Pampa, is that correct?

A. Yes, sir, he did.

Q. And one of his theaters had burned and he had closed the others. Is that right?

A. That is correct.

Q. Did he assign any reason in connection with that as to why he desired to get out of the business?

A. Not that I recall.

Q. You don't know?

3034 A. No, sir.

Q. I believe you also testified, or the record otherwise shows, that in 1939 Mr. Laham was operating a theater in the town of Blackwell?

A. Yes, sir.

Q. That was the Bays Theater?

A. Yes, sir.

Q. And that the Griffith Amusement Company afterwards acquired that theater?

A. Yes, sir, we acquired it in October of 1939.

Q. That was the Bays Theater?

A. Yes, sir.

Q. At the time that theater was acquired by your organization was it your intention to try to operate that theater?

A. Yes, sir.

Q. Did you attempt to operate it?

A. Yes, sir, we did.

Q. What was your experience with it?

A. Well, it was not satisfactory. We operated it for awhile and closed the theater.

Q. Did you own the fee to that property or is it leased?

A. It is leased.

Q. Do you still hold the lease?

A. Yes, sir.

Q. When does the lease expire?

A. Well, that lease expires, I believe in 1948;

3035 probably June, 1948.

Q. During the period the war has been going on, has your company been handicapped in any way in the matter of remodelling or refurnishing theaters in order to attempt to improve your operating conditions in the towns?

A. Yes, sir, we have been bothered very much by that.

Q. In what way?

A. Well, the War Production Board wouldn't in the early days of the war grant priorities beyond a small sum of money to do any building, and then even at the present time, they haven't let down completely on the building or remodelling and improving of properties.

Q. Has it been possible to obtain new equipment?

A. No, sir, it has not.

Q. Does your company have plans in connection with the Bayes Theater?

A. Yes, sir, we have very definite plans.

Q. In Blackwell. What are those plans?

A. We intend——

Mr. WRIGHT (interrupting.) If the Court please, I don't see how this could possibly be material, what plans they have now, with reference to the Bayes Theater.

The COURT. The contention is, as I recall it, that they purchased this theater in order to get rid of competition, that they had no idea of operating it themselves.

Your evidence in chief shows that Griffith closed
3036 the theater.

Mr. WRIGHT. But, your Honor please, he is stating about his present or about their present intentions, and plans for the future. How could that possibly be relevant with reference to what happened in 1938?

The COURT. To show their intent at the time they purchased it.

Mr. WRIGHT. He is asking him now what their plans are now. I fail to see what that has to do with their intent at that time.

The COURT. If it goes to the purpose, it would be a continuing purpose or intent. If the reason they couldn't do it was because they couldn't get material, I think it is competent. Objection overruled and exception allowed.

A. Our purpose for the future—the fact of the matter is, we have had that purpose throughout this period since we acquired this Bayes Theater——

Mr. WRIGHT (interrupting.) If the Court please, this is a pure conclusion as to what their purpose was during the period of time. I suppose that is what your Honor is here to decide. He can tell what has been done or what happened, but beyond that the testimony is clearly incompetent.

The COURT. Overruled and an exception allowed. I think it is clearly competent as to what his purpose was then, and what it has been all the time, and what it is now.
3037 I can't see any objection to it. Go ahead and answer.

A. Was to build a new treater on that location. The Bayes Theater is an old established theater location, but the physical condition of that property is very bad. In other words, the balcony some years ago began to swing and was critically called to our attention by the local city authorities, and our thought was that we would rebuild the theater from the ground up, a new theater, and that is still our intention as soon as we can get approval to do so.

Q. Now, in connection with the Griffith Amusement Company, state whether along about 1928, or somewhere in there, Griffith Amusement Company acquired a stock interest in another corporation?

A. Yes, sir, they did.

Q. What was the name of that corporation?

A. The Consolidated Amusement Company.

Q. Is that the company which has been referred to here in connection with Hobart, Oklahoma?

A. Yes, sir.

Q. What time was it that Griffith Amusement Company acquired a stock interest in that corporation?

A. May 1st, 1927.

Q. What interest did it acquire in the stock of the corporation?

A. It acquired 67.38 per cent, I believe, of the out-
3038 standing common stock.

Q. At that time Consolidated Amusement Company was operating theaters in what town or towns?

A. It was operating theaters in Ardmore, Oklahoma.

Q. Did it later acquire theaters in other towns?

A. Yes, sir, it did.

Q. Just state the towns and the dates of those acquisitions.

A. Well, in May, 1929, it acquired theaters in Ada, Oklahoma; in May, 1929 it acquired theaters in Maude, Oklahoma; in fact, it built and owned in fee the Arcadia Theater in Maude, Oklahoma.

Q. There was just one theater that it owned?

A. There was two; a little house called the Rex which was leased.

Q. Go ahead.

A. In 1930 it acquired theaters in Hobart, Oklahoma.

Q. You say in 1930?

A. June 1st, I believe.

Q. June 1st, 1930?

A. Yes, sir.

Q. What theaters did it acquire?

A. Beg pardon?

Q. What theaters did it acquire in Hobart?

A. Pardon me—I wasn't finished.

3039 Q. Go ahead.

A. In 1929 it also built a theater in Hobart, Oklahoma, in December of 1929, the Kiowa; and then in 1930 it acquired additional theaters in Hobart, Oklahoma.

3040 Q. That theater that they erected, was that just a rebuilding or remodeling of a theater that had been in operation there?

A. Well, it was rebuilding but the theater originally, as I recall, belonged to Judge Tolbert of Hobart, Oklahoma.

Q. Operated under what name?

A. The Rialto.

Q. You say it was entirely rebuilt?
A. Yes, sir, from the ground up and increased in size.
Q. And opened as what?
A. Opened as the Kiowa.
Q. What was the character of that theater?
A. Well, it was just a fine theater; de luxe theater. It had, I believe, 887 seats, all new equipment throughout. It was the finest theater in that part of the country at that time.
Q. The best theater in Hobart?
A. Yes, sir.
Q. At that time there was a theater operating?
A. Yes, sir.
Q. Do you recall a man by the name of Hale who was operating a theater?
A. Yes, sir.
Q. And Mr. Mahone was operating the Oklahoman?
A. The Oklahoman, and he also had another theater called the Cozy.
3041 Q. Was that operating at that time?
A. No, I believe it was closed.
Q. Mr. Mahone, as I recall, said that the Cozy was being operated at that time, and if you know, tell us what the situation was.
A. I don't believe it was operating myself.
Q. Are you reasonably certain that the Cozy was not being operated at that time?
A. Well, I just don't remember. I really don't.
Q. I think Mr. Mahone's testimony was very definite that he was operating it at the time.
A. I just don't recall.
Q. After acquiring the theaters from Mr. Mahone, the Palace Theater continued to operate in opposition, did it not?
A. Yes, sir.
Q. Then how long was the Consolidated Amusement Company operating theaters there in the town of Hobart?
A. I believe until July 1, 1932.
Q. What happened in the way of economic conditions about the time that you acquired theaters there in Hobart?
A. Well, the so-called national depression came into this territory and business just went off.
Q. I think it is a matter of history that the stock
3042 market crash was given credit for precipitating the economic collapse of that period, which happened in the fall of 1929. Will you please tell us when it was that the depression commenced to be felt in the theaters in Oklahoma, which were being operated by your company?

A. The first feeling we had of it and noticed it seriously was in the late summer and early fall of 1930.

Q. Then just tell us briefly what the developments were of that depression so far as the picture business in Oklahoma was concerned.

A. Well, as far as our part of the picture business was concerned, speaking from the standpoint of an exhibitor, there was a steady down trend on our gross income, which continued month after month. If I might inject this, the summer months in those days, usually when you came out of summer and went into fall, you would show a rising trend of income. That year it did not show, and that is when we became alarmed about the gross, and it continued on that basis month after month and into the years, the income was continuously down until the fall of 1933 before we saw any rise in income or any balance to where it was stopping this downward trend.

Q. But even after that period did you continue to feel the effects?

A. Yes, sir.

3043 Q. Of poor economic conditions?

A. Yes, sir. We only had just a slight trickle. It looked like things were beginning to slow down to where we could regroup ourselves, but actually we didn't get any sizeable benefits, any increased income until 1934 after the entry of this stimulant called "bank night."

Q. What happened then to these theaters which were being operated by the Consolidated Amusement Company in Hobart along in 1932 or '33?

A. They went into receivership.

Q. In the meantime had the Griffith Amusement Company advanced considerable sums of money to attempt to keep that concern going?

A. Yes, sir, they had.

Q. Well, after the Consolidated Amusement Company went into receivership did it finally go out of business?

A. The Consolidated Amusement Company?

Q. Yes.

A. Yes, sir, eventually it did.

Q. When did it cease to operate theaters in any of these towns? It ceased in Hobart in 1932?

A. It ceased in Hobart in July of 1932.

Q. Did it ever operate theaters there again?

A. No, sir, not to my knowledge.

Q. How about Ada?

3044 A. It ceased to operate theaters in Ada in March of 1932.

Q. Did it ever operate there again?
A. No, sir.
Q. How about Ardmore?
A. March of 1932.
Q. Did it ever operate theaters in Ardmore again?
A. No, sir.
Q. Did the Griffith Amusement Company then lose the stock interest which it had in the Consolidated when it wound up?
A. Lost the stock interest, and also lost a considerable amount of money in notes receivable.
Q. Did the Consolidated Amusement Company discontinue operations in Maude?
A. Yes, sir, in March of 1932.
Q. Did it ever operate there again?
A. No, sir.
Q. It appears from your testimony that the Griffith Amusement Company sometime in 1932 acquired a theater in Maude, is that correct?
A. That is correct, yes, sir.
Q. Just explain how that acquisition was made.
A. The Consolidated Amusement Company which had been advanced a considerable sum of money by the
3045 Griffith Amusement Company to keep it going and make these purchases, sold Maude, Oklahoma, Ada, Oklahoma, to the Griffith Amusement Company and applied it against the debt they owed the Griffith Amusement Company.
Q. That took place as to both theaters in both of those towns that had been previously owned by the Consolidated Amusement Company in 1932. Is that correct?
A. That is correct, yes, sir.
Q. What happened in regard to Hobart, Oklahoma?
A. Well, Hobart, Oklahoma, went into receivership. In other words, it was operated by receivers, as I recall, a gentleman by the name of Hunter.
Q. What happened to its interest in the equipment in the Oklahoman Theater?
A. Well, it was operated by the receiver.
Q. I know, but after the receiver operated it what happened; was it sold?
A. It was acquired by Charles Mahone.
Q. Did the receiver sell it?
A. Yes, sir.
Q. The receiver sold it and Mr. Mahone acquired it?
A. Yes, sir.
Q. And is still operating it?

A. Yes, sir.

Q. What happened to the Kiowa?

3046 A. Well, the Kiowa building in Hobart, at the time the Consolidated Amusement Company acquired that property, there was a loan which had been made by Judge Tolbert with the Great Southern Life Insurance Company of Houston, and when the deal was made acquiring the theater, the Great Southern required that the Griffith Amusement Company guarantee the loan, which we did, and we were guarantors on the loan, and at the time this receivership occurred, the Kiowa building was turned over to the receiver, who, as I remember, told us that he didn't care to——

Q. Well, did they disclaim any interest in it?

A. They disclaimed it, yes, sir. I think that is a matter of record. The Griffith Amusement Company had to pay the loan out and they acquired the Kiowa building.

Q. After acquiring that building in Hobart, when was it, do you remember?

A. They acquired it, I believe around about the early fall, September of 1932; two or three months after this receivership started.

Q. Was that theater being operated at that time?

A. No, sir, it was closed.

Q. And what did Griffith Amusement Company finally do with the Kiowa Theater?

A. Well, they finally opened it up in 1934, in November, and began operating it.

3047 Q. In November, 1934?

A. Yes, sir.

Q. And have been operating it ever since?

A. Yes, sir.

Q. How about the theaters in the town of Maude that had been operated——

The COURT. Before you leave that——

Mr. COCHRAN. Yes, sir.

3048 By the COURT:

Q. Was Mr. Mahone out of business a good while?

A. Yes, sir, your Honor, he was out of the theater business, I believe, from June of 1930 until about July of 1932.

Q. Well, now, the Rialto, did he sell that to the Griffiths?

A. No, your Honor; the Rialto belonged to Judge Tolbert in Hobart, and he was the one that sold it to the Griffiths.

Q. That is not the same as the Kiowa?

A. It is the same theater; it was remodelled and rebuilt from the ground up and 25 feet was added.

Q. Then in 1932 when Mahone bought the theater at the receivership, that was when he went back into business?

Mr. COCHRAN. In '35, your Honor.

A. In '35. It went into receivership in '32.

Mr. COCHRAN. His testimony, you will recall, was that he operated under Hunter, the receiver, during the period of the receivership, and finally bought it in 1935.

By the COURT:

Q. What was the name of that theater?

A. The Oklahoman.

The COURT. Go ahead.

By Mr. COCHRAN:

Q. Now, tell what happened to the theaters in Ardmore which had been operated by Consolidated Amusement Company?

3049 A. Well, the theaters in Ardmore, Oklahoma when —the theaters in Ardmore, Oklahoma, about March 1st, 1932, or at the time that Ada and Maude were sold to Griffith Amusement Company, were operated by Mr. Harry Lowenstein, and as I recall, the rent was in arrears and the landlord of the then Palace and Ritz Theaters cancelled the leases on the Consolidated Amusement Company.

Q. What happened?

A. And Harry Lowenstein personally secured those leases, in other words, the landlords made new leases to Harry Lowenstein.

Q. My point is, did the Griffith Amusement Company then acquire an interest?

A. No, the Griffith Amusement Company didn't acquire an interest. As I recall, the Consolidated Amusement Company had signed notes, and gave him personal property.

Q. Well, don't let's go into all those details.

A. All right.

Q. Griffith Amusement Company didn't acquire an interest in those theaters?

A. No, sir, they didn't.

Q. Did later some of the Griffith family individually acquire an interest in those theaters?

A. Yes, sir; that was years later.

Q. Which of the Griffiths, if you know, acquired an 3050 interest in those theaters?

A. Well, L. C. Griffith, R. E. Griffith, and H. J. Griffith.

Q. In their individual capacity?

A. Yes, sir.

Q. Now, during the time that Griffith Amusement Company had a stock interest in the Consolidated Amusement Company, did Griffith Amusement Company license and book pictures and perform other administrative details for the theaters which were operated by Consolidated Amusement Company?

A. They did, yes, sir.

Q. After Consolidated Amusement Company lost the theaters, or discontinued the operation of the theaters in the town of Ardmore, did Griffith Amusement Company continue to perform administrative services including the licensing and booking of pictures for the town of Ardmore?

A. Yes, sir.

Q. Is there competition in the town of Ardmore at this time?

A. Yes, sir.

Q. Who is operating a theater?

A. A gentleman by the name of Gilliam.

Q. How long has that been operating?

A. Oh, he has been in there for years, I would say seven or eight years.

3051 Q. Now, I notice that you do not list for 1939 the town of Guthrie as having competition. Does that town have a theater operating in competition to you at this time?

A. Yes, sir.

Q. What is the name of that theater?

A. The Cimerron.

Q. How long has it been operating?

A. Since the fall of 1943.

Q. The Court asked you a question before noon as to whether there was any town in which Griffith Amusement Company and Consolidated Theaters, Inc. both owned theaters, and my recollection is that you answered, "No." Calling your attention to the city of Oklahoma City?

A. I was wrong on that. In Oklahoma City they do operate in competition with one another.

Q. They each operate theaters in Oklahoma City?

A. Yes, sir.

Q. What theater does Griffith Amusement Company operate in Oklahoma City?

A. The Rialto Theater.

Q. How long has it been operating that theater?

A. Since 1926 when they incorporated, that is——

Q. (Interrupting.) Griffith Brothers were operating it before they incorporated?

A. They were operating it before they incor-

3052 porated, yes, sir.

Q. Consolidated Theaters, Inc. operate what theater?
A. They operate the Reno Theater on Reno Street.
Q. And when did it acquire that theater?
A. It acquired that theater in December, I believe December 27th, 1930.

By the COURT:

Q. You say the Griffith Amusement Company opened the Rialto Theater in 1927?
A. Griffith Brothers, your Honor, opened it before incorporation, in 1925, I believe, and it has been with the Griffith Amusement Company since 1926, in August of 1926.
Q. Now, the Griffith Consolidated own what?
A. The Reno Theater on Reno Street.
Q. And what other; is that all?
A. Yes, sir.
Q. They have operated that since when?
A. Since December 27th, 1930.

By Mr. COCHRAN:

Q. Mr. McKenna, will you now tell us the theaters which were operated by Consolidated Theaters, Inc. in 1930; just read off the list, will you please?
A. Altus, Claremore, Cleburne,——
Q. Wait just a minute. All right.
A. Cushing, Lubbock, Midland, and Vinita.
Q. You didn't name Oklahoma City there, did you?
3053 A. You said—didn't you say when they began——
Q. (Interrupting.) I said in 1930.
A. I thought you said when they began operating in 1930. I was giving it to you in the same order.
Q. The ones which you just read were the towns in which Griffith Consolidated acquired theaters immediately at the time of its organization?
A. That's right; it was April 27th, 1930.
Q. April 27th?
A. Yes, sir; and that same year——
Q. (Interrupting.) All right; what towns did they acquire theaters in?
A. Reno Theater, Oklahoma City; Rig Theater, at Hobbs, New Mexico; and the Strand Theater at Gallup, New Mexico; and purchased a site in Roswell, New Mexico.
Q. In 1931, what new towns were added?
A. None.
Q. In that year, did it dispose of any theaters, I mean of any theaters in any town?
A. I don't believe it did.
Q. Was that the year that the deal was made with R. E. Griffith, in 1931?

A. Yes, it was; you are right.

Q. All right, what towns, what theaters in what towns did it dispose of in 1931?

3054 A. It disposed of the New Mexico towns; Hobbs, New Mexico; Gallup, New Mexico; and Roswell, New Mexico, in May, on May 1st, 1931.

Q. Just tell us the circumstances under which those theaters in those towns were disposed of?

A. Well, Mr. R. E. Griffith desired to move to New Mexico and he sold his stock in Griffith Consolidated Theaters in exchange for the assets of the three towns I have just mentioned, and some cash.

Q. And at that time he ceased to be connected with the Consolidated Theaters, did he?

A. Yes, sir; he disposed of all his stock.

Q. And Consolidated Theaters disposed of all its interest in these three towns?

A. Yes, sir.

Q. Prior to that time, since the time of the organization of Griffith Amusement Company, had R. E. Griffith been participating with his brother L. C. Griffith in operating the Griffith Amusement Company?

A. Yes, sir.

Q. Did he draw a salary——

The COURT. (interrupting.) Read that question.

(The last question read by the reporter.)

By Mr. COCHRAN:

Q. During that time had he been receiving a salary from Griffith Amusement Company?

3055 A. Yes, sir.

Q. After he disposed of his stock in Consolidated Theaters and acquired the towns in New Mexico, did he leave Oklahoma?

A. Yes, sir, he did.

Q. And from that time until the time of his death did he ever live again in Oklahoma?

A. Not to my knowledge.

Q. Where did he go first?

A. He lived in Roswell, New Mexico.

Q. Where did he first go after he left Oklahoma City in 1931?

A. He went to Roswell, New Mexico.

Q. And from there where did he go?

A. He went, I believe, to Denver, Colorado awhile.

Q. And then where?

A. To Dallas, Texas.

Q. And was he living in Dallas, Texas at the time of his death; was that his home?

A. That was my understanding of where his home was, yes, sir.

Q. Do you know generally about the fact that he, subsequently to the time he left here in 1931, organized the R. E. Griffith Theaters, Inc., and the Westex Theaters?

A. Yes, sir, I know that.

3056 Q. Did the Griffith Amusement Company have anything to do with the organization of R. E. Griffith Theaters, Inc., or any of the R. E. Griffith companies after he left Oklahoma City?

A. Nothing whatsoever.

Q. Nothing at all?

A. No, sir.

Q. Did the Consolidated Theaters, Inc. have anything to do with the organization of those companies?

A. Nothing at all.

Q. Well, did Consolidated—first, when R. E. Griffith left Oklahoma City did he retain his stock interest in the Griffith Amusement Company?

A. Yes, sir, he did.

Q. And he continued to own that stock interest until the time of his death, did he?

A. Yes, sir.

Q. Now later did R. E. Griffith Theaters, Inc., or one of his companies, acquire some stock in the Consolidated Theaters, Inc.?

A. Yes, sir, they did; R. E. Griffith Theaters, Inc.

Q. When was that?

A. About 1935 or '36.

Q. What were the circumstances under which that acquisition took place?

3057 A. I don't recall the circumstances.

Q. Well, about the same time did Consolidated Theaters acquire any interest in R. E. Griffith Theaters, Inc.?

A. Yes, sir, but I think L. C. Griffith and his brother, R. E. Griffith, handled the circumstances, and I don't know what the circumstances were.

Q. But that is the fact, is it?

A. Yes, sir, that is the fact; I know we have the stock, yes, sir.

Q. After R. E. Griffith left here in 1931, did he draw any salary from either of the companies here, either Griffith Amusement Company or Consolidated Theaters, Inc.?

A. He didn't draw any salary; he was no longer on the payroll in a regular manner as he had been previously;

but he did, Mr. R. E. Griffith did continue to buy pictures for Griffith Amusement Company, and he was paid a salary during that period of time when he actually bought the pictures.

Q. He participated in the licensing of pictures?

A. He participated in the licensing of pictures, yes, sir.

Q. With Mr. Falls?

A. Yes, sir.

Q. Mr. Falls was a regular salaried employee?

A. Yes, sir, he was.

3058 Q. Do you mean by that, that he received pay during the time that he actually spent in performing services when he did the licensing of pictures?

A. Only for that period of time.

Q. And he wasn't on the regular payroll?

A. No, sir, he wasn't.

Q. In 1932, tell us, look at your list——

A. (Interrupting.) Chickasha and Sapulpa.

Q. And tell us what towns were added to those in which Consolidated was operating?

A. Chickasha and Sapulpa—Chickasha, Oklahoma, and Sapulpa, Oklahoma.

Q. In 1933?

A. Clinton, Oklahoma.

Q. In 1934?

A. There was none in 1934.

Q. 1935?

A. There was none in 1935.

Q. None?

A. None.

Q. In 1936?

A. Drumright, Oklahoma; Holdenville, Oklahoma, Homny, Oklahoma; Sayre, Oklahoma; and Sunray, Texas.

3059 Q. In connection with the town of Hominy, I believe the records show somewhere that it was acquired—that R. E. Griffith Theaters, Inc. had an interest in the theaters in that town. Is that correct?

A. That is correct, yes, sir, right after that.

Q. How long did that interest continue?

A. It lasted several years. I believe it continued up until about 1943.

Q. What was the purpose of that acquisition?

A. Well, the purpose of it was, on the advice of our certified auditors, to save from having to pay double taxation on the dividends that we received from within and without the state on income.

Q. Do you mean that had relation to the rule that the Oklahoma Tax Commission had at one time in the event a corporation from which you received dividends paid taxes in the state, it was not necessary for them to pay state income tax on those dividends?

A. That is right, if they had an interest in the state.

Q. That law was changed sometime later?

Mr. WRIGHT. Which acquisition was that?

Mr. COCHRAN. Hominy, Oklahoma.

By Mr. COCHRAN:

Q. You understand that later that law was changed so as to not give an escape by reason of that device?

3060 A. Yes, sir.

Q. What happened in regard to the R. E. Griffith Theaters interest at that time?

A. Well, they sold the interest back to the Griffith Consolidated Theaters.

Q. And went out of the situation so far as Hominy was concerned?

A. Yes, sir.

Q. During the entire time that that interest prevailed in Hominy, were the theaters in that town operated in connection with one of these administrative deals with the Griffith Amusement Company?

A. Yes, sir. You mean the administrative contract?

Q. Yes.

A. Yes, sir.

Q. The Griffith Amusement Company had an administrative contract covering the licensing and booking of pictures and other matters?

A. Yes, sir.

Q. With that town as with other towns, with the Consolidated Amusement Company?

A. Yes, sir, it did.

Q. Sunray, Texas. You stated that Consolidated went into that town in 1936. How long did that operation continue?

3061 A. That operation continued until May of 1934 when the theater burned down.

Q. Was it rebuilt?

A. No, sir, it was not.

Q. Have you operated there in Sunray since then?

A. No, sir, we disposed of the lots.

Q. In 1937 were any towns added?

A. Yes, sir, in 1937, Mangum, Wewoka Goldsmith and Kingfisher.

Q. What happened to the operation in Goldsmith?

A. Well, Goldsmith was a boom oil town and it just didn't develop to where it was a permanent business town, and so in 1940 we razed the building, and salvaged the brick, mortar and equipment.

Q. And discontinued operation?

A. Discontinued the operation, and haven't operated there since.

Q. What happened at Kingfisher?

A. Well, we bought theaters in Kingfisher from a man by the name of John Thomas. I believe that was in April, 1937, and in the beginning of 1938 we sold the theaters back to Mr. Thomas.

Q. Have you operated in Kingfisher since that time?

A. No, sir, we have not.

Q. In 1938, in what town did you acquire theaters
3062 in Oklahoma?

A. We acquired them in Ponca City, and Frederick, Oklahoma.

Q. In that year did you also acquire an interest in theaters in towns in Texas?

A. Yes, sir. We acquired theaters in Cuero, Texas, Refugio, and New Braunfels, Texas, and Uvalde, Texas.

Q. Were they towns in which Jack Pickens had an interest?

A. Yes, sir.

Q. What interest did you acquire in those towns?

A. 50 per cent.

Q. Was that in the physical properties or in some corporation?

A. It was stock in the corporation called "Pickens Theaters, Inc."

Q. How long did you continue to own stock in the Jack Pickens Corporation?

A. Until February, 1941.

Q. Then what happened?

A. We made a deal with Jack Pickens whereby we purchased his 50 per cent and traded out with him, at Uvalde, Texas. In other words, he took Uvalde, Texas and gave us in exchange 50 per cent in the Pickens Theater Corporation.

Q. Do I understand that after that trade was made you continued to own stock in the Jack Pickens Company?

3063 A. No, we dissolved the corporation.

Q. So after that deal was made Pickens owned the theaters in Uvalde. Is that correct?

A. He owned the real estate, improvements——

Q. Don't go into detail. Did he own the theaters?

A. He owned the theaters in Uvalde. We owned the theaters and a full interest in Cuero, Refugio and New Braunfels.

Q. Did you acquire an interest in any other theaters in Texas in the year 1938?

A. Yes, sir, we acquired an interest in Alvin, Bay City, Texas, and El Campo, Texas, Texas City, Texas, and Wharton, Texas, and Victoria, Texas.

Q. What interest did you acquire in those theaters?

A. 25 per cent.

Q. Griffith Consolidated Theaters, Inc.?

A. Yes, sir, that is right.

Q. Acquired what?

A. 25 per cent.

Q. Did some R. E. Griffith Company also acquire an interest in those theaters at that time?

A. Yes, sir.

Q. Which company?

A. Wes-Tex Theaters, Incorporated.

Q. What interest did that company acquire?

3064 A. 25 per cent.

Q. Who retained the other half interest?

A. A gentleman by the name of Johnny Long, J. G. Long.

Q. During the time that ownership continued in that manner, did either the Griffith Amusement Company or Consolidated Amusement Company have anything to do with the operation of those theaters?

A. You mean the Consolidated Theaters?

Q. Consolidated Theaters, Inc., or Griffith Amusement Company, or either of those companies have anything to do with the operation of those theaters?

A. They did not.

Q. Or with the licensing and booking of pictures for those theaters?

A. No, sir.

Q. At the present time has that ownership changed?

A. Yes, sir, it has.

Q. What is the situation now?

A. Well, Griffith Consolidated Theaters, Inc. now own 50 per cent and J. G. Long owns 50 per cent.

Q. Does Wes-Tex have any interest in it at all?

A. It does not.

Q. Who is operating the theaters?

A. J. G. Long of Bay City, Texas.

Q. Who does the licensing of pictures and the

3065 booking of pictures?

A. J. G. Long.

Q. In other words, Consolidated Theaters, Incorporated, merely has a 50 per cent investment in those theaters?

A. That is correct, yes, sir.

Q. Since 1938, has Consolidated Theaters, Inc. acquired the theaters in any additional towns?

A. Yes, sir, in 1939, El Reno, Oklahoma.

Q. Has there been any additional acquisition since that time, any new towns?

A. No, sir.

Mr. COCHRAN. I believe we have never offered Defendants' Exhibit 108. I now offer in evidence Defendants' Exhibit 108.

Mr. WRIGHT. No objection.

Mr. COCHRAN. That is a list of competitive towns of the Griffith Amusement Company.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 109 and ask you if there was competition in each of the towns listed in the three columns shown there at the dates shown?

A. Yes, sir, there was.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 109.

By Mr. COCHRAN:

Q. In Altus, Oklahoma, did Consolidated Theaters, Inc. acquire the Ritz Theater there from Mr. Hamm?

3066 A. Yes, sir.

Q. When was that?

A. It was in July of 1937.

Q. Will you state the circumstances under which that acquisition was made, the purpose for which the Consolidated Theaters, Inc. acquired that theater?

A. We desired a C house in Altus, Oklahoma, and we were looking for a location, and we ascertained from Mr. Speers that Mr. Hamm wanted to sell his property.

Q. Did you acquire it?

A. We have acquired it, yes, sir.

Q. For that purpose?

A. Yes, sir.

Q. At the time you acquired it was it your intention to operate it?

A. Yes, sir.

Q. Prior to that time you spoke of wanting a C house, had you had a C house?

A. Yes, sir, we had.

Q. What was that?

A. It was the old Wigwam Building, we called it.

Q. Was it also called the Paramount?

A. Yes, sir, it had been called the Paramount at one time.

Q. What happened to that theater about the time
3067 you are speaking of?

A. Well, that building was in terrible condition. It was obsolete in fact. We had a lease on it and gave it up.

Q. Then you sought another building to replace that?

A. Yes, sir.

Q. What operation have you had in the Ritz Theater since that time?

A. We have operated it as a C house, second run.

Q. What I mean by my question is, whether you have operated it continuously. I mean every day of the week.

A. No, sir, we haven't. We operate continuously during the cotton season, and we operate on week ends, generally speaking, Friday, Saturday and Sunday.

Q. And during the cotton season what do you do?

A. We operate it every day in the week.

Q. What is the idea and purpose of that type of operation?

A. Out in those independent areas there are a large number of people who come to work picking cotton during the season, which usually starts about the middle of October and runs until about the end of November.

Q. I see you are not a very good cotton picker.

A. Maybe not, but anyhow there are a lot of people out there, cotton pickers, and the theater is used to accommodate the extra population that comes in there.

3068 Q. Is there at this time competition in Altus?

A. Yes, sir.

Q. Who is operating a theater there?

A. A man by the name of Merriot.

Q. How long has he been operating?

A. Since 1938; in May, I think.

Q. That lease shows that in 1934 there was competition in Chickasha, and in 1939 it shows no competition. Is there at this time competition in Chckasha?

A. Yes, sir, there is.

Q. Who is operating there in competition with you?

A. Mr. John Gray.

Q. How long has he been operating a theater there? Do you have any notes you can refer to?

A. I think I have a note on it.

Q. Look at it so you can give it to us.

A. The fall of 1943.

Q. In the towns of Bay City, El Campo, Victoria and Wharton, in which you acquired interests in 1938, there was and still is competition?

A. Yes, sir.

Q. And in Cleburn, Clinton, Lubbock, Oklahoma City, Sapulpa and Wewoka there is competition?

A. Yes, sir.

Q. Now, New Braunfels, which I believe was an-
3069 other town you acquired an interest in in 1938, is there competition?

A. Yes, sir.

Q. Was there at the time you acquired it?

A. No, sir, there was not at the time we acquired it but there is now. In fact, there are two competitors.

Q. Two competitors now?

A. Yes, sir.

Q. In the answers to interrogatories which the Griffith Amusement Company filed in connection with Ada, they show that the Kiva, otherwise known as the Liberty, was acquired on July 7, 1930, and the McSwain on May 6, 1929, and the Ritz was acquired on May 6, 1929. Is that date as to the Kiva correct?

A. Well, the dates are correct but the Griffith Amusement Company did not acquire them as of that date. The Consolidated Amusement Company acquired them.

Q. The Griffith Amusement Company, as you have heretofore testified, acquired them when?

A. March 1, 1932.

Q. Acquired all of those theaters at the same time?

A. Yes, sir.

Q. Well, the Liberty, at the time the Griffith Amusement Company acquired the Liberty in 1932, what was the condition of that theater as to whether it was being oper-
3070 ated?

A. It was a closed house.

Q. Was it later abandoned?

A. No, sir. In 1935 it was remodeled and made into a very nice theater.

Q. Did you abandon some theater at the time or about the time that the Liberty was acquired?

A. We abandoned the Hamly Theater in Ada, Oklahoma.

Q. The Liberty took the place of that?

A. Yes, sir.

Q. Now the Hamly, was that later opened by someone else as a theater?

A. The Hamly, yes, sir. It opened in 1932, I believe in May, under the name of the Strand Theater by Mrs. Kyser, who was a former employee of ours.

Q. That is the Strand Theater Miss Kyser referred to in her testimony?

A. Yes, sir. Ernest Kyser opened it.

Q. What theaters did you first acquire in the town of Bartlesville?

A. We acquired the Lyric and Isis.

Q. That was when?

A. In November, 1928.

Q. And what other theaters were operating in the town at that time?

3071 A. There were two theaters, the Odeon and the Liberty.

Q. Who was operating those theaters?

A. Mrs. Blanch Cutler.

Q. When were those theaters acquired by the Griffith Amusement Company?

A. July 1, 1929.

Q. What were the circumstances under which the Odeon and Liberty were acquired from Mrs. Cutler?

A. Well, she had the theaters for sale and we were desirous of having an A and B house in the town. We felt like it was a good buy, and it was about the time, I recall, that sound was coming in, and she was not interested in installing sound and we were. When we bought those theaters we immediately built a new de luxe theater.

Q. You spoke about having an A and B operation in that town?

A. Yes, sir.

Q. What about your Isis?

A. Well, the Isis was an old store show type, in bad repair.

Q. What happened to the lease?

A. The lease expired and we didn't renew it. It became a commercial building.

Q. So the Isis was abandoned?

A. Yes, sir.

3072 Q. What was the situation relative to the other theater which you acquired from Mrs. Cutler? You acquired two theaters at that time.

A. Well, the other theater was the Liberty and it was an old opera house type of theater, and it had a good balcony. There was a considerable number of colored people in that area and we wanted to use it for a colored house and take care of the colored patrons, particularly that balcony sector.

Q. Well, did you operate it?

A. Yes, we did.

Q. You not only acquired those theaters to operate them but you did operate them?

A. Yes, sir.

Q. What did you say about building a new theater in Bartlesville?

A. Well, right after we purchased the Odeon and Liberty Theaters from Mrs. Cutler, the Odeon Theater was

completely remodeled into about as fine a theater at that time as could be built in the town.

Q. Was it rebuilt?

A. It was rebuilt from the ground up. We spent, as I recall, about $25,000 on the remodeling alone, without the cost of equipment, which was another $15,000 or $18,000, and we opened it, as I recall, about Christmas day, 1929.

3073 Q. I believe when you were on the stand before, there was some testimony about having acquired the Rex Theater in Bartlesville?

A. Yes, sir.

Q. Do you recall the acquisition of the Rex?

A. Yes, I do; it was originally the Midwest Theater, acquired in April of 1931, and subsequently renamed the Rex.

Q. Has that been operated ever since?

A. Yes, sir.

Q. From whom was that theater acquired?

A. From some gentlemen named Isley and Moran.

Q. Were there several theaters acquired at that same time?

A. Yes, sir.

Q. What other theaters besides this theater in Bartlesville?

A. We acquired a theater in Blackwell, Oklahoma, in Pampa, Texas, and Ardmore, Oklahoma.

Q. What were the circumstances in connection with the acquisition of those theaters?

A. Well, the Rialto Theater here in Oklahoma City, on Grand Avenue, the lease was expiring, and there was a controversy arose over it; Isley and Moran, I believe, were leasing it away from us.

Q. Did they acquire a lease on the Rialto?

3074 A. I believe they did; in fact, I am positive they did. It was finally settled, and in the settlement all these four towns we just mentioned were part of the deal.

Q. Did you make a deal whereby Griffith Amusement Company again acquired the lease on the Rialto?

A. Yes sir, we acquired the Rialto lease.

Q. What connection did the acquisition of these other theaters have with the deal and reacquiring the Rialto?

A. Well, the connection was that in making the deal to reacquire the Rialto Isley and Moran insisted that we had to take these other towns, other theaters.

Q. Borger, Texas, what was the first acquisition that Griffith Amusement Company made in Borger, Texas?

A. The first acquisition was the—well, they built the Rex Theater in 1926.

Q. Well, you acquired a site for a theater in 1926, didn't you?

A. Yes sir, we acquired a site for the theater about the time they incorporated.

Q. And built what?

A. Built the Rex Theater.

Q. Then, the Rig Theater, how did you acquire that?

A. They acquired a site a short time later and built the Rig Theater; they built the Rex Theater in 1926, about that time, and it burned down that evening or the
3075 next morning and they immediately rebuilt it, and then a little later they got the Rig Theater and it burned down and they rebuilt it.

Q. Incidentally, another one burned up for you not long ago, didn't it?

A. A few months ago, yes, sir.

Q. What was that?

A. The Rex Theater burned a few months ago.

Q. Your former testimony referred to the acquisition of the Circle Theater in Borger?

A. Yes, sir.

Q. When did you acquire the Circle?

A. We acquired the Circle in August of 1934.

Q. From whom?

A. Henry Evans, the owner of the building.

Q. Wait a minute. Your answer to the interrogatories shows that the Circle was acquired November 10th, 1938; is that correct?

A. That's wrong.

Q. What was the date you acquired it?

A. The date we acquired it was August, 1934, and we made a new agreement on November 10th, 1938. The lease was expiring and another lease went into effect.

By the COURT:

Q. What town is this?

A. Borger, Texas.

3076 By Mr. COCHRAN:

Q. From whom did you acquire the theater?

A. From the landlord, Mr. Henry Evans.

Q. Well, what I want to know is whether that operated in opposition to Griffith Amusement Company's theaters prior to the time of its acquisition?

A. Yes, it had been operated against Griffith Amusement Company by a man named David Dallas. As I recall, he opened it up about 1933, sometime in the late summer.

Q. Who was the landlord?

A. Henry Evans.

Q. What were the circumstances under which you acquired that?

A. Well, that is the Circle Theater we are talking about.

Q. What were the circumstances under which you acquired that?

A. He got behind with his rent with the landlord, and couldn't keep it up, and the landlord took it over.

Mr. WRIGHT. If the Court please, we are getting into matters which show that this witness obviously is not competent to say what was going on between this man and the landlord.

By Mr. COCHRAN:

Q. Had the landlord taken it over at the time?

A. Yes, sir.

3077 Q. And made a lease on it to you?

A. Yes, sir.

Q. What was your purpose in acquiring that theater?

A. We wanted to operate it as a "C" house.

Q. Did you operate it?

A. Yes.

By the COURT:

Q. Did you make a proposition to the landlord to purchase that theater while it was in operation by Dallas?

A. No, sir, we did not; the landlord came to us after he had already acquired it.

By Mr. COCHRAN:

Q. Then, later, you acquired the State Theater in Borger, did you?

A. Yes, sir.

Q. What were the circumstances under which the State was acquired?

A. Well, in the spring of 1938 this Mr. Evans that I mentioned, Henry Evans, awhile ago——

Q. (Interrupting.) He was the landlord?

A. He was the landlord of the Circle Theater, and another gentleman by the name of Hamm opened up the State Theater in Borger, Texas, and they operated it for a period of time and they had some disagreement, I don't know what the disagreement was, but they fell out anyhow, and

Mr. Evans took over the theater, and he wasn't a

3078 theater man, and just about November 10th, in fact, the date you mentioned awhile ago, the renewal for the lease on the Circle Theater was coming up, so he had the Circle Theater and he had the State Theater, and he wanted to lease to us.

Q. You mean he was the owner of the real estate?

A. I mean the owner of the two properties. So he wanted to lease us both theaters.

Mr. WRIGHT. If the Court please, this witness is testifying as to what Mr. Evans wanted to do.

The COURT. Just tell what he did.

A. I am sorry. Anyhow, he leased us the two theaters. We had a provision in the lease on the Circle Theater that it would be converted into a mercantile building because we didn't care to operate another theater in the town at that time, and the Circle was converted into a mercantile building and subleased for mercantile purposes.

By the COURT:

Q. The State Theater, did you seek the lease on that before the proposition was submitted to you?

A. Read the question, please.

(Question read by the reporter.)

A. No, sir, we didn't.

By Mr. COCHRAN:

Q. As I understand it, the State took the place of your Circle?

A. It took the place of the Circle.

Q. And you continued to operate the State Theater?

3079 A. Yes, sir; we are operating it today.

Q. Now, in Norman, Oklahoma: What were the first theaters that Griffith Amusement Company became interested in in Norman?

A. The University Theater and the Billings Theater.

Q. What was the next change you made in your theater situation in that town?

By the COURT:

Q. What was the date of that?

A. September 1st, I believe, your Honor, 1927.

By Mr. COCHRAN:

Q. What was the next change in your situation there in Norman?

A. In 1928 we made a lease with Harold Gimeno to build a deluxe theater, and it was built and it was opened in February of 1929 as the Sooner.

Q. Is that theater still being operated by Griffith Amusement Company?

A. Yes, sir.

Q. Is it the best theater which Griffith Amusement Company is operating in that town?

A. Yes, sir.

Q. What is the relative condition of that theater as compared with all the other theaters?

A. That theater is one of the finest theaters in the southwest, in my opinion. It has 1,100 seats, it has all modern improvements in theaters, it is kept right up to
3080 date at all times. I just don't think there is any better theater in this part of the country.

(Defendants' Exhibits 110, A to G, inclusive, were then marked by the reporter for the purpose of identification.)

Q. I hand you Defendants' Exhibits marked 110, A to G, inclusive, and ask you to state if those are photographs of the exterior and interior of the Sooner Theater as the same appeared in 1939?

A. Shall I describe them individually?

Q. No, just answer.

A. Yes, sir; this is the exterior.

Q. Each one of those pictures shows on the back the location, doesn't it?

A. Yes, sir; I know, I can tell without looking. Yes, that's right.

Q. Speak out loud.

A. I asked you if you wanted me to explain them individually, and you said, "No."

The COURT. Let him state what A is.

A. That is what I wanted to know.

Mr. COCHRAN. They are not arranged in order here. Let's get them in order.

A. Exhibit 110-A, your Honor, is a view of the mezzanine floor, the upstairs second floor, what we call the
3081 mezzanine of the Sooner Theater at Norman, Oklahoma; 110-B is a view of the balcony, the seating in the balcony, looking toward the stage; 110-C is a view of the auditorium downstairs, looking toward the stage; 110-D is a view of the downstairs of the auditorium and the balcony, looking from the stage toward the booth; 110-E is a view of the upstairs balcony showing the seating in the balcony; 110-F is the downstairs as you come into the foyer before going upstairs; 110-G is the exterior front view of the Sooner Theater, that is, an outside view of the Sooner Theater.

Mr. COCHRAN. We offer in evidence Defendants' Exhibits 110, A through G.

Mr. WRIGHT. They are all objected to as completely irrelevant to any issue in the suit, your Honor. I don't see what possible light they can throw on the question of whether or not there was an unlawful agreement between

the defendants and the distributors to prevent opposition from getting pictures.

The COURT. Well, it might be, in comparing their theaters in Norman with the other theaters which are operated there.

Mr. WRIGHT. I assume that if they had the best theater in the world in Norman, it still wouldn't excuse the making of an illegal agreement by the owner, would it?

The COURT. I don't know that it is material.

3082 Mr. COCHRAN. If the Court please, we offer it on the theory that the entire history of the operation of these corporations is competent and relevant to show the type of business they were operating, and that they were trying to get along in a normal operation and progressing, and their progressive spirit and their progressive actions, instead of by monopolistic practices.

The COURT. Let them be admitted. We will not commence now to exclude really incompetent testimony in this case, because I think we can cut out about three-fourths of it and still have all that is material to the issues.

(Defendants' Exhibits 111, A, B, and C, were then marked by the reporter for the purpose of identification.)

By Mr. COCHRAN:

Q. I hand you what has been identified as Defendants' Exhibits 111, A, B, and C for identification, and ask you to state what they are?

A. 111-A is an exterior view of the Varsity Theater in Norman, Oklahoma; 111-B is an inside view of the auditorium of the Varsity Theater looking from the stage toward the street; and 111-C is an inside view of the auditorium looking from the rear of the theater toward the screen.

Mr. COCHRAN. We offer in evidence Defendants' Exhibits 111, A, B, and C.

3083 Mr. WRIGHT. The same objection.

The COURT. They will be admitted.

(Defendants' Exhibits 112, A, B, and C, were then marked for identification by the reporter.)

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibits 112, A, B, and C, and ask you to state what they are.

A. Exhibit 112-A is an inside view from the rear of the theater looking toward the screen of the auditorium of the University Theater in Norman; 112-B is an inside view of the auditorium looking from the stage of the University Theater at Norman; and 112-C is an exterior view or outside view of the University Theater at Norman.

3084 Mr. COCHRAN. We offer in evidence Defendants' Exhibits 112 A, B, and C.

Mr. Wright. The same objection.

The Court. Let them be admitted.

By the COURT:

Q. You say the Sooner Theater was a finer theater than the University Theater?

A. Yes. The University is a very nice theater, however.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 113, A, B and C, and will ask you to state what they are.

A. No. 113-A is an inside view of the Boomer Theater looking toward the auditorium from the stage, and No. 113-B is an inside view of the Boomer Theater auditorium looking from the rear of the theater, the foyer, and No. 113-C is an exterior view of the Boomer Theater, outside view.

Q. The Boomer Theater, is that the theater which is on the property which is owned by Mr. Ambrister?

A. Yes, sir.

Q. And it was formerly the Campus Theater when operated by Mrs. Boldman and Mrs. Berry, and at one time by Ray Berry?

A. Yes, sir.

By the COURT:

Q. Has this theater been rebuilt?

A. Yes, sir.

Mr. COCHRAN. I will get to those changes in a
3085 little while, your Honor.

The Court. They will be admitted.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 114-A and B, and ask you to state what they are.

A. 114-A is an inside view of the auditorium of the theater.

By the COURT:

Q. What theater?

A. I can't identify the theater from the inside.

By Mr. COCHRAN:

Q. You are not acquainted with the Oklahoma Theater on the inside?

A. No, sir.

Q. How about 114-B?

A. 114-B is the outside of the Oklahoma Theater in Norman, Oklahoma. I am familiar with that.

Q. You have never been inside the Oklahoma Theater?

A. No, sir.

Mr. Cochran. We offer in evidence Defendants' Exhibit 114-B. 114-A has not been properly identified.

Mr. WRIGHT. No objection.

By Mr. COCHRAN:

Q. Before we start identifying those pictures, you stated the Sooner Theater was built along in 1939, I believe?

A. 1929.

Q. What happened at that time to the Billings Theater?

3086 A. The Billings lease was expiring and we converted it to a commercial building.

Q. Was it abandoned by you?

A. Yes, sir, we did not renew the lease, no, sir.

Q. What was the next change in the ownership of theaters, or operation of theaters by the Griffith Amusement Company at Norman?

A. In the early part of 1930 we made a lease with Mr. Parr of Norman, Oklahoma, and he built us what we called the New University Theater. We opened that theater in November of 1930.

Q. Was that the same theater as shown here in Exhibit 112-A, B and C?

A. Yes, sir.

By Mr. WRIGHT:

Q. Which theater is that?

A. University.

By Mr. Cochran:

Q. That was the New University. Is that right?

A. Yes, sir, that was the New University.

Q. What happened to the old University?

A. The lease expired on the old University and we did not renew it.

Q. Well, did you later acquire a lease or title of any kind to the old University property?

A. Yes, sir, we purchased the property in fee in July,

3087 1937. There was a foreclosure sale and we bought the property.

Q. What did you do then in regard to theater operations? Was there a theater building there at that time?

A. There was a theater building but it was in a delapidated condition.

Q. Was it a store room then or was it being operated?

A. It was in the form of a theater but it wasn't being operated but we had to go in and completely remodel it.

Q. What I am talking about, was anybody operating that in opposition to you at the time?

A. No, sir, there was not.

Q. Had it been operated by anyone since the time you gave up the lease?

A. Yes, sir, it was operated a short time by a boy by the name of Bob Howard. At one time he owned that property. He was a professional football player and came back and operated it for a while.

Q. Did he cease operating it?

A. He just quit. Why, I don't know.

Q. Then the building was sold at foreclosure sale?

A. Yes, sir, I believe by the Local Federal Savings and Loan Association at Norman.

Q. And the Griffith Amusement Company acquired the title?

3088 A. Yes, sir, the Griffith Amusement Company.

Q. Then what did you do with it?

A. We completely remodeled it and re-equipped it throughout and opened it up as the Varsity Theater.

Q. And that is the theater which is shown in Exhibit 111, A, B and C?

By the COURT:

Q. That was in 1937?

By the WITNESS:

A. Yes, in 1937. That is right, those are the exhibits.

Q. You had operated the University Theater on the same grounds earlier?

A. The old University. Then there was a New University built in 1930.

Q. The Varsity was 1937?

A. Yes, sir.

Q. And that succeeded the old University?

A. That was on the same spot as the old University.

Q. You operated the old University first when?

A. That was acquired originally with the Billings Theater, back in 1927, and the lease expired as I explained here.

By Mr. COCHRAN:

Q. When was it in 1937 that you opened this Varsity?

A. November, '37, I believe.

Q. When did you acquire title to that property on

3089 which the Varsity was constructed?

A. July 2, I believe, 1937, or thereabouts.

Q. Later did you acquire a lease from Mr. Ambrister on the property on which the Campus Theater had been operated?

A. Yes, sir.

By the COURT:

Q. When was that?

A. That was August, 1938.

Q. How many theaters were there in Norman in 1938?

A. Five.

Q. Four that you owned?

A. Well, yes. Four we had and one Mrs. Berry had.

3090 Q. You had four after you got the Boomer?

A. Yes, sir.

Q. Were there any other theaters in town at that time?

A. No, sir, except the Oklahoma, Mrs. Berry's Theater.

By Mr. COCHRAN:

Q. Mrs. Berry was operating and still is operating the Oklahoma?

A. Yes, sir.

By the COURT:

Q. That is downtown?

A. Yes.

By Mr. COCHRAN:

Q. You at that time were operating four theaters?

A. Yes, sir.

Q. And have ever since you commenced to operate the Boomer?

A. That is correct.

By the COURT:

Q. Do you know when Mrs. Berry began operating the Oklahoma Theater?

A. Yes, your Honor. She began operating that theater, according to my memory, around 1933; the spring of 1933.

Q. You mean Mrs. Berry or her husband?

A. Mrs. Berry.

By Mr. COCHRAN:

Q. I think His Honor wants to know when Mr. Berry first started to operate it?

The COURT. Mrs. Berry or her husband?

A. Mr. Berry in 1933, had died in the meantime.

3091 Here is the history of that theater, as I recall it. The Oklahoma Theater was originally operated by Ray Berry about 1928——

The COURT. That is what I want.

A. And he operated it until about February, 1929, and we built this Sooner Theater and so on, as I explained awhile ago. Then the theater was not operated for a period of time and we leased the theater and we had a lease on it for awhile; tried to operate it and it was not successful, and we gave up our lease, and that was about the latter part of 1932. Then about six months later, as I recall, Mrs. Berry acquired the Oklahoma Theater and has been operating it since.

The COURT. It is now 4:00 o'clock, and we will adjourn at this time until Monday.

Mr. WRIGHT. If the Court please, before we adjourn I would like to make a suggestion which I think might shorten the cross examination. There were questions I was going to ask him setting forth similar statistics we have here for these intermediate yearly periods, they were written out by us in the form of this notice, and I suggest I give him this list and inform him that these questions, Nos. 2 to 12 will be asked him on cross examination, and over the week-
end he will be in a position to ascertain the necessary
3092 facts so he can then answer without having to ad-
journ and take the time looking up the information.

The COURT. I think that is very proper to write Questions 2 to 12. We will ask you for the facts that are stated there and if there are any errors or any facts that are not set forth correctly you just check them on there and then answer from your notes. Start with No. 2 through 13, inclusive.

(Thereupon, Court adjourned until 10:00 o'clock a. m., September 24th, 1945.)

3093 PROCEEDINGS

September 24, 1945, 10 o'clock a. m.

The COURT. Proceed, gentlemen.

B. J. MCKENNA, was hereupon recalled, and further testified as follows:

Direct examination (continued) by Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 115, and ask you to state what that is.

A. It is a memorandum agreement, lease agreement between S. G. Ambrister, Norman, Oklahoma, and the Griffith Amusement Company on the Campus Theater, Norman, Oklahoma.

Q. This is a copy of the original, isn't it?

A. A copy, yes, sir.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 115 and we have available the original if counsel desires it.

Mr. WRIGHT. We have no objection.

Mr. COCHRAN. That contract bears date of July 11, 1938, and provides it is effective August 1, 1938.

By Mr. COCHRAN:

Q. Mr. McKenna, what was the purpose in leasing that Campus Theater?

A. The purpose was to operate a second run theater on the campus.

Q. You mean near the campus.

3094 A. Pardon me.

Q. Not on the Campus; near the Campus. Is that right?

A. Yes, sir.

Q. This theater was in the first block north of the Campus?

A. Within half a block of Boyd Avenue, which is the main street on the Campus.

Q. The contract provides you were to have possession on August 1. Did you obtain possession August 1?

A. No, sir, we did not.

3095 Q. What happened?

A. Well, we had trouble getting possession. There was a lot of equipment left in the building and the former tenants wouldn't move it out.

Q. Was the theater being operated?

A. No, sir, it was closed; it had been closed for some time, in fact, before we acquired it.

Q. But the equipment of the former tenant was still in there?

A. Yes, sir.

By the COURT:

Q. Was it closed at the time you made the contract?

A. Yes, sir, your Honor, it was closed two months ahead of that, practically, or a month and a half before we made the contract.

By Mr. COCHRAN:

Q. Do you remember when you did obtain possession?

A. We obtained possession around, I would say around about the 5th of October, maybe the 5th or 6th.

Q. At the time you leased that property, what improvements or repairs had you contemplated having to make?

A. We hadn't contemplated that it would be necessary to make hardly any repairs; we felt like we could start in operating it with touching it up, painting it a little bit and

and a few minor effects, here and there, but no major
3096 repairs.

Q. Was it your intention to make those repairs before you commenced operating?

A. Yes, sir.

Q. After you obtained possession, what did you ascertain as to the condition of the building?

A. We found the building had been completely what you might term it was all torn up, defaced all over.

Q. Just explain what you mean by "torn up"?

A. Well, the wiring was torn out in the building entirely, the front of the building, the lobby frames had been stripped and torn, and the floor in the lobby was cracked, the tile floor, the inside walls were completely stripped, and in addition, well, the whole building was in a deplorable state, that's about the best way to express it.

Q. How about the roof?

A. They had had a penthouse formerly up there, and that penthouse had been torn off and left a big hole in the top of the building. The cooling system couldn't be installed without building a complete new roof and penthouse; so it was a major remodeling job in contemplation that we had to look forward to.

Q. When you discovered that was the condition and the situation in regard to the building, and after you were not
able to get possession, until in October, what did
3097 you then do about the matter of opening a theater near the campus?

A. Well, after we found out that it was going to develop into a major remodeling job, and would cost so much money, we decided that we would be better off if we were going to have to spend that much money to acquire a 50 foot location and build a 50 foot theater on the campus in lieu of this 25 foot space that we had, so we immediately went to work trying to locate a 50 foot location on Boyd Avenue, and there were several buildings there that were likely, among them was this old College Shop that was located on Boyd Avenue just east of this street called Asp, which is the street the present Boomer Theater is on. And for awhile we were negotiating with the owner of that property and also with some others right on the Boyd Avenue location, and just about the time it looked like we might work out something on that location, Boyd Avenue I am talking about, which is the main street on the campus, why, the projectionists went on a strike in Norman, in other words, the operators organized a local and they started picketing all the theater locations in Norman and stayed there for about six months, which agitated the whole thing, and it

finally was running up into the following late spring, and when they did not acquire the 50 foot location——

3098 Q. That was in 1939?

A. Yes, late spring of 1939 after we executed this lease in the fall of 1938.

Q. You had not at that time opened this theater which you had leased from Mr. Ambrister?

A. No. We decided it was impracticable to open the theater while the theaters were being picketed by the Union.

Q. What happened to further delay the opening?

By the COURT:

Q. Did you remodel this whole building?

A. We finally did later; about a year later.

By Mr. COCHRAN:

Q. Why was that theater not remodeled and opened during this period from 1939 for about a year until you did open it?

A. Well, after we went through this period of trying to locate the 50 feet, as I explained awhile ago—in the meantime we had under consideration a theater in Stillwater, Oklahoma on the Campus and it was decided——

Q. Was that a 25 foot lot?

A. That was a 25 foot location. So we decided if we were going to try to open that house we would just try to see whether or not a 25 foot location would be a satisfactory location in Stillwater, and we wanted the experience of the Stillwater operation for awhile before definite-

3099 ly going ahead with the 25 foot location on the Norman campus. As a result of that—we waited until we had some experience from the operation in Stillwater before we remodeled and opened the Boomer Theater on the campus at Norman.

Q. There was a question asked when we introduced a picture of the Boomer Theater at Norman as to whether that picture showed the condition at the time you leased the Campus or whether it had been changed.

A. Oh, no. That is the remodeled theater as of today.

By the COURT:

Q. When did you go into it?

A. We got into it in November, 1940.

By Mr. COCHRAN:

Q. It has been operated as a second run house ever since that time?

A. Ever since, yes.

Q. In Kermit, Texas, the answer to the interrogatories shows that you acquired the Texas Theater in July of 1937?

A. Yes, sir.

Q. After having opened the Kermit Theater in that place along in 1936?

A. December, 1936.

Q. Up to that time had you operated only one theater in that town?

A. Yes.

Q. What was the purpose of acquiring the Texas Theater in 1937?

3100 A. The purpose was to have an A and B operation in the town.

By the COURT:

Q. Have what?

A. An A and B operation.

By Mr. COCHRAN:

Q. Just explain what you mean by an A and B operation.

A. Well, the A house operates what might be termed the best product, and the B house operates second best; uses the second product. It is standard operation in the theater business, more or less.

Q. In a town like Kermit in addition to playing of the second best pictures were action pictures played?

A. Western and action pictures play in this second house, yes.

Q. When you were on the stand before you testified that the Inca Theater in Okmulgee was acquired from the estate of Mr. Malcolm Cook, who had been operating that theater?

A. Yes, sir.

Q. Who approached you or your company to dispose of the Inca Theater?

A. Mrs. Cook.

Q. The widow of Malcolm Cook?

A. The widow of Malcolm Cook.

Q. What was the purpose of acquiring that theater? Explain the situation there and why you desired to acquire that theater at that time.

3101 A. Well, you mean the purpose of acquiring it for——

Q. The purpose of acquiring the Inca Theater.

A. Mr. Cook had died——

By the COURT:

Q. Why did you want an additional theater there? That is the question.

A. We were operating there at the time——

Q. How many theaters did you have there at that time?

A. Three.

Q. Three in Okmulgee?

A. Three in Okmulgee.

By Mr. COCHRAN:

Q. Did you own the fee to any of your theaters there in Okmulgee at that time?

A. No, we didn't. Mrs. Cook wanted to dispose——

Mr. WRIGHT. If the Court pleases, it isn't competent to say what she wanted to do.

The COURT. No, don't tell what she said. Just tell what you did.

A. We acquired Mrs. Cook's interest in the Inca Theater.

By Mr. COCHRAN:

Q. I am asking you why you acquired that theater.

A. Because we had an opportunity to buy the building in fee. In other words, we purchased the entire building.

Q. What type of theater was the Inca?

A. It was what they call a C house, and it was in
3102 a 50 foot building. It occupied 25 feet of the 50 foot location and the other part was a mercantile establishment.

Q. So you did have an opportunity——

A. So we had an opportunity to buy this Inca building from the insurance company, I believe it was the Connecticut Mutual, and it was up for sale and we bought it and acquired in addition to the theater, the mercantile portion of the building.

Q. What C operation did you have in Okmulgee before you commenced to operate the Inca?

A. What C operation?

Q. Yes. Did you have a C operation?

A. Yes, we did.

Q. What was it?

A. The Rex Theater.

Q. Why did you desire to operate the C theater instead of the Rex?

A. It was a better location.

Q. Where is the Inca located?

A. It is located on the south side of the square, what they call the square in Okmulgee. It is the only theater in the square.

Q. Where is the Rex Theater?

A. The Rex Theater is located off the square on the northern side of the square, slightly to the west.

3103 Q. In the town of Okmulgee during a period of years did you have considerable difficulty in the operation of your theaters there owing to change in the conditions in the town?

A. Yes, sir, we did have.

Q. What seemed to be the difficulty?

A. Well, it was a case of trying to figure out the location and how the trend was going in the town. For a long time there it looked like the Rex was a good house. Then there came a shift in conditions and the opposite side of the square became a better location. In other words, we have had a sort of changing operation in Okmulgee ever since we have been there, as I recall.

Q. Has the fact that the town is built on a square had anything to do with that situation, that condition?

A. Well, I don't know what exactly brought that about.

Q. Had there also been considerable fluctuation, so far as business conditions in Okmulgee were concerned?

A. Yes, sir. When we went in Okmulgee why conditions were what might be termed very good because they had had an oil boom, and the town was still in good shape.

3104 Q. When was that?

A. In 1926. We didn't come in exactly on the boom, but we came in when conditions were very good; and there has been a lot of change in the conditions since that time.

By the COURT:

Q. Were there any other theaters there except yours at the time you bought this?

A. No, sir.

Q. What did you finally do with this location?

A. We are still operating it.

Q. Did you just develop the 25 feet?

A. The other 25 feet is occupied by the Firestone Store; they have a tenant there.

By Mr. COCHRAN:

Q. What did you do with the Rex?

A. We still have the Rex; in fact, we bought the building, which is also mercantile; we have a 25 foot restaurant, and the other side is the theater premises.

By the COURT:

Q. You still have four theaters there?

A. We still have four theaters there.

Q. Are there any other theaters there except yours?

A. No, sir.

By Mr. COCHRAN:

Q. In Hugo, Oklahoma, it appears from your answers to the interrogatories that you acquired the Erie in May of 1926, and the Ritz in 1933. Now, was the Ritz being operated at the time you acquired it?

A. No, sir.

3105 Q. Had it been operated prior to that time?

A. Yes, it had been operated I would say probably eight or ten months before that.

Q. By whom?

A. By a man named Weaver.

Q. What had become of him at the time—

Mr. WRIGHT (Interrupting.) What town is it?

A. Hugo.

By Mr. COCHRAN:

Q. What had become of him at the time you acquired the Ritz?

A. He was sent to the penitentiary.

Q. And the theater was closed?

A. The theater was closed.

Q. Did you acquire that theater for the purpose of operating it?

A. Yes, sir.

Q. Have you operated it since that time?

A. Yes, sir, and are still operating it.

Q. Now, in Mangum, Oklahoma, your answers to the interrogatories show that you acquired the Temple and Rialto in May of 1938; is that correct?

A. That's correct, yes, sir.

Q. Those are the theaters that you acquired from Mr. Duffy?

A. That's right.

3106 Q. And at that time you were operating the Greer Theater in Mangum?

A. Yes, sir.

Q. Was the Rialto operating at the time you acquired it?

A. No, sir, it was not.

Q. What was done with the Rialto after Consolidated Theaters acquired the Temple and Rialto?

A. We closed the Temple Theater immediately after we acquired it in order to remodel it; we did a major remodeling job on the Temple Theater, and it was closed down, I would say two months, or possibly seven weeks, and we operated the Rialto during that period with the Greer Theater.

Q. After the remodeling of the Temple had been finished, what was done with the Rialto?

A. Well, it was closed down. It was an obsolete theater, an off location, and everything else, and it was closed down; and it was destroyed by fire finally.

Q. When the lease expired?

A. Well, it was destroyed by fire about the time the lease expired, or right around that date, I don't recall exactly.

Q. And it was not operated by Mr. Duffy at the time it was acquired?

A. Not to my knowledge, it was not, no, sir. I might mention that we stored, we used it for storage for
3107 awhile after we closed it. The rent on it was practically nothing, and we needed storage space there, so we had used that building for storage.

Q. Was that a building that was constructed for theater purposes?

A. No, sir.

Q. Was it a store building?

A. A store show, we called it a store show type.

Q. A store show?

A. Yes, sir.

By the COURT:

Q. Are there just two theaters in Mangum now?

A. Yes, your Honor.

Q. Do you recall, Mr. McKenna, in how many towns Griffith Amusement Company has all of the theaters in operation?

A. No, I do not, your Honor, not off-hand. I can get that information.

The COURT. Proceed.

Mr. COCHRAN. We can prepare that list, your Honor, but I think when we take the theaters in which shows were operated, were in operation, and then you can deduct those towns in which we show there was competition on a certain date, and that will give that answer.

A. I can give you the percentage, your Honor.

3108 Mr. COCHRAN. We can prepare that list, if your Honor wants it.

A. I can give you the percentage.

By the COURT:

Q. What is that percentage?

A. About 50 per cent.

Q. 50 per cent?

A. Yes, sir.

(Defendants' Exhibits 116–A and B, 117–A and B, and 118–A and B were then marked for the purpose of identification.)

The COURT. You may get up that list.

The WITNESS. All right, your Honor.

By Mr. COCHRAN:

Q. Are you acquainted with the theater buildings and equipment in the town of Altus?

A. Yes, sir.

Q. I hand you what has been marked for identification as Defendants' Exhibits 116–A and 116–B, and will ask you to state what they are?

A. 116–A is the exterior view of the Plaza or New Empire Theater in Altus, Oklahoma.

By the COURT:

Q. The New Empire?

A. Formerly the New Empire, now the Plaza.

By Mr. COCHRAN:

Q. Now the Plaza?

A. Now the Plaza. 116–B is the auditorium view looking from the foyer towards the stage of the Plaza Theater.

3109 Q. And 117–A and B?

A. 117–A is the auditorium view from the foyer of the Delta Theater looking toward the screen in Altus, Oklahoma; 117–B is the exterior view of the Delta Theater, the front, in other words.

Q. And 118–A and B?

A. 118–A is the exterior view of the Ritz Theater in Altus, Oklahoma; and 118–B is the auditorium view looking from the stage toward the foyer.

Q. Now, this exterior view of the Ritz Theater, has that been changed since that theater was acquired from Mr. Hamm?

A. I do not recall whether it has been or not.

Q. Has the interior been changed?

A. I don't think so; I really don't remember.

Mr. COCHRAN. We offer in evidence the exhibits which have just been identified.

Mr. WRIGHT. We have the same objection as made formerly to the relevancy.

The COURT. Overruled, and exception allowed.

By Mr. COCHRAN:

Q. In Altus, the Plaza Theater is what you call your "A" house, is it?

A. Yes, sir.

Q. And the Delta is your "B" house?

A. Yes, sir.

3110 Q. And the Ritz is your "C" house?

A. Yes, sir.

By the COURT:

Q. How many theaters are there in Altus?

A. There are four, your Honor.

Q. Who owns the fourth one?

A. A gentleman by the name of Merriot.
Q. What class theater is it?
Mr. COCHRAN. The Court wants to know what class theater is Mr. Merriot's?
A. It is a 25 foot store show.

By the COURT:

Q. Whether it is an A, B, or C class?
A. I believe he plays some A, some first run, and some second run.

3111 By Mr. COCHRAN:

Q. In comparison with the theaters, the pictures of which have been introduced in evidence, how does that theater compare?
A. It doesn't compare with any of them. He just went there and opened up a cheap theater. In other words, he didn't spend any money on it.
Q. The theater has been open since 1939?
A. Since 1938; May 1, 1938.

By the COURT:

Q. When was your Plaza opened?
A. The Plaza was opened in 1928, your Honor.
Q. And the Delta?
A. The Delta was opened in 1928. The Plaza was formerly what was called the New Empire Theater. The Delta was the old Empire Theater. Both of those theaters had gone through a major remodeling since 1928.
Q. But the Griffiths went into the theater business there in 1928?
A. Yes, sir.
Q. When was the Ritz acquired?
A. The Ritz was acquired in July of 1937.
Q. From whom did you acquire that?
A. A gentleman by the name of Hamm.
Q. Did you open negotiations with Hamm in the purchase of that theater or did he open them with you?
3112 Mr. WRIGHT. I think Mr. Hamm was on the stand here and testified as to those negotiations. I don't think Mr. McKenna took part in them.
Mr. COCHRAN. We are going to have Mr. Speers, who is manager of the Griffith Amusement Company down there and who was mentioned by Mr. Hamm in his testimony, testify as to the acquisition.
The COURT. Very well.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibits 119–A and B, and ask you to state what those exhibits are.

A. 119–A is the auditorium view looking from the foyer of the State Theater in Sapulpa, Oklahoma.

Q. Is that a Griffith Amusement Company's Theater?

A. No, it is Griffith Consolidated. Exhibit 119–B is the exterior view of the State Theater, Sapulpa, Oklahoma.

Q. I hand you Defendants' Exhibit 119–C and D, and ask you to state what they are.

A. 119–C is the auditorium of the Yale Theater in Sapulpa looking from the foyer toward the stage. Defendants' Exhibit 119–D—this is not the Yale Theater in Sapulpa as it is today.

By the COURT:

Q. The State is in Sapulpa?

A. Yes, sir.

By Mr. COCHRAN:

3113 Q. That is an exterior view of the Yale Theater as it existed back in the early thirties?

A. Yes.

Q. What has been done to that theater since?

A. It has been completely remodeled. We have spent thousands of dollars on the front. It is a beautiful theater, and the interior has been redecorated. The picture of the interior seems to be all right. The exterior view is not the exterior view of the State. We had this remodeled in 1936 and '37.

Q. Both the State and Yale are operated by Consolidated?

A. Griffith Consolidated Theaters, yes, sir.

Q. And the other theater operating there is Mr. Moulder's theater, the Criterion?

A. Speedy Moulder, yes, sir.

Q. I hand you Defendants' Exhibits 120–A and B, and ask you to state what they are.

A. 120–A is the picture of the auditorium of the Criterion Theater, Sapulpa, looking from the foyer or from the arcade sector, and Exhibit 120–B is the outside or exterior view of the Criterion Theater in Sapulpa, Oklahoma.

Q. This is the State Theater which you were operating there in Sapulpa. Is that a second run operation?

A. Yes, sir.

Q. I hand you Defendants' Exhibit 121–A and B and ask you to state what they are?

3114 A. Exhibit 121–A is an exterior view of the Kiowa Theater in Hobart, Oklahoma.

Q. Is that a Griffith Amusement Company theater?

A. Yes, sir.

Q. Exhibit No. 121–B?

A. Exhibit 121–B is the auditorium view looking toward the stage from the foyer of the Kiowa in Hobart.

Q. 122–A?

A. 122–A is the exterior view of the Oklahoman Theater, Hobart, Oklahoma.

Q. Is that the theater which is operated by Mr. Charlie Mahone?

A. Yes, sir.

Q. What is Defendants' Exhibit 122–B?

A. Exhibit 122–B is a view of the interior of the Oklahoman Theater looking from the balcony toward the stage.

Q. We do not seem to have a picture showing the seats in the Oklahoman Theater. Are those nice upholstered seats?

A. Well, I think they are divided, some are upholstered, some hard backs and some veneer. It is not a very large theater; 518 seats.

Q. Defendants' Exhibit 123–A is what?

A. That is the auditorium view of the Palace Theater in Hobart looking from the foyer.

Q. Is the Palace Theater the theater which was at one time operated by Mr. Jess Hale?

3115 A. Yes, sir, that is right.

Q. What is Defendants' Exhibit 123–B?

A. Exhibit 123–B is the exterior view of the Palace Theater in Hobart, Oklahoma.

Q. And that is also the theater which was later acquired by Mr. Mahone from Mr. Hale, about which he testified?

A. Yes, sir.

By the Court:

Q. Who owns the Palace Theater at this time?

A. I don't know, your Honor, who owns it.

By Mr. Cochran:

Q. Is it operated as a theater now?

A. I don't know that.

Q. As far as you know, Mr. Mahone still operates the theater?

A. As far as I know—

Q. Is that true of the last time you knew about it?

A. Yes, sir, the last time I was there. I haven't been in Hobart for quite a while.

Q. But Griffith Amusement Company operates one theater in Hobart?

A. Yes, sir, the Kiowa.

The Court. You asked the question as to what kind of seats the Oklahoman Theater had.

Mr. COCHRAN. Yes, sir.

3116 The COURT. The picture says "upholstered seats in good repair."

Mr. COCHRAN. I thought there was a notation on it but we didn't have the picture.

3117 The COURT. In preparing that list, I wish you would show the towns where each one of these companies operated, the number of theaters in the town, and the number owned by the circuit.

A. Yes, sir.

Mr. COCHRAN. Here is another one, which is C.

A. I understand.

Mr. WRIGHT. This is as of what date, if the Court please.

The COURT. When was this suit filed?

Mr. WRIGHT. April 28th, 1939.

The COURT. Well, as of 1939.

A. All right, your Honor.

(Defendants' Exhibits 126–A and B, and 127–A and B were then marked for identification.)

By Mr. COCHRAN:

Q. What is your "A" house in Seminole, Oklahoma?

A. The Seminole Theater.

Q. Was that formerly known as the Rex?

A. Yes, sir.

Q. I show you Exhibits marked for identification as Defendants' Exhibits 124–A, B and C, and ask you to state what those exhibits are.

A. Exhibit 124–A is the exterior view of the Seminole Theater in Seminole, Oklahoma; 124–B is the inside

3118 view looking from the booth of the auditorium and the balcony of the Seminole Theater in Seminole, Oklahoma; and 124–C is the auditorium view of the Seminole Theater looking toward the stage from the foyer, I presume.

Q. I show you exhibits marked for identification as Defendants' Exhibits 125–A, B and C, and will ask you to state what those are?

A. Exhibit 125–A is an exterior view of the Rialto Theater in Seminole, Oklahoma; Exhibit 125–B is an inside view showing the auditorium looking from the foyer or booth.

Q. Of the same theater?

A. Of the Rialto Theater, Seminole, Oklahoma; and 125–C is another interior view looking toward the screen of the Rialto Theater at Seminole.

Q. What operation do you have in the Rialto?

A. We have a "C" operation.

Q. What is your "B", in what house do you have your "B" operation in Seminole?

A. The State Theater.

Q. I hand you Defendants' Exhibits 126–A and B, so marked for identification, and ask you to state what they are.

A. 126–A is an exterior view of the State Theater in Seminole, Oklahoma, and 126–B is an interior view of the auditorium and balcony looking from the stage
3119 toward the booth.

Q. The opposition theater in Seminole is what?

A. The Chief Theater.

Q. Operated by Mr. Love, who testified here?

A. Mr. Love.

Q. I hand you Defendants' Exhibits 127–A and B, for identification, and ask you to state what they are.

A. Exhibit 127–A is an outside or exterior view of the Chief Theater in Seminole, Oklahoma, and 127–B, I don't know what that is; it looks like the auditorium of a theater.

Q. It is labeled the Chief Theater, Seminole, Oklahoma. Are you not familiar with that?

A. I am not familiar with that.

Q. Of the interior of that theater?

A. No, sir, I am not.

Q. You have never been in that?

A. No, sir. I have seen it from the outside and passed by it, but I have never been on the inside.

Mr. Cochran. We offer in evidence Defendants' Exhibits 124–A, B and C, 125–A, B and C, 126–A and B, and 127–A; B not having been identified.

Mr. Wright. We have the same objection as to all these photographs, your Honor please.

The Court. Objection overruled, and exception allowed.

3120 Mr. Cochran. I understand I haven't offered 119. I don't know what it is.

The Court. It is Sapulpa.

Mr. Cochran. All right, the photographs of the theaters at Sapulpa are offered in evidence.

The Court. You have offered 119, 120, 121, 122, 124, 125, 126 and 127.

Mr. Cochran. Yes, sir.

The Court. So the record will be clear.

Mr. Cochran. Yes, sir.

The Court. They will be admitted.

By the COURT:

Q. How many theaters are there in Seminole?

A. Four, your Honor.

Q. And the Griffith interests own three of them?

A. Yes, your Honor.

Q. When did you acquire the Seminole?

A. In 1926. It was then known as the Rex, your Honor.

Q. And the Rialto?

A. The Rialto was acquired in June, 1935.

Q. And the State?

A. The State in February, 1930.

Q. When was the Chief acquired by the present owner?

A. I believe in 1935, in October.

Q. Who owned the Chief prior to the present ownership?

3121 A. It was just a building, a store building, and he remodeled it and put in a theater there.

Q. What time in 1935 did you acquire the Rialto?

A. In June, your Honor; June 1st, I believe, or thereabouts.

By Mr. COCHRAN:

Q. In Wewoka, what is the theater in which you have your A operation?

A. The Key.

(Defendants' Exhibits 128–A and B were marked for identification.)

Q. In what theater do you have your "B" operation?

A. The Paramount.

(Defendants' Exhibits 129–A and B were then marked for identification.)

Q. Do you have a "C" operation in that town?

A. Yes, sir.

Q. In what theater do you have that operation?

A. The Rex.

Q. Was that at one time known as the State?

A. Yes, sir; it is the State, I am wrong. The Rex is now the State; in other words, it was the Rex and it has been renamed the State.

Mr. COCHRAN. All right.

(Defendants' Exhibits 130–A and B were then marked for identification.)

3122 Q. And the opposition theater is what?

A. The Pix.

(Defendants' Exhibits 131–A and B were then marked for the purpose of identification.)

Q. I hand you Defendants' Exhibit No. 128–A and ask you to state what that is.

A. That is an exterior view of the Key Theater in Wewoka, 128–A.

By the COURT:

Q. Exterior?

A. Exterior.

By Mr. COCHRAN:

Q. And 129–B?

A. 129– is the auditorium view——

The COURT (Interrupting.) 129 or 128?

Mr. COCHRAN. 128–B is what I want.

A. 128–B is the auditorium and the balcony of the Key Theater in Wewoka, Oklahoma.

Q. 129–A?

A. 129–A is the outside or exterior view of the Paramount Theater in Wewoka, Oklahoma.

Q. 129–B?

A. 129–B is the inside or auditorium view of the Paramount Theater looking from the stage.

Q. 130–A?

A. 130–A is the exterior view of the State Theater in Wewoka, Oklahoma.

3123 Q. 130–B?

A. 130–B is the inside view of the auditorium of the State Theater in Wewoka.

Q. 131–A?

A. 131–A is the exterior view or outside view of the Pix Theater in Wewoka, Oklahoma.

Q. Are you familiar with the interior of the Pix Theater?

A. I am not.

Mr. COCHRAN. We offer in evidence Exhibits 128–A and B, 129–A and B, 130–A and B, and 131–A.

Mr. WRIGHT. The same objection.

The COURT. Overruled and exception allowed.

3124 By the COURT:

Q. When did you acquire the Key?

A. In 1938, your Honor, January 1. We started operating January 29, 1938.

Q. The Paramount?

A. The same date.

Q. The Rex or State?

A. The same thing.

Q. All three at the same time?

A. All three at the same date.

Q. For whom did you purchase those?

A. John Terry.

Q. What theaters were there in the city at that time?

A. There were just three theaters.
Q. When was the Pix opened?
A. The Pix was opened that following spring, March or April, 1938.
Q. Which is your A Theater in Seminole?
A. The Seminole Theater.
Q. I mean the A theater in Wewoka.
A. The Key Theater.

By Mr. COCHRAN:

Q. Mr. McKenna, there has been some testimony here in regard to the town of Lubbock, particularly relating to the lot which you acquired in, I believe 1938, out near the campus of the Tech school, and on which a sign was placed but on which no theater was ever erected.
3125 A. Yes, sir.
Q. Do you recall that testimony?
A. I do.
Q. Was there a suit brought in behalf of the Lindsey Theaters, Inc. for the purpose of attempting to remove the restrictions or zoning limitations, or whatever it was on that property?
A. There was.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit No. 132, which is a certified copy of the Plaintiff's original petition and Defendants' original answer in cause No. 8100, the County of Lubbock, in a cause entitled Lindsey Theaters, Inc., versus Ray C. Mowery, defendant——

Mr. WRIGHT. It seems completely immaterial to me. I can't for the life of me see what that document is supposed to prove in this suit.

The COURT. It goes to the good faith of the defendants in purchasing this lot. It has been asserted in this case—I don't know whether you were present or not—but a witness testified this lot was purchased and a sign was put up on it, and that it was for the purpose of deceiving the public.

Mr. WRIGHT. I don't think there was any claim of deception. It was clearly a threat, and it was just as much of a threat whether they intended to go through and build a theater or not. All he is proving here is that they
3126 were not bluffing, and if they were not I suppose it still had the cursive effect, or even more cursive effect on the owners of the Campus Theater than if they had been bluffing.

The COURT. Overruled. I think it is very material to show good faith. Is it your contention that this company would not have a right to erect a theater out in that section?

Mr. WRIGHT. Not at all. I say it was clearly the pur-

pose in putting up the sign and giving this man notice they were going to erect the theater and then having a conference with him, was to induce the sale of his theater to them, and it would still have the same effect as far as he was concerned, whether they went ahead and built it or whether they did not.

The COURT. Overruled. Exception allowed.

3127 By Mr. COCHRAN:

Q. Mr. McKenna, the testimony of Mr. Akers, I believe, was to the effect that an architect was employed and plans were prepared for the erection of a theater on a lot which was involved in that lawsuit?

A. That is true; I employed him.

Q. You employed the architect?

A. Yes, sir.

Q. Do you have here the detailed plans and specifications which were prepared by the architect for the erection of a theater on that lot?

A. Yes, sir; they are over there.

Q. They are available here in Court?

A. Yes, sir, they are.

Q. Count the number of sheets there (handing).

A. 21 sheets—25 altogether.

Q. Consisting of 25 sheets?

A. Yes, sir.

Mr. COCHRAN. Do you care to inspect those?

Mr. WRIGHT. I wonder if there is any date on this. This apparently is some kind of a prepared copy.

Mr. COCHRAN. It is a certified copy.

Mr. WRIGHT. Where does the date appear as to when this was filed?

By Mr. COCHRAN:

Q. Can you get your correspondence and show
3128 that date? I think we ought to send it back and get the date, but he can testify to that. Do you have your files here so you can give us the filing date on this lawsuit? It seems that the Clerk didn't place any filing date on it.

A. I don't have my file, but I recall that suit was filed sometime in the fall of '38, 1938. I can get you the exact date.

Q. But you know it was filed sometime in the fall of 1938?

A. Yes, sir; I talked to Mr. McWhorter about it.

The COURT. Do you gentlemen agree that this exhibit may be returned to the Clerk with instructions to put the filing date on it?

Mr. WRIGHT. Surely.

The COURT. Then it can be refiled as an exhibit.

Mr. COCHRAN. Very well, your Honor.

The COURT. I think that should be done as a part of the record.

Mr. COCHRAN. Has Defendants' Exhibit No. 11 been introduced, your Honor?

The COURT. What number?

Mr. COCHRAN. No. 11. It is in evidence, your Honor, at page 906.

By Mr. COCHRAN:

Q. Defendants' Exhibit No. 11 which has been introduced in evidence is a two year agreement with the Seminole Amusement Company on the Criterion
3129 Theater in Shawnee, Oklahoma. It shows that the rental was reduced from $500 per month to $400 per month, and it shows that it was to expire on June 30th, 1934. Now, Mr. Jake Jones testified to a conference which was held and which he says was held in the Aldridge Hotel in Shawnee, Oklahoma, and which he says was in the early part of 1933, and in which he said that Mr. R. E. Griffith during the course of that conversation said, "I want you to cut the rent to $250, and if you don't cut it, we are going to build another house and take your second run away from you, all of your second run pictures away from you." Mr. Jones gave the names of the persons who were present at that conversation, and said that you were one of the persons who were present in the Aldridge Hotel at that conversation. Do you recall being present at any conversation, at any conference with Jake Jones in the Aldridge Hotel, for the purpose of discussing the matter of the rental on the Criterion Theater?

A. Yes, sir, I do.

Q. How many such conversations in the Aldridge Hotel did you attend, I mean such conferences in the Aldridge Hotel?

A. One.

Q. Did you attend?

A. One.

Q. And only one?

A. Yes, sir.

3130 Q. Was there any such conference in 1933?

A. There was not.

3131 Mr. WRIGHT. You mean by "such conference", a conference at which he was in attendance?

Mr. COCHRAN. Yes. Mr. Jones testified there was only one conference.

By Mr. COCHRAN:

Q. By whom was that conference that you referred to arranged?

A. Arranged by Mr. Hornbeck.

Q. At whose request?

A. At my request.

Q. Do you have in your files a copy of a letter which you wrote to Mr. Hornbeck in regard to arranging that conference?

A. I didn't write a letter in regard to arranging it, I called him by telephone.

Q. Well, you have in your files a copy of a letter which was written by you in relation to that conference?

A. Yes, sir, I do.

By the COURT:

Q. Who was Mr. Hornbeck?

A. Mr. Hornbeck is our partner in Shawnee, Oklahoma.

By Mr. COCHRAN:

Q. He lives in Shawnee?

A. He lives in Shawnee.

Q. Can you tell us when that conference was held?

A. The conference was held on or about June 23, 1934.

Q. What was the purpose of that conference?

A. The purpose of it was to discuss a new lease on
3132 the Criterion Theater.

Q. According to this Defendants' Exhibit 11, that extension agreement was expiring about that time. Is that true?

A. Yes, sir. Well, this is a two year agreement. It was filed about the first of July. I believe the lease was running as of a July date and Mr. Hornbeck wrote to me under date of May 12——

Mr. WRIGHT. If the Court pleases——

Mr. COCHRAN. It is competent to say he wrote to him but not the contents.

The COURT. Don't state the contents.

Mr. COCHRAN. He can state that he wrote to him?

The COURT. Yes.

By Mr. COCHRAN:

Q. When did he write to you relating to the matter?

A. He wrote to me relating to the matter.

Q. On what date?

A. May 12, 1934.

Q. Then what did you do?

A. I called him by telephone.

Q. Then don't state what you said to him. Pursuant to that telephone conversation, what was done relative to a conference?

A. Well, I hadn't heard——

3133 By the COURT:

Q. Well, did you go over and have a conference with him?

A. Yes. I just want to explain that I followed it by writing a letter to Mr. Hornbeck and asking him what progress he had made.

Mr. WRIGHT. If the Court please——

The COURT. I don't care about that. Did you arrange a conference?

A. I did arrange a conference. Mr. Hornbeck arranged a conference.

By Mr. COCHRAN:

Q. Do you have a copy of the letter which you wrote Mr. Hornbeck in regard to that?

A. I do.

Q. In that conference just tell us what conversation took place.

By the COURT:

Q. Who were present?

A. H. J. Griffith, Mr. R. M. Clark and myself, Mr. Jake Jones and Mr. Lawrence Bocher, who was secretary of the Seminole Amusement Company.

By Mr. WRIGHT:

Q. Mr. H. J. Griffith was present, Mr. R. M. Clark and yourself for the Griffith Company?

A. That is right.

Mr. COCHRAN. And Mr. Bocher was present?

A. Mr. Bocher, yes, sir.

By the COURT:

Q. The original contract was made when?

3134 A. The original contract was made in 1929, on June 1.

Q. When did that expire?

A. It expired in 1939, on June 1.

Q. A ten year lease?

A. Yes, sir.

Q. Now this modification you are talking about, when did it take place?

A. It took effect in 1932, in August.

Q. When did the two year modification expire?

A. It expired July 1, 1934.

Q. Now this conference you are speaking about was held just prior to the expiration of this two year modification?

A. About a week ahead of that.

Q. Now you can state what was said.

Mr. COCHRAN. Just a moment. The Court asked you if this conference was held just prior to this two year modification.

The COURT. Expiration.

Mr. COCHRAN. Go ahead. You are right.

A. Well, we met in a room in the Aldridge Hotel in Shawnee, Oklahoma, and the parties I have mentioned here were present, and Mr. Griffith, Mr. Clark and myself, arrived in the room first. We had arranged for a room and Mr. Jones came in with Mr. Bocher and we passed a few pleasant remarks——

3135 The COURT. I don't care about those details.

A. Anyhow, Mr. H. J. Griffith acted as spokesman and he said to Mr. Jones: "Well, Jake, I understand you want to work out a new lease on the Criterion, and talk to us about the rental at the reduced figure," and Jones just didn't waste any time. He let out a few oaths, very impolitely, that someone had misinformed him; and he wasn't over here to make any reduction to anybody, and if we wanted to talk about a new lease he would talk to us about it, but it was at a higher rental or at the figure that we had originally agreed to, and just turned around and walked out. He didn't waste any time; it didn't last over a minute or two. It was very sudden; no one was expecting it——

Q. Was R. E. Griffith present?

A. He was not present.

Q. Was he in Oklahoma at that time?

A. No, sir.

Q. Where was he living?

A. He was living in Roswell, New Mexico, I believe.

By the COURT:

Q. What did the original lease provide?

A. It provided a rental of $561.65, plus taxes and insurance on the building.

Q. What did the modifying lease provide?

A. The modified lease was for that two year period at $400 a month.

3136 By Mr. COCHRAN:

Q. Mr. Jones said Mr. R. E. Griffith got up after that and said, "We want you to cut the rent to $250, and if you don't cut it, we are going to build another house and take your second run away from you, all of your second run pictures away from you." Now, you say that R. E. Griffith wasn't present?

A. He wasn't present.

Q. Therefore, he didn't make that statement?

A. He did not.

Q. Was any statement of that kind or character made by anyone in that conference?

A. There was no such statement of any kind or character made. We didn't have time to open our mouths; he was gone.

Q. You say you didn't have time to open your mouths. You have given some conversation?

A. I mean after he said what he did.

Q. After he made the statement, "If you are here for a reduction, it is out of the question"?

A. That's right.

Q. How about the Mr. Clark you speak of; where is he?

A. Mr. Clark is dead.

Q. Mr. Clark is dead?

A. Yes, sir.

Q. At the time this conference took place, were you operating a second run theater in the town?

3137 A. We were.

Q. What?

A. The Rex Theater.

Q. How long had you been operating the Rex Theater?

A. We had been operating it over a year; we opened it up in May, 1933.

By the COURT:

Q. Did this modified contract cancel the ten year lease?

A. No, it didn't, your Honor; it was just a modification for the two year period only.

Q. What followed——

A. Well the——

Q. —this conference?

A. After this conference, why, on July 1st the rent reverted back to the figure we had been paying before the two year period, before the modification agreement, and it remained that way until we made a new lease with him in 1938.

Q. Then you paid him $500 a month?

A. We did, plus taxes and insurance on the building.

Q. Did the ten year lease expire in '38?

A. No, it didn't your Honor. In 1938 Mr. Jones came to us and asked us if we wanted to make a new lease on the premises, and we worked out a new ten year lease with him.

Q. Did you make a lease?

A. Yes sir.

3138 Q. What rental did you pay then?

A. We paid $300 a month.

Q. What theater was that?

A. The Criterion.

Q. Do you still operate that theater?

A. Yes, sir, we do.

Q. Under that lease?

A. Under this new lease. I said $300 a month, and we discontinued paying the taxes and insurance.

Q. Well, you agreed on a new lease?

A. That's right.

By Mr. COCHRAN:

Q. Mr. McKenna, this original lease, in addition to being a lease on the real estate, also covered some equipment, didn't it?

A. Yes, it did; it was a lease of the personal property.

Q. And when you made this new lease in 1938, you acquired, as I believe, the equipment, and the new lease covered only the real estate?

A. That's correct; we bought the equipment.

Q. There has been some testimony here about Griffith Amusement Company discontinuing the operation of the Ritz Theater in Shawnee. That theater which Griffith Amusement Company operated for a number of years as the Ritz was acquired by Griffith Amusement Company when?

3139 A. September 1st, 1926.

Q. Under a lease from whom?

A. Jake Jones.

Q. That is, you leased the real estate from Jake Jones?

A. Yes, sir. We purchased the equipment from him.

Q. You didn't lease the equipment, but purchased the equipment?

A. That's right.

By the COURT:

Q. Was that your first theater in Shawnee?

A. Yes, sir, your Honor, it was.

By Mr. COCHRAN:

Q. For a time was that theater operated as your "A" house?

A. Yes, sir, it was.

Q. After acquiring the Ritz in 1926, what was your next acquisition in Shawnee?

A. We built the Bison Theater and opened it on October 27th, 1927.

Q. Now, what type of theater was the Bison as compared with the Ritz?

A. Well, the Bison is a very fine theater; it is still one of the most modern theaters in the state.

Q. Was it a finer theater than your Ritz when you opened it, built it and opened it?

A. Indeed, yes, sir, very much so.

Q. How does it happen then that after you built the
3140 Bison Theater there was a time when the Ritz was operated as your "A" house?

A. Well, the Ritz Theater in 1928, in September, was equipped with sound; the Bison wasn't.

Q. Well, then, when you operated it as an "A" house after the Bison had been built was after talking pictures came in, is that correct?

A. Yes, sir; that's right.

Q. In other words, prior to talking pictures, when you first built the Bison Theater, it became the "A" house?

A. It became the "A" house, and had stage shows and motion pictures.

Q. In 1928, or somewhere along there, talking pictures came in, and talking picture machinery was first installed in the Ritz Theater, is that correct?

A. That's correct.

Q. So you commenced to play "A" pictures in that house again?

A. Sound pictures.

Q. Sound pictures?

A. Sound pictures.

Q. Was there a time when you played the "A" pictures of the silent kind in the Bison Theater?

A. Yes, sir; we played "A" pictures silent with stage attractions, vaudeville in those days, it was very
3141 good vaudeville.

Q. How did it happen that sound was first installed in the Ritz Theater instead of in your finer theater?

A. Well, when sound came in there was some difference of opinion regarding whether or not it would be permanent, so the installation was made in the Ritz as a sort of trial procedure.

Q. And the Bison was left to operate in connection with silent picture and stage shows?

A. That's correct, yes, sir.

Q. Then, was sound equipment installed in the Bison sometime after it was installed in the Ritz?

A. Yes, sir.

Q. How long?

A. In May, 1929.

Q. In May of 1929?
A. Yes, sir.
Q. Was the installation in Shawnee, the first installation of sound which was made by Griffith Amusement Company in any of its theaters?
A. I believe it was.
Q. You believe it was?
A. I sure do.
Q. Then, after sound was installed in the Bison, what was the operating policy in the Ritz, immediately following?
3142 A. Immediately following that the Bison became the "A" operation, and the Ritz became the "B".
Q. Then later, I believe the testimony shows that the Criterion was acquired from Mr. Jake Jones, or leased from Jake Jones along when?
A. In June of 1929.
Q. June of 1929?
A. The first day.
Q. At that time, did the Criterion Theater have any sound equipment in it?
A. It did not.
Q. Were there any opposition theaters in the town then?
A. Do you mean?
Q. In 1929, when you acquired the Criterion?
A. Yes, I believe there was.
Q. Isn't it a fact that A. B. Momand was operating two opposition theaters?
A. Wait just a minute; I was thinking about A. B. Momand with two, and there was another one in addition to that.
Q. What was the purpose of the acquisition of the Criterion Theater in 1929?
A. Well, we acquired it for the purpose of operating it; we thought we could operate it at a profit.
Q. What was the condition of Shawnee at that
3143 time as to whether it was growing or not?
A. Oh, yes, Shawnee in 1929 was growing considerably; in fact, it was a sort of office headquarters of the Seminole Oil Field.
3144 Q. Have you continuously operated the Criterion Theater since its acquisition at that time?
A. Well, when we acquired the theater we operated for a while and then closed it down to install sound.
Q. Well, have you operated, except for a time when you were remodeling and installing your machines?
A. Yes, sir, we have.

Q. And you continued to operate, after you acquired the Criterion you continued to operate the other two theaters, the Ritz and Bison?

A. Yes, sir.

Q. Until what time?

A. We discontinued operating the Ritz in 1931, I believe in March. Wait, let me check that. We discontinued operating the Ritz——

Q. Do you have your notes on that?

A. No, but I remember it; August of 1930.

Q. When was your lease expiring on the Ritz Theater?

A. September 31.

Q. In 1930, what was your operation in the Ritz, as to whether it was your A, B, or C house?

A. It was a C house.

Q. And you say you closed it for a while in 1930?

A. Yes, we did. We closed it for about two months.

Q. What were the circumstances under which it was closed?

3145 A. Well, if you recall, I testified the other day about the period of depression that began to show in the late summer of 1930, and that was the occasion. We felt we could not justify operating it in view of the depression in business.

Q. Did the rental which was being paid on it have anything to do with it?

A. Yes, it had considerable to do with it. The rent was entirely too high for the type of operation we had.

Q. Are you still paying the amount of rental you contracted to pay for it when that was your best house?

A. Our A house, yes, sir, we were.

Q. Had you attempted to obtain reductions from Mr. Jones on that?

A. Yes, sir, I talked to him a dozen times about it.

Q. Then what did you later do after having closed it for a time in 1930?

A. Well, I think it was in December of 1930, it looks like there might be a little uptrend in business there and for a short period it was our optimism more than anything else, and we opened it up and attempted to operate it as a second house again, and we operated it for a period, I believe up until about the first of March, 1931, and it had a pretty unsatisfactory operation so we closed it; unprofitable operation.

3146 Q. During that time were you attempting to obtain any adjustment of rentals?

A. I was. I talked to Jake about it all the time myself.

Q. How long did those negotiations continue?

A. They continued right up to the time the lease was to expire.

Q. When was that?

A. September 1, 1931.

Q. You were not able to get any concession from him?

A. No, sir, we were not.

Q. As to that property, did you have an option to continue for an additional period the lease on that property?

A. Yes, sir, we did, a five year option.

Q. Did you exercise that option?

A. We did not.

Q. Why?

A. Because of the rental.

Q. What do you mean?

A. Because of the fact we couldn't afford to pay it. The option provided for the same rental as the lease did.

Q. The rental was too high?

A. The rental was too high. We couldn't afford to operate it at that rental.

Q. After giving up that lease what was your in-
3147 tention as to opening another theater for a second run operation?

A. Well, we intended to open up another theater for second run operation.

Q. Did you at that time have a theater for that purpose?

A. Yes, sir, we did.

Q. What was the name of that theater?

A. The name of it was the Victory Theater.

Q. When had you acquired that theater?

A. We acquired it about February or March of 1931.

Q. From whom did you acquire that?

A. We acquired it from a gentleman by the name of Tolteter.

Q. Was it being operated at the time?

A. No, sir, it was not.

Q. In what manner did you acquire the theater?

A. Well, Tolteter had subleased the Lyric Theater in Dallas.

Q. Did you exchange properties?

A. Yes, we exchanged. He was in debt to us and we exchanged, or rather we cancelled his debt in exchange for the personal property and leasehold of the Victory Theater.

Q. On what theater was that indebtedness?

A. The Lyric Theater at Dallas, Texas.

Q. And you acquired this Victory Theater in ex-
3148 change for that debt?

A. For that debt, yes, sir.

Q. I believe you have already stated you opened up that theater as a second run operation in 1933?

A. May 1st.

Q. Opened it up as what theater?

A. The Rex.

By the COURT:

Q. 1933?

A. Yes, sir.

Q. What time?

A. May 1, 1933.

By Mr. COCHRAN:

Q. There have been introduced in evidence here a number of contracts between the Griffith Amusement Company and Consolidated Theaters and others, which among other things provides for the Griffith Amusement Company to license pictures and book pictures. What is the name that you apply to those contracts?

A. General administrative contracts.

Q. Please explain to the Court just what services are performed by the Griffith Amusement Company under those contracts, and were performed during the period involved in this lawsuit.

A. Well, we keep a complete accounting setup for each and every one of the individuals; keep their books; make monthly statements to them; make up their income
3149 tax report. We furnish them a centralized advertising department and we ship all the advertising to those theaters. We give them 50 per cent credit when they return the advertising, which is a saving to them. We operate a central shipping department, we have our own truck and we deliver to the theater door. We give them the benefit of all the saving we can. We have our own central mechanical department. We have booth equipment——

Q. What do you mean by "central mechanical department"?

A. I mean we have a repair department. We call it the mechanical or repair department, to repair machines, and we have our own mechanics.

Q. How about repairs on buildings and equipment in theaters?

A. We have our own contractor. That is not in the mechanical department. We call that the contractor's division.

Q. Go ahead, speak a little louder.

A. In the mechanical department, if all the equipment in a theater needs repair, we have experienced repair men who come in and repair those parts and equipment, and they are given the benefit of that experience and price, and there is a saving accomplished there. We do so many things for them——

By the COURT:

Q. Do you actually operate theaters?

3150 A. Do we actually operate the theaters?

Q. Yes, for the Consolidated.

A. No, we do not. They operate their own theaters.

Q. But you furnish this service you are talking about? Who buys the pictures?

A. The pictures are bought by the Griffith Amusement Company; by the buyer of the Griffith Amusement Company.

By Mr. COCHRAN:

Q. Do you maintain a department for the licensing of the pictures?

A. Yes, sir. We have a film buying department and booking department.

Q. Just explain by the Court what is done by the booking department. What does that consist of?

Q. Well, the booking department is the department that sets in what we call the "play time" on all the theaters. In other words, it chooses the pictures and places them on the most advantageous dates in the week for the purpose of trying to get the most revenue out of what we call the booking, and their job is to work with exchanges and see that we get bookings which will enable us to derive better income out of the operation of those theaters.

Q. How many employees are maintained in the booking department?

A. There are seven. That is inclusive of stenographers.

By the COURT:

3151 Q. That booking department arranges the dates on which any particular pictures would be played in any theater in the circuit?

A. That is correct.

Q. Then arranges with the distributors to have those pictures released at the time indicated in your booking?

A. No, not exactly that. Our booker works with the booker of the exchanges in setting the dates. In other words, they first want to find out whether or not there is a print available on the dates we choose to play that picture. Then if the exchange agrees our booker makes a notation

and records that on his booking chart. Then after they have finished with their checking, a confirmation comes from the exchange to us advising us that picture is available as of that date.

Q. By "exchange" you mean the distributor's office?

A. Yes, sir.

By Mr. COCHRAN:

Q. That arrangement or that manner of selecting a date on which a picture is to play in that particular theater is a matter which has to be negotiated by the booking department of the Griffith Amusement Company with the booking department of the particular distributor which is releasing that individual picture. Is that right?

A. Yes, sir, that is right. I didn't finish my reply to your question. In addition to all those services I listed awhile ago, during the last four or five years our office
3152 has done a tremendous amount of work in the matter of completing all these questionnaires and filling out the information on the various reports that must be submitted to the government on all these stabilization acts and all the various things we submit information on and there is a great amount of detail connected with it.

3153 Q. Does the Griffith Amusement Company take care of all of the questionnaires that are submitted to the various theaters from the various governmental agencies?

A. Yes, they do; and in addition to that we take care of all these insurance reports. We have a tremendous amount of detail on these towns; we have group insurance, pension plans, and so forth.

Q. How about fire and casualty insurance?

A. We take care of all of that.

Q. What do you mean by taking care of all of that?

A. We arrange the coverage and keep the record of it, maintain it, keep the book record on it, making all the recordings and charging it up proportionately on the profit and loss statements.

Q. How about the matter of taking care of claims for loss, in the event of loss by fire, where there is a fire?

A. We take care of all that; we make the adjustments and submit it to the owner or partner as the case may be, for his approval.

Q. You were asked the question as to whether you operated theaters. Take a theater, for instance in the town of Altus, the theaters there, which are owned by Mr. Speers and by Griffith Consolidated Theaters, Inc.?

A. Yes, sir.

Q. Does Griffith Amusement Company operate those theaters?

3154 A. They do not.

Q. Who does?

A. W. T. Speers and Griffith Consolidated Theaters.

Q. What services in the nature of supervision and furnishing of ideas in regard to the advertising and other handling of pictures to get the best results from that does Griffith Amusement Company perform in connection with theaters of that type, where they don't operate the theaters actually?

A. We have at all times in the field three division men who travel the entire territory. These gentlemen go in and consult with Mr. Speers, as an illustration, who is the manager and in charge of Altus, Oklahoma, and he gets the benefit of the experience of the circuit there. We have what we call "The Contact" which is a weekly advertising bulletin, which goes out each week to these towns, and gives ideas which have been picked up and used in all the theaters all over the two circuits. In addition to that, we have an engineer who is expert in projection, and knows about this mechanical equipment and all, and he travels the circuit quite regularly and gives the advantage of his experience to the partners or the operators.

Q. Something has been said here in some of this testimony about an expansion department. Has Griffith Amusement Company during the period you have been con-

3155 nected with it at any time had an expansion department?

A. It never did.

Q. Has Consolidated Amusement Company during that time had an expansion department?

A. You mean Consolidated Theaters, Inc.?

Q. Consolidated Theaters?

A. No, they have not.

Mr. COCHRAN. Your Honor, I think I have only one more subject to cover with this witness, and I wonder if we might adjourn now. I think we can finish with him in probably half an hour.

The COURT. Very well, we will recess until 2:00 o'clock, gentlemen.

(Whereupon, Court was recessed until 2:00 o'clock p. m. of this same date.)

3156 PROCEEDINGS

September 24, 1945, 2 o'clock p. m.

Mr. COCHRAN. At page 2906 of the record at the bottom of the page Mr. McKenna is reported as saying in connec-

tion with Norman, "And it finally was running up into the following late spring, and when they did acquire the 50 foot location——" it should be "when they did not acquire the 50 foot location." In other words, they at no time acquired a 50 foot location in Norman.

The COURT. You desire to insert the word "not"?

Mr. COCHRAN. Insert the word "not" between "did" and "acquire."

The COURT. Let the record be corrected.

B. J. MCKENNA, recalled, further testified as follows:

Direct examination (continued) by Mr. COCHRAN:

Q. Mr. McKenna, in the town of Lubbock the interest of Consolidated Theaters, was the stock interest?

A. That is correct, yes, sir.

The COURT. How is that?

A. The Griffith Consolidated Theaters owned 50 per cent of the common stock interest in the Lindsey Theaters, Inc. in Lubbock, Texas.

3157 Q. Who operates theaters in the town of Lubbock which are owned by Lindsey Theaters, Inc.?

A. The Lindsey Theaters, Inc.

Q. Does Griffith Amusement Company have an administrative contract with Lindsey Theaters, Inc.?

A. Yes, sir, they do.

Q. When was that stock ownership in Lindsey Theaters acquired?

A. April 27, 1930.

Q. What theaters was Lindsey Theaters, Inc. operating at that time?

A. Operating the Palace and Lindsey Theaters.

3158 Q. At that time was there any other theater operating in the town?

A. Yes, sir; there was the Lyric Theater.

Q. Who was operating that theater?

A. A Mrs. Scales.

Q. Do you mean the Lyric or the Texan?

A. I mean the Lyric.

Q. When was the Texan acquired?

A. The Texan was acquired by the Lindsey Theaters in August of 1933.

Q. From whom was that acquired?

A. It was leased and remodeled by Lindsey Theaters, Inc.

Q. From whom was it acquired?

A. From the landlord.

Q. Oh, you mean that was a new theater that was put in at that time?

A. Yes, sir.

Q. All right; when was the Lindsey remodeled?

A. It was remodeled in 1940. It started about April and finished in November, on November 7th; we opened it on November 7th, 1940.

Q. That was rebuilt at that time?

A. Yes, sir, it was completely rebuilt from the ground up.

Q. When you acquired the interest with the Lind-
3159 sey Theaters, Inc. in Lubbock, you say the Lyric was operated at that time?

A. It was operating, yes, sir.

Q. By Mrs. who?

A. Mrs. Scales, who subsequently became Mrs. Mauldin.

Q. Mrs. Andy Mauldin?

A. Yes, sir.

Q. Then later on was there a theater known as the Cactus which was opened there in Lubbock?

A. Yes, sir.

Q. By whom was that opened?

A. It was opened by a gentleman by the name of Ted Sanders.

Q. In the period of about 1938–'39, was there any considerable growth and development in Lubbock?

A. Yes, sir; it has grown steadily.

Q. When was the Broadway Theater opened?

A. The Broadway was built by Mr. Andy Mauldin I believe in about June of 1935.

Q. Was there a period then that Mr. Mauldin operated the Broadway and the Lyric?

A. Yes, sir, he operated both of those theaters until June of 1939.

Q. And what happened then?

A. He sold them to Lindsey Theaters, Inc.

3160 Q. Now, prior to the time that the Lyric and the Broadway were sold to Lindsey Theaters, do you know of any efforts that were made by Mr. Mauldin to sell those theaters?

A. Yes, sir; he advertised in papers all over that part of the country, the Fort Worth Telegram and other prominent papers, that he was not only going to sell that but other theaters in other towns, Tulia and Crosbyton.

Q. Was it after those theaters were advertised for sale that the Lindsey acquired those theaters from Mauldin?

A. Yes, sir.

Q. Have those theaters been continuously operated by Lindsey Theaters, Inc. since the time of their acquisition?

A. Yes, sir.

Q. I am referring to the theaters in Lubbock; Lindsey Theaters didn't acquire the theaters in Tulia and Crosbyton, did they?

A. You are referring to the Lyric and the Broadway?

Q. Yes, sir; and the only theaters which Lindsey Theaters acquired from Mauldin were the Lyric and the Broadway in Lubbock?

A. Yes, sir.

Q. What became of the Cactus?

A. The Lindsey Theaters, Inc. purchased it in May, 1939.

3161 Q. What were the circumstances under which that theater was bought?

A. Mr. Sanders decided to go back in the tire business——

Mr. WRIGHT. If the Court pleases, let him tell what he did.

A. Mr. Sanders came to us and offered to sell us the theater and we thought it would be profitable——

Mr. WRIGHT. There are a lot of conclusions in there.

Mr. COCHRAN. He didn't state what he said. He said he came to him to sell the theater and he felt it would be a profitable operation.

By the COURT:

Q. You felt it would be?

A. We did.

Mr. COCHRAN. I think that is competent.

The COURT. You meant you felt it would be?

A. Yes, sir, that is what I meant.

By Mr. COCHRAN:

Q. Has your theater been continuously operated by Lindsey Theaters, Inc., since its acquisition?

A. Yes.

Q. At the present time what theaters are being operated in Lubbock in operation to theaters which the Lindsey Theaters, Inc., operate?

A. There is the Tech Theater and the Arcadia Theater and Midway Theater.

3162 By the COURT:

Q. Just in that connection, this suit was filed you say in April, 1939? Do you remember the date?

Mr. WRIGHT. April 28.

By the COURT:

Q. Now on April 28, 1939, what theaters were owned and operated by the Lindsey Corporation?

A. The Palace Theater, the Lindsey Theater and the Texan Theater.

Q. Three?

A. Yes, sir.

Q. Now what were operated by Mauldin?

A. The Lyric Theater and Broadway Theater.

Q. Now what other theaters?

A. And the Tech.

Q. By whom?

A. By Bearden and Smith.

Q. The Tech?

A. The Tech by Bearden and Smith and the Arcadia by Bearden and Smith.

Q. There is one more.

By Mr. COCHRAN:

Q. Was the Cactus being operated at that time?

A. Yes, sir, and the Cactus, by Tate Sanders.

Q. The Midway and the Tower had not been opened at that time?

3163 A. No, sir, they had not.

Q. Were you familiar with the admission charges which were charged in the various theaters operated by the Griffith Amusement Company and Consolidated Theaters, Inc. in the period 1934, to and including the time of the filing of this suit?

A. Yes, sir.

Q. Was there any increase in the admission prices in any of the theaters operated by the Griffith Amusement Company or Griffith Consolidated Theaters during the period from 1934 until the time this suit was filed?

Mr. WRIGHT. If the Court pleases, obviously the records show what these theaters charge, if they are available, and they are the best evidence, and the conclusion as to whether they were raised or not is something that will have to be determined from an examination of the records showing the prices actually charged.

The COURT. If this witness knows, if he is in a position to tell; of course, I think the records are the best evidence.

Mr. WRIGHT. I might add, I think the data is immaterial in any event. What is the difference whether they increase them or do not increase them?

The COURT. It might be material.

Mr. WRIGHT. I don't see in what way.

3164 The COURT. To see what their motive was for buying additional theaters. If they control all of them they can fix the prices to suit themselves.

Mr. WRIGHT. There is no question about that.

The COURT. You may answer if you know.

By Mr. COCHRAN:

Q. Were you familiar with the admission prices which were being charged by the various theaters operated by the Griffith Amusement Company and Consolidated Theaters?

A. I was.

Q. During the period from April, 1934, to the time of the filing of this suit?

A. I was.

Q. Have you made a memorandum covering those admissions?

A. Yes, sir, I have a memorandum of the admissions.

Q. In the town of Ada——

By the COURT:

Q. Was it different in different towns?

A. Yes, it was different. It isn't standard price all the way through.

3165 The COURT. Do we have to go over each one of these towns?

Mr. COCHRAN. I didn't think so. I was going to ask that general question, and he has it available for cross examination, if they want to question it. Of course, some of these towns we are going to ask specifically about, but it is my general purpose to show that during that period there was no increase in admission prices in any of the towns.

The COURT. He has made out a memorandum here showing that; why not produce that?

Mr. WRIGHT. It is my impression that we asked back here four or five years ago when we filed the interrogatories for the admission prices that were charged by each of these theaters, and at that time they reported, as I recall, that the information wasn't available. Now, if it wasn't available then, I don't know how it became available now. The answer they gave was, "Unable to furnish the information."

Mr. COCHRAN. It was only by reason of going back through the records and digging this out after much labor that we were able to get this, and the authorities say that when these interrogatories are propounded it is not required that you go back and make a search of that kind.

Mr. WRIGHT. If he wants to submit the work sheets
3166 and the records that were made, that is another matter. He is asking here for conclusions with no record at all.

The COURT. Have you prepared a statement showing the admission prices of the various theaters?

A. Yes, sir, I have a statement of the admission prices as they were in 1939.

The Court. You may submit that and it is open to cross examination.

By Mr. Cochran:

Q. All right, let me have that statement.

A. Yes, sir (handing).

Q. Does that cover all of the theaters?

A. Yes, sir.

The Court. Do you have an extra copy of it?

A. No, I do not, your Honor.

By Mr. Cochran:

Q. This is for Griffith Consolidated?

A. Yes, sir.

Q. Do you have Griffith Amusement Company?

A. Yes, sir.

The Court. I would like for you to furnish the Government with a copy of that.

Mr. Cochran. We can have it photostated or have a copy made. Let's see, I may have a copy (handing paper to counsel for Government).

By the Court:

3167 Q. Did you make this statement from the records?

A. Yes, your Honor.

(Defendants' Exhibit 133 was then marked for identification.)

By Mr. Cochran:

Q. I hand you Defendants' Exhibit 133, consisting of two pages, and ask you if that first sheet of that exhibit shows the admission prices in 1939 for Griffith Consolidated Theaters?

A. Yes, sir, they are.

Q. And if the second page are the admission prices for Griffith Amusement Company?

A. Yes, sir, they are.

Mr. Cochran. We offer in evidence Defendants' Exhibit No. 133.

Mr. Wright. I would like to cross examine on it first.

Cross-examination by Mr. Wright:

Q. I see this is headed admission prices in 1939. As of what date in '39?

A. That is at the beginning of the year and throughout the year.

Q. These are the prices that were in effect for the entire year?

A. Yes, sir.

3168 Q. Now, just where did you get the information that is recorded here?

A. I got it from what we call the ticket continuity records.

Q. That is a record that was kept regularly?

A. Yes, sir.

Q. And you were keeping that record, were you, in 1939?

A. Yes, sir.

Q. And you were keeping the record also in '40 and '41 at the time you took an oath in answering these interrogatories, were you?

A. We keep it all the time.

Q. I believe you previously testified that you were the man who prepared the interrogatory answers, and you swore to them, did you not?

A. I believe I testified that I had signed the interrogatories.

Q. Well, this has a statement at the end of the interrogatories here saying, "I, B. J. McKenna, being first duly sworn, on oath state that the foregoing answers to interrogatories cover the period from April 28th, 1934 to April 28th, 1939, and said answers are true and correct." That was sworn and signed, signed and sworn to by you, wasn't it?

A. That's right.

3169 Q. And the answer that you gave there with respect to Interrogatory No. 18 is, "Unable to furnish information," isn't that right?

A. Yes, sir.

Q. You saw that at the time you signed the Interrogatories, did you?

A. Mr. Wright, the information——

Q. (Interrupting.) Just answer the question.

The Court. Well, just let him explain.

A. The information is asked in the interrogatories for the years beginning with April 28th, 1934 to April 28th, 1939, and we don't have the information prior to 1939.

By Mr. Wright:

Q. Will you now answer the question?

A. I have answered it.

Q. I asked you, you saw this answer before you signed it, didn't you?

A. I am sure I did.

Q. In other words, "Unable to furnish the information"?

The Court. What is the question; what is the interrogatory, Mr. Wright?

3170 Mr. WRIGHT. The question is as follows: There is apparently a typographical error in our copy that was served on them. It reads: "Admission prices of adults and children, matinee and evening, charged by them during the period April 28, 1934 to April 28, 1939, indicating the date or dates of changes in admission prices, if any." Is that what you understand the question to be at the time you made the answer?

A. I understood the question to be that you wanted the admission prices beginning from April 28, 1934, until April 28, 1939. We only had that information in 1939, and that is what this statement covers that I have submitted here.

Q. You had the information at the time you made this answer then?

A. I beg your pardon.

Q. Just wait until you hear the question. You had the information as to what your admission prices were from January 1, 1934, until April 28, 1939, at the time you prepared this answer, didn't you?

A. We did, yes, sir.

Q. You say you didn't have information prior to 19.. —as to what the admission prices were prior to 1939?

A. That is correct.

Q. And what was the change in your records that
3171 you made on January 1, 1939?

A. Well, there is no change. After the records are once analyzed here we don't keep them.

Q. You had destroyed the records for the years prior to 1939 when?

A. At the time these figures were worked up we did not have the information.

Q. When were the figures for the period prior to January 1, 1939 destroyed?

A. I don't know when they were destroyed. We didn't have them because I personally looked for them.

Q. You mean you didn't have them when?

A. At the time I worked up the information on this interrogatory.

Q. At the time you answered the interrogatory?

A. That is right.

Q. You did have the information on 439 at that time?

A. That is correct.

Q. You understood that the question called for the information from April 28, 1934, to April 28, 1939?

A. I did, yes, sir.

The COURT. Have you offered that in evidence?

Mr. COCHRAN. Yes, sir.

The COURT. It will be admitted.

Direct examination resumed by Mr. COCHRAN:

3172 Q. Speaking about not having records. What is your practice in regard to records of this type, about preserving such records?

A. Well, our policy has been for years that we only keep those records for a period of three years.

Q. Then they are destroyed?

A. That is correct.

Q. Did you give any directions to destroy any records of any kind or character after the filing of this suit?

A. No, sir, I did not.

Q. Was this list which is compiled here in these exhibits which have been introduced, did you compile them from records some days ago?

A. Yes, sir, I did.

Q. In other words, you had no compilation but you did have the records from which the compilation could be made?

A. Yes, sir, that is right.

Q. Now then, you have testified that you did not have the records and do not have the records prior to 1939. That was your statement, was it not?

A. Yes, sir.

Q. Do you have any recollection now in regard to whether there was any change in admission prices in any of these towns in that period from 1934 to 1939?

A. I do have a recollection.

Q. What is the situation?

3173 A. There were no changes.

Mr. WRIGHT. Now if the Court pleases, this man cannot possibly at this time sit here and give your Honor admission prices, information in this form in these towns for that prior period.

The COURT. No, the question is whether he has an independent recollection as to whether there have been changes from 1934 to 1939. If he has a recollection on it I think the question is competent. If he would have to rely on the records. I don't think it is.

Mr. WRIGHT. Six years after the information was asked for? And the witness goes on the stand and undertakes to supply this information with no record available. He could go on here and say anything he pleases and there is nothing we could do about it.

The COURT. If he knows.

Mr. COCHRAN. The plaintiff introduced several witnesses who testified orally as to what the admission prices were in these various towns.

The Court. Overruled. You may answer.

By Mr. Cochran:

Q. You say you do have a recollection?

A. I do have a recollection.

Q. During that period of time was there any tax, either state or federal, placed on admissions?

A. Well, it was in effect on admissions, the state
3174 tax of two percent.

Q. What period?

A. It was in effect April 28, 1934, and also at the end of the period, April 28, 1939.

Q. There was no change as to the tax situation during that period?

A. No, sir.

Q. And you may state whether there was any change in admission prices so far as the general admission policy was concerned in any of these towns during that period.

A. There were not.

Mr. Wright. Let's see what he knows, town by town. There has been testimony as to specific admission prices in all these towns. If this is intended to refute that testimony, it obviously does not afford any means of cross examination at all when he just says there was not any change.

The Court. Well, you have the basis of the 1939 prices. Now if there was no change, the 1939 prices would certainly be the same as they were in 1934 and on. You may answer.

A. Will you read the question.

(Previous question and answer read as follows: "You may state now whether there was any change in admission
prices so far as the general admission policy was
3175 concerned in any of these towns during that period."
"A. There was not.")

By Mr. Cochran:

Q. After 1939, were changes made in admission prices in any or all of the towns in which the Griffith Amusement Company and Consolidated Theaters were operating?

A. Yes, there was.

Q. When were those changes made?

A. Well, those changes were made—they started in 1940, in the fall of 1940.

Q. What happened at that time?

A. Well, the Federal Tax law was passed and there was a 10 percent tax on admissions over 21 cents.

Q. At that time were changes made in admission prices in these theaters?

A. In some cases they were. In some cases we absorbed the tax.

Q. What was the next change that was made?

A. It was a year later, about October 1, 1941, the federal tax was extended to cover the prices from 10 cents up.

Q. What was the tax then, the federal tax on admissions?

A. Ten percent on all admissions above 10 cents. Children admissions were exempt.

Q. In addition to that was there a state tax?

A. Yes, sir, that was still in effect. That had been
3176 continuously in effect.

Q. Two percent?

A. Yes, sir.

Q. Up to that time had you been absorbing the state admission tax?

A. In the majority of cases. In some cases we did not.

Q. Then when this general application of the federal tax became effective were there changes in the admission prices?

A. There were some changes where we added the tax. That is, on certain prices, and in other cases we absorbed the tax. In other words, we tried to keep what we call an even admission price because the public don't like the odd cents and mills and we had to balance the price to make it an even admission price.

3177 Q. Later, was the Federal Tax increased again?

A. Yes, sir, it was.

Q. When was that?

A. In April of 1944, I believe.

Q. Then what changes, if any, did you make in the admission prices?

A. Well, it was increased to where the Federal Tax was 20 percent on all admissions above 10 cents.

Q. What changes, if any, did Griffith Amusement Company and Consolidated Theaters make in its admissions?

A. We made quite a number of changes. We increased, added the tax in some cases and in other cases we absorbed it, but we had to add part of it on at that time because it was more than the traffic could bear.

(Defendants' Exhibit No. 134 was then marked for identification.)

Q. I hand you Defendants' Exhibit No. 134, consisting of three pages, and ask you if that is a list of your present day admission prices in the theaters of Griffith Amusement Company and Consolidated Theaters, Inc.?

A. It is.

Q. That is two pages instead of three?

A. Yes, sir, two pages; that is the first two pages.

Mr. Cochran. We offer in evidence Defendants' Exhibit No. 134.

3178 Mr. Wright. That is objected to as irrelevant, incompetent, and immaterial. I don't see what it has, what it possibly has to do with any issue in the suit.

The Court. Overruled and exception allowed.

By Mr. Cochran:

Q. I note here in the town of Ada, for instance, the McSwain Theater, you show an admission price of 28.4—32.5 cents. Is the McSwain your best theater there?

A. Yes, sir.

Q. What does that 28.4 and 32.5 refer to?

A. That is the balcony price.

Q. Do you mean the balcony prices, 28 cents and 4 mills?

A. That is what we received out of it, yes, sir.

Q. And the main floor is 32 cents and 5 mills?

A. That's correct.

Q. You say that is what you received out of it. What is the admission price for the balcony there in the McSwain?

A. The admission is 35 cents; of the 35 cents, the Federal Tax is 6 cents and the State Tax is 6 mills.

Q. Leaving you the net?

A. Leaving us the 28.4.

Q. On the main floor, what is the admission price there?

A. The admission price posted is 40 cents, of which 7 cents is Federal Tax and 5 mills State; in other words, it allowed us to use that balance system.

3179 Q. In Blackwell, what is your highest admission theater there?

A. 35 cents.

Q. I mean what theater?

A. The Rivoli Theater.

Q. And what is that?

A. 28.4, 28 cents and 4 mills; our posted price is 35 cents, of which 6 cents is Federal Tax and 6 mills is State.

Q. In Borger, what is your highest admission theater there?

A. 40 cents, the Rig Theater is our best house.

Mr. Wright. I assume those figures are an exhibit and the Court can read them. Are you going to read every one into the record instead of putting the exhibit in?

Mr. Cochran. No.

The Court. I don't see why you don't insert that statement. If you have the prices in 1939 and the prices now, we can see what it is. I think it is all right to bring out what the facts are as to the difference it would make.

Mr. Cochran. That's all right, your Honor.

By Mr. Cochran:

Q. As I understand it, on this exhibit, the prices which you show is the net amount which you received out of the admission exclusive of the tax?

A. That's correct.

3180 Q. Where it shows the net amount that you received as .167, what is the admission price?

A. The admission price is 20 cents posted, 3 cents of that is Federal Tax and 3 mills State.

Q. Where the net price is shown as .206, the admission price is how much?

A. 25 cents.

Q. Where it shows .284, the admission price is what?

A. 35 cents.

Q. What is the highest admission price which is received in any of the Griffith Amusement Company or Consolidated Theaters towns?

A. Including the tax?

Q. Yes.

A. 50 cents.

Q. What is the net amount which you receive there?

A. We receive 41.2, I believe; 41 cents and 2 mills. Of course—let me think—42 cents.

Q. 42 cents?

A. 42 cents. There is no state tax in Texas.

Q. In what towns do you receive 50 cents admission?

A. We receive 50 cents in Midland, Texas and Lubbock, Texas.

Q. Are those the only two towns?

A. Those are the only two towns.

3181 Q. And that is the highest admission price?

A. That is the highest admission price, including tax, which includes the tax.

Q. Do you have any theaters in which you receive 45 cents admission price?

A. Yes, sir.

Q. For the highest?

A. Yes, sir.

Q. Price theater in the town?

A. Yes, sir.

Q. What towns are those?

A. Enid, Oklahoma and Ponca City, Oklahoma, Pampa, Texas and Borger, Texas.

Q. And on the great majority of towns what was the highest price admission?

A. 35 cents on the "A" house.

Q. On your best house?

A. Yes, sir.

Mr. WRIGHT. I assume the exhibit speaks for itself. There is no occasion to have the man characterize the great majority.

Mr. COCHRAN. Well, I thought——

Mr. WRIGHT. (interrupting.) If you are going to make any argument about it, it might be necessary to have the witness make it.

3182 Mr. COCHRAN. The trouble is, it might be necessary to go through and find out which are the "A" houses, and we haven't attempted to do that in a lot of these non-competitive points.

By Mr. COCHRAN:

Q. Mr. McKenna, there has been some testimony here about the admission prices in the town of Enid, Oklahoma, and I believe it was Mr. Gray who testified that there was a period when the Mecca Theater charged a ten cent admission price for a time. Do you recall on any occasion the Mecca Theater charging ten cents admission?

A. Yes, sir, I do.

Q. At any time was that the regular admission policy of the Mecca Theater?

Mr. WRIGHT. If the Court please, that is a matter of the conclusion of the witness, of what the regular policy was. I suppose he can state the facts, if he knows them, as to what they charged.

By the COURT:

Q. Was that your regular price, or was it a special price, that ten cents?

A. It was a special price.

By Mr. COCHRAN:

Q. In 1937, what theaters was Griffith Amusement Company operating in Enid?

A. Operating the Aztec, Criterion, Arcadia and Mecca.

Q. When was the Cherokee acquired?

A. The Cherokee was opened on November 16th, 1938.

3183 Q. By Griffith Amusement Company?

A. Yes, sir.

Q. Was that a theater which was acquired from somebody else, or was it a theater which was constructed by Griffith Amusement Company?

A. It was a theater which was constructed by Griffith Amusement Company.

Q. Prior to the time the Cherokee was constructed, what was the best theater which was operating in Enid?

A. The Aztec.

Q. What was your next best theater?

A. The Criterion.

Q. What character of theater was the Cherokee when it was constructed?

A. The Cherokee was a new modern type theater, about 950 seats, all modern improvements.

Q. What was the size of the Aztec?

A. The Aztec was 1,148 seats.

Q. At the time that the Cherokee was constructed, what was intended to be the policy of that theater?

A. A second run theater, "C" house.

Q. Was it initially opened as a second run house?

A. No, sir.

Q. On what policy did it open?

A. It opened on a "B" policy.

3184 Q. Prior to the time Cherokee was opened, what was the Griffith Amusement Company's second run house in Enid?

A. The Mecca.

Q. So, when you did open the Cherokee as, what did you say, a "B" house?

A. As a "B" house, yes, sir.

Q. As your "B" house, was the Mecca continued for a time as a second run house?

A. No, when we opened the Cherokee as a "B" house, the second run policy was shifted to the Criterion Theater.

Q. And what was done with the Mecca?

A. Well, we continued to operate the Mecca on subsequent run policy.

Q. Subsequent run?

A. Yes, sir.

Q. Then, how long was the Cherokee continued as your "B" theater?

A. Only until January, the middle of January, 1939.

Q. What change was then made in the operation?

A. Well, the theater was operated as, as a "C" house second run, as had been originally intended when it was built.

Q. What effect did the operation of the Cherokee as a second run house have on your operations at the Mecca?

A. Well, it completely destroyed the operation of 3185 the Mecca Theater.

Mr. WRIGHT. Now, if the Court please, with reference to testifying in the terms of the effect of particular operations and as to what particular receipts were, I suppose they have records which would show what was taken

in at the box office during these various periods, and for the witness to refer to one operation as having completely destroyed another one doesn't throw any light on the facts.

The Court. Let him explain his answer. Just what do you mean by that?

A. Your Honor, after we began operating the Cherokee Theater as a second run house, it was, as I said awhile ago, a deluxe theater and it had the best second run product, and it just immediately, we felt the effects of it in the Mecca; the Mecca business which had been more or less stabilized to a certain figure just dropped, and the Cherokee did a fine business as a second run operation.

By the Court:

Q. You mean after you opened the Mecca as a second run house?

A. The Cherokee, Your Honor.

Q. The attendence dropped off at the Mecca?

A. Immediately.

Q. And increased at the Cherokee?

A. At the Cherokee.

By Mr. Cochran:

3186 Q. Then what was done in connection with the Mecca after that situation resulted?

A. Well, we operated the Mecca at a ten cent admission price.

Q. For what purpose?

A. To try to stimulate business, build it up.

Q. What effect did it have on the admissions?

A. Well, it improved to some extent. We only continued that for a short time.

Q. At ten cents admission?

A. Yes, sir.

Mr. Wright. If the Court please, I suppose every time a policy is changed in any theater or every time the admission price is changed, the purpose is to get more business, but what that contributes to any issue being resolved here is beyond me.

Mr. Cochran. Counsel has read a lot of antitrust decisions and he knows that in many of those cases they refer to the proposition of reducing prices for the purpose of putting some other theater out of business, and we are attempting to show here that the purpose here was to stimulate business in their theater and to try to operate it on a sound basis and a sound business policy, and not for the purpose of destroying anybody.

Mr. Wright. It is more polite words, but is exactly the same thing.

3187 Mr. COCHRAN. I beg pardon?

Mr. WRIGHT. I say it is a matter of phraseology, where you term it as stimulating business. You cannot stimulate business in one house without affecting it with somebody else.

The COURT. Let it go in. We have so much in this case already where the importance and competency is in question, but we will get to it when we get to it.

3188 Q. Then what was done with the admissions to the theaters there in Enid?

A. Well, the admission price to the Mecca Theater, about the latter part of May or the first of June was changed to 10 cents for children and 15 cents for adults.

Q. Mr. Gray testified something about free admission tickets being given away in connection with admissions to some other theater.

A. Well, we had a free ticket plan there, that everyone who purchased a ticket to the Cherokee Theater would be given a free ticket to the Mecca.

Q. What was the purpose of that arrangement?

A. The purpose of it was to try to build back the business of the Mecca Theater.

Q. How long did that policy continue?

A. It lasted for about a year.

Q. What was the final effect so far as the Mecca was concerned?

A. It improved the gross income.

Mr. WRIGHT. Again, that is a conclusion, and I don't think he is competent to draw that conclusion.

The COURT. He is the man who handled it. I think he would know.

Mr. WRIGHT. I don't think anybody could say the fact you gave free passes during one period is the reason
3189 that during the latter period you might have made more money than you did at some earlier period. There is nothing of any tangible nature.

The COURT. I agree with you on that part of it. I didn't understand that was the question.

Mr. COCHRAN. I didn't intend to put it that way so I will change the question.

By Mr. COCHRAN:

Q. What happened to the Mecca Theater so far as its attendance was concerned?

A. It increased considerably.

Q. Did the Mecca get on a successful operating basis?

A. Yes, sir, it did.

Q. Are you still operating the Mecca?

A. Yes, sir.

Q. And have operated it ever since?

A. Yes, sir.

Q. Can you tell us when those free tickets were discontinued?

A. Those free tickets were discontinued the latter part of June, 1939, or about the 30th, or the first day of July.

Q. After those free tickets were discontinued, when was the first time then after that that there was any change in the admission prices in any of the theaters in Enid? I mean any of the theaters operated by the Griffith Amusement Company.

3190 A. About the fall of 1940 when the federal tax was applied. The fall of 1940, that is when it was.

Q. Now in your position with the Griffith Amusement Company during the time we have been talking about, this ten cent admission to the Mecca, and these free admissions, did you have anything to do with the fixing of the policy of operation of those theaters so far as admission prices were concerned?

A. Yes, sir, I did.

Q. Mr. Gray says there was a period when those pictures were given out, free tickets were given out promiscuously without regard to purchase of a ticket to another theater. Did you ever authorize any such policy as that?

A. No, sir.

Mr. WRIGHT. It hasn't appeared yet that he was the only one who would authorize it. All he said was that he had something to do with it.

By Mr. COCHRAN:

Q. Were you the first to authorize admission price policy changes?

A. I was.

Q. Did any authorization of admission price changes for those theaters up there have to come through you?

A. It did. It had to come through me through most of the period we are referring to. Mr. H. J. Griffith was the general manager part of the time.

3191 Q. What period?

A. Well, he was general manager, as I recall, about two months in 1939, and I took charge from there.

Q. In regard to these business stimulants from time to time, have you from time to time authorized similar stimulants in other towns where there was no competition whatever?

A. Yes, sir. That has been used for years.

Q. Has that been true not only of theaters operated by your company but by others?

A. Yes, sir.

By the COURT:

Q. Now on April 28, 1939, give me the names of the theaters in Enid operated by Griffith?

A. The Aztec, the Criterion, the Cherokee, the Mecca and the Arcadia.

Q. What other theaters were there?

A. There was the Royal, operated by Mr. Roy Shield and the Rivoli operated by Mr. John Gray.

Q. There were seven theaters then at Enid at that time. How many are there now?

A. There are five.

Q. What five?

A. The Aztec and the Criterion has been renamed the Chief, and remodeled; the Cherokee, the Royal and the Mecca.

Q. What happened to the Arcadia?

A. The lease expired and it was converted over
3192 into a restaurant.

Q. What happened to the Rivoli?

A. The lease expired and it was converted into some form of merchantile business, I think a shoe store; I have forgotten.

By Mr. COCHRAN:

Q. Is that Rivoli the one operated by Gray or the one operated by Shield?

A. It is the one operated by Gray at one time and later by Shield.

Q. I think that is the theater that Mr. Gray testified that you bought, the Royal from Gray and then closed the Royal. That is my recollection of the testimony.

The COURT. Very well, go ahead.

By Mr. COCHRAN:

Q. Mr. McKenna, do you recall the situation in Shawnee at one time when one of your theaters operated on a ten cent price?

A. Yes, I recall we did operate on a 10 cent matinee price.

Q. Not evening price but 10 cent matinee price?

A. Yes, sir.

Q. What theater was that?

A. That was the Rex.

Q. At that time was Mr. Momand operating a theater there called the Odeon?

A. Yes, sir, he was.

3193 Q. Do you recall what admission price he had there?

A. Well, he had five cents and ten cents.

Q. How long do you think that operation, that ten cent matinee price in that theater in Shawnee continued?

A. We only used it for a few months.

Q. What was the purpose of that?

A. It was to stimulate interest in the matinees to get people to come to the matinees.

Q. Mr. Wright indicated the lowering of admission prices or one of these price stimulants was intended to have the effect of taking patrons away from one theater and turning them into the theater having that stimulating price. That is, that you could not create the business in one theater without taking it away from another. Just explain to the Court what your experience has been in that connection and how that works out.

A. Well, your Honor, our experience has been that we can use a stimulant such as this matinee stimulant we are talking about in Shawnee, and we can get the public to come to the theater and improve the attendance, and have no effect whatever on the other houses. In other words, it is business we have not been getting, and we simply excite the public interest in the matinees, particularly the housewives and children, and hasn't had any effect on the other houses.

3194 Q. You say that has a tendency to create a picture going habit in people?

A. Very definitely.

Q. In the Town of Enid in 1940 when you made the change in admission prices, just state what changes were made at that time, if you know.

A. In the latter part of June or the first of July that I spoke of awhile ago?

Q. Yes.

A. We just discontinued the use——

Q. You stated that you discontinued that about June of 1939, and you further went on to say that you made a change in your admission prices about 1940, I believe, in the fall when a certain tax went on. I want to know what prices became effective then.

A. Well, there was no change made in the prices that were in effect in the houses which were charging an admission price of 21 cents and under, which was the Cherokee and Mecca Theaters, and the Arcadia, and above the 21 cents that is where the tax was effected, and we absorbed the tax on both the A and B houses.

Q. Which had the effect of reducing the net amount you were receiving.

A. It cost us about four cents on each A ticket in the Aztec and Criterion Theaters. The Criterion was about three cents.

3195 Q. Was there any change made in the overall admission price you charged the public in the theaters in Enid prior to the time the 20 per cent federal tax went into effect; prior to the change you made when you absorbed the first federal tax?

A. Yes. There was some little change made on the admission prices that were 21 cents and under.

Q. I am talking about after that time. Did you make a further change?

Q. Not until the 20 per cent tax went in in April, 1944.

Q. Then at that time the changes were made which are reflected in this Exhibit No. 134. Is that right?

A. Yes, sir, that is it.

Q. In the changes which were made in your theaters which are reflected in this Exhibit 134, just explain generally how your admission prices were worked out at that time.

Mr. WRIGHT. This is 1934?

Mr. COCHRAN. Those in effect in 1945.

By Mr. COCHRAN:

Q. Go ahead and tell the Court generally.

A. Well, in making these changes——

Q. In order not to repeat, what I have in mind is this: was the net effect in some instances to increase the net amount which you received?

A. No; the net effect was to decrease. In other

3196 words, what I mean is this: We were trying to balance the admission prices to even figures because the public didn't like the mills and penny system, and we balanced the admission prices in these houses, A and B, as the case may be, and in the final outcome of it we feel it loses us about $2000 a year, as near as our statisticians can figure it out.

Q. That is in all your theaters?

A. That is in all our theaters.

Q. In one theater in the town wouldn't it effect a slight increase and another theater in the town effect a decrease in the net amount you receive?

A. Yes, sir, it would.

Q. But the purpose was to arrive at a flat amount of admission price without having to have cents and mills added to take care of this tax. Is that correct?

A. That is correct, yes, sir.

Mr. COCHRAN. Take the witness.

Cross-examination by Mr. RICE:

Q. When Mr. R. E. Griffith went to New Mexico did you perform any work for him for a while?

A. Yes, sir, I did.

Q. What was that work?

A. I kept his books for him.

3197 Q. Were you familiar with his operations to some extent?

A. Yes, sir, I was familiar with them.

Q. Do you remember the town of Hobbs which shows in the record of having a population in 1930 of 598?

A. Yes, sir, I remember it. I have been there.

Q. The record also shows that there was a theater called the Rig in Hobbs. Will you tell the Court when that theater was built and the circumstances under which it was built?

A. Well, the Rig Theater was built in what was called New Hobbs. It was a development started by John Hardin of Oklahoma City and located about a mile and a quarter or a mile and a half from the old town of Hobbs proper. He built a de luxe hotel out there and came to us, to Mr. Griffith, and wanted us to help build a theater, help finance it.

Q. What happened to New Hobbs?

A. New Hobbs just blowed up.

Q. The record shows that in 1931, Mr. R. E. Griffith obtained a lease on what was originally known as the Fawn Theater in old Hobbs and renamed it the Rex. Do you recall that circumstance?

A. Yes, sir, I do.

Q. The record also shows that the Rig Theater in

3198 New Hobbs was finally abandoned. What was done with it, if you know?

A. Well, it was just razed to the ground. They took the bricks, and then just moved them to Carlsbad, New Mexico.

Q. You moved the theater to Carlsbad, New Mexico?

A. Just left the bare lot.

Q. Was there an oil boom in Hobbs during the time between the opening of the Rig Theater in New Hobbs and its being dismantled?

A. There was the starting of an oil boom. In fact, in 1930, in September when the theater opened the boom was on.

Q. That was the occasion for building the Rig?

A. That is correct.

Q. What happened to the boom?

A. The boom just stopped over night. There was another oil development in east Texas and Hobbs just quit.

Q. Did that boom come to life again?

A. Yes, sir.

Q. Was it before or after the Rig Theater was moved to Carlsbad?

A. It was after that.

Q. Shortly after the Rig was moved to Carlsbad, did that boom assume rather large proportions?

A. It sure did.

Q. The record shows that in 1940 the town of
3199 Hobbs had a population of something around 11,000. From your recollection, can you recall about the size of the town along in 1935?

A. Well, I was out there about that time and it was just dead. I don't believe it had a thousand people.

Q. And the boom came suddenly?

A. Yes, sir.

Q. And it continued to grow until the peak of the boom was reached and then it settled down to a steady population?

A. It has made a pretty good town, yes, sir.

Q. During the period from 1934 to 1939, what degree of supervision and control did you, as an official of the Griffith Amusement Company or Consolidated Theaters, exercise over the operation of the R. E. Griffith Theaters, Incorporated, or Wes-Tex Theaters?

A. Did I?

Q. Yes.

A. None whatever.

Q. Do you know whether any other officers or employees of these two Oklahoma units, Oklahoma City units, exercised control and direction over the affairs of those corporations?

A. I am positive they did not.

Mr. WRIGHT. I don't think he is competent to give any such information.

The COURT. Well, he is an officer of the company.
3200 I think he would know whether the officers here have anything to do with the company. If you don't know you can say so.

By Mr. RICE:

Q. The record shows there were certain persons who were directors or officers and had a relationship to the Texas and New Mexico unit. I am trying to ask whether or not this group here in Oklahoma City, the original group, continued to control, or ever controlled the operation of the R. E. Griffith Theaters, Incorporated?

A. It did not.

Mr. WRIGHT. He doesn't state which group he is talking about.

Mr. RICE. I said the Oklahoma City group. The Griffith Amusement Company or Griffith Consolidated, did any of the officers of those two companies exercise any control over R. E. Griffith Theaters Companies?

A. They did not.

Mr. WRIGHT. I take it his testimony is those who were directors and officers didn't act as directors and officers.

The COURT. I think a man could be a director in two corporations and the corporations be absolutely distinct and separate.

By Mr. RICE:

Q. Mr. McKenna, during that period of time from 1934 to 1939, did you have occasion to become
3201 familiar with the organization set up in the R. E. Griffith Theaters, Incorporated, office as to departments and personnel?

A. Yes.

Q. And know what sort of equipment they offer to serve their constituents?

A. You mean——

Q. Did that group, to your knowledge, furnish a similar service to the theaters that they operated or were interested in that you testified your local unit did to your theaters?

A. Yes, sir, they did.

Q. The booking and purchasing and so on?

A. Yes, sir, they did. A very fine organization.

Q. A technical organization of skilled people?

A. Yes, sir.

Q. In the description of the booking functions, there is one point I think perhaps we might develop. In the old days, back in this period of time, you bought, as the record shows, the pictures before they were made?

A. That is correct.

Q. Did the head booker, or anybody in your booking offices get a chance to see those pictures before he set a date for their exhibition?

A. No, sir, they didn't.

Q. Did he ever get a chance to see any of them be-
3202 fore he set the dates?

A. He might see a few.

Q. The more important pictures?

A. Yes, sir.

Q. Here at Oklahoma City whether he viewed a picture or not, he was familiar with the type of picture offered as available?

A. Yes, sir.

Q. Did it ever happen there were a substantial number of A or first class features of the same kind available at a given time——

Mr. COCHRAN. We object to that line of questioning——

The COURT. Read the question.

Mr. RICE. I withdraw the question.

Mr. COCHRAN. Mr. Falls will be on the stand.

Mr. RICE. I withdraw the question.

By the COURT:

Q. I understood you to say you had nothing to do with the contract for the pictures.

A. The actual contracting, no, sir, I did not.

Mr. RICE. I was referring to the booking.

A. In my position as general manager, I had to naturally supervise the departments.

Mr. RICE. I was referring to the booking; not the buying.

By the COURT:

3203 Q. Did you actually handle the booking yourself?

A. No, sir, I did not, your Honor.

Mr. RICE. I have no other questions.

The COURT. You may cross examine.

Cross-examination by Mr. WRIGHT:

Q. Calling your attention to these prices that are listed on Defendants' Exhibit 133, these prices you have listed on this exhibit, are those exclusive or inclusive of taxes?

A. They are inclusive of the state taxes. That is all we had at that time.

3204 Q. There was no Federal Tax?

A. No, sir.

Q. In effect in 1939?

A. No, sir, there wasn't.

Q. During the whole year?

A. There wasn't through the whole year.

Q. And these included the two per cent State Tax?

A. Yes, sir.

Q. Now, I see you have got 10, 15, 25, written after the Delta in Altus, Oklahoma. Can you tell us just what that means?

A. That is 10 cents for children, 15 cents balcony, and 25 cents main floor, or 15 cents matinee in some cases.

Q. Well, which?

A. In this case it was the matinee. You see, on each theater, it will have to be analyzed separately.

Q. Suppose you make that analysis for each one of these; tell us what the prices mean there?

A. All right. In Altus, or which town?

Q. Take them theater by theater.

A. All right. The Plaza Theater, Altus, 10 cents for children and 20 cents matinee price.

Q. That is for what, children and adults?

A. No, 10 cents for children at all times.

Q. Why don't you say that?

3205 A. Can we agree that that will be all right, 10 cents for children at all times?

Q. Whenever you say children do you mean at all times?

A. Yes, sir.

Q. All right.

A. 20 cents matinee for adults, 25 cents balcony for adults, and 35 lower floor for adults.

Q. In the evening?

A. In the evening.

Q. When you say "adults", you mean in the evening, is that right?

A. No, I will clarify it for you. The Ritz Theater, 10 cents for children, 15 cents for adults. Chickasha, Oklahoma——

Q. When you say 15 cents for adults, that means at all times?

A. At all times in this case.

Q. Well, you had better say in each case what the prices are, whether for matinee, evening or all times.

By the COURT:

Q. Is there any provision there for matinee?

A. No, the matinee price and the night price are the same on the Ritz Theater. The Rialto, Chickasha, 10 cents for children at all times, and 20 cents for adults at all times.

The Washita at Chickasha, 10 cents for children at

3206 all times, 30 cents for adults at all times.

The Palace Theater, Claremore, was 10 cents for children at all times, 15 cents for adults at all times through August. This house was operated through August on the basis of a two-day operation, and then beginning in August the admission price for the balance of the year was 10 cents for children at all times, 15 cents matinee price for adults, and a 20 cent matinee price for adults.

Q. I didn't understand the last?

Mr. GRIFFING. You didn't mean matinee, did you?

A. Will you read the answer?

The COURT. You said 15 cent matinee price for adults, and then 20 cent matinee price for adults.

A. I am wrong: I mean in the evening. The Yale Theater, Claremore, 10 cents admission for children at all times, 25 cents at all times for adults.

Cleburne, Texas, Palace Theater, 10 cents at all times for children, 15 cents matinee price for adults, and a 20 cent evening price for adults. The Yale Theater, Cleburne, 10 cents at all times for children, 25 cents at all times for adults.

Clinton, Oklahoma: Del Rio Theater, 10 cents at all times for children, 15 cent matinee price for adults, and a 20 cent night price for adults. The Del Rio Theater,
3207 I mean the Rialto Theater, 10 cents at all times for children, 15 cent matinee for adults, and a 20 cent evening price for adults.

Cushing, Oklahoma: The American Theater, 10 cents at all times for children, 15 cents at all times for adults. The Duncan Theater, 10 cents at all times for children, 25 cents matinee price, 25 cent balcony price for adults, and 30 cents lower floor price at all times for adults. The Paramount Theater, 10 cents at all times for children, and 20 cents at all times for adults.

Drumright, Oklahoma: The Midwest Theater, 10 cents at all times for Children, and 20 cents at all times for adults. The Rex Theater, 10 cents at all times for children, and 15 cents at all times for adults. The Tower Theater, 10 cents at all times for children, and 25 cents balcony price for adults at all times, and a 30 cent lower floor price for adults at all times.

El Reno, Oklahoma: The Criterion Theater, 10 cents at all times for children, and 15 cents balcony on the matinee for adults, and 20 cents on the lower floor on the matinee for adults, and 25 cents balcony price for adults in the evening, and 35 cents lower floor price for adults in the evening. The El Caro Theater, 10 cents at all times for children, and 15 cent matinee price for adults, and a 20 cent lower floor, I mean evening price for adults. The Empress Theater,
3208 10 cents at all times for children, 15 cents at all times for adults. The Royal Theater, 10 cents at all times for children, 15 cent matinee for adults, 20 cents evening for adults.

Frederick Oklahoma: 10 cents at all times for children, 25 cents balcony price at all times for adults, 35 cents lower floor price for adults at all times. This is during the months of January and February. The balance of the year, the Ramona Theater, 10 cents at all times for children, 25 cents balcony price for adults, and 30 cents lower floor price for adults. The Ritz Theater, 10 cents at all times for children, 15 cents at all times for adults.

Holdenville, Oklahoma: The Dixie Theater, 10 cents at all times for children, 20 cents at all times for adults. The Grand Theater, 10 cents at all times for children, 15 cents

balcony price for adults, and 25 cents lower floor price for adults. The Liberty, 10 cents at all times for children, and 15 cents at all times for adults.

Hominy, Oklahoma: 10 cents at all times for children.

By Mr. COCHRAN:

Q. You didn't give the theater.

A. I beg pardon. The Ritz Theater. 10 cents at all times for children, 15 cents balcony, I mean matinee price, for adults, and the 25 cent evening price for adults.

Mangum, Oklahoma: The Greer Theater, 10 cents at all times for children, and 20 cents at all times for
3209 adults. The Temple Theater, 10 cents at all times for children, and 25 cents at all times for adults.

Midland, Texas: The Rex Theater, 10 cents at all times for children, 20 cents at all times for adults. The Ritz Theater, 10 cents at all times for children, 20 cent matinee for adults, and 25 cent evening price for adults. The Yucca Theater, 10 cents at all times for children, 25 cents balcony price for adults, and 35 cent lower floor price at all times for adults.

Oklahoma City, Oklahoma: The Reno, 10 cents at all times for children, 15 cents at all times for adults.

Ponca City, Oklahoma: The Murray Theater, 10 cents at all times for children, and 15 cents matinee for adults, and 20 cents balcony price for adults at night, and a 25 cent lower floor price for adults at night. The Poncan Theater, 10 cents at all times for children, 25 cent matinee and balcony price for adults.

By Mr. WRIGHT:

Q. What do you mean by "matinee and balcony"?

A. We charged the same price for matinee for adults as we did in the balcony.

Q. Go ahead.

A. 35 cent lower floor price for adults.

Q. At all times?

A. At all times, yes, sir. The Ritz Theater, 10
3210 cents at all times for children, and 15 cents at all times for adults. The Roxy Theater, 10 cents at all times for children, 15 cent matinee price for adults, and 20 cent evening price for adults.

Sapulpa: The State Theater, opened in August, 10 cents at all times for children and 15 cents at all times for adults. The Yale Theater, 10 cents at all times for children, 15 cent matinee price for adults, and 20 cent balcony price in the evening for adults, and a 25 cent lower floor price.

Vinita, Oklahoma: The Aztec Theater, 10 cents at all times for children, 15 cents matinee for adults, and 20 cents

evenings for adults. The Lyric Theater, 10 cents at all times for children, 20 cents matinee price for adults, and 25 cents evening price for adults.

Wewoka, Oklahoma: The Key Theater, 10 cents at all times for children, 25 cents at all times for adults. The Paramount Theater, 10 cents at all times for children, and 15 cents at all times for adults. The State Theater, 10 cents at all times for children, and 15 cents at all times for adults.

Now, that is all of the Consolidated Theaters, Griffith Consolidated Theaters, and those prices include the two per cent sales tax. Now, I will read the Griffith.

Q. Go ahead.

3211 A. Griffith Amusement Company: Ada, Oklahoma: Kiva Theater, 10 cents at all times for children, 15 cents matinee for adults, and 20 cents evening for adults. McSwain Theater, 10 cents at all times for children, 25 cents matinee price for adults, and 35 cent evening price for adults. The Ritz at Ada, through August of 1939, we had a special kid show at 5 cents, then the admission prices the remainder of the year were—well, wait just a minute, through August the prices were 5 cents for children, I don't recall what this 10 cent price is here. I can check for you and find out, Mr. Wright.

Q. All right.

A. A 15 cent price for adults at all times through August, it appears; then the balance of the year, the children's price was 10 cents, 15 cents for matinee. That apparently, Mr. Wright, is what the 10 cents is, 10 cent matinee through August.

Q. Well, do you know?

A. I will check it for you. I think I can find it. 20 cents for adults on the evening prices.

Bartlesville, Oklahoma: The Liberty Theater, 10 cents at all times for children, and 15 cents at all times for adults. It was operated through June. The Lyric Theater in Bartlesville, 10 cents at all times for children, 15 cents matinee for adults, and 20 cents evening price for

3212 adults. The Odeon, 10 cents at all times for children, 25 cents matinee price at all times, and 35 cents night price for adults. The Rex Theater, started in June, 10 cents at all times for children, and 15 cents at all times for adults.

By the COURT:

Q. Started in June when?

A. June, 1939. The Liberty operated through June, then the Rex operated the rest of the year.

By Mr. WRIGHT:

Q. You transferred the——

A. Operation.

Q. —policy from one theater to the other?

A. Yes, sir.

Q. All right.

A. Blackwell, Oklahoma: Midwest Theater, 10 cents at all times for children, 15 cents at all times for adults. The Palace Theater. 10 cents at all times for children, and 15 cents at all times for adults, and the operation of that theater started in June, 1939. The Rivoli Theater, 10 cents at all times for children, 15 cents adult matinee, and 25 cents evening for adults.

Borger, Texas: The Circle Theater, 10 cents at all times for children, and 20 cents for adults. In my opinion, that is wrong, and I would like to check that.

Q. All right.

A. Because I don't believe the Circle was operating in 1939. In fact, I know most positively it wasn't. The
3213 Rex Theater, 10 cents at all times for children, and 25 cents at all times for adults. The Rig Theater, 10 cents at all times for children, with a 25 cent balcony price for adults, and also a matinee price of 25 cents for adults, and a 35 cent lower floor evening price for adults.

Chandler, Oklahoma: The H. & S., 10 cents at all times for children, 15 cents matinee for adults, and 25 cents evening price for adults.

Duncan, Oklahoma: The Folly Theater, 10 cents at all times for children, and 15 cents at all times for adults. The Palace Theater, 10 cents at all times for children, 20 cents matinee price for adults, with a 25 cent balcony price in the evening for adults, and a 35 cent lower floor price for adults in the evening.

Elk City, Oklahoma: The Elk, 10 cents at all times for children, 20 cents matinee price for adults, and 25 cent lower floor, I mean evening price for adults.

Enid, Oklahoma: The Arcadia Theater, they have 10 cents at all times for children, in January, and 15 cents —well, 10 cents at all times for children throughout the year. They had a 15 cent adult price in January at all times. In February, they had a 15 cent, 20 cent, and 25 cent price, and I am sure that that is probably some special showing, and I would like to check that for you.

Q. You don't know what those three prices are?

3214 A. No, I do not, off-hand.

Q. All right.

A. During the month of June, the price, and from February to June, the price was 20 cents at all times for adults, then the price for the remainder of the year was the same as

in February, at 15, 20 and 25 cents, which I do not recall exactly how those prices applied. The Aztec Theater, 10 cents at all times for children, 25 cent matinee and balcony price for adults, and 35 cent lower floor price for adults. The Cherokee Theater, 10 cents at all times for children, a 15 cent matinee price for adults, and a 20 cent—a 20 cent balcony price for adults, and a 25 cent lower floor price for adults. Both of those in the evening. That is for the months of January and February. The remainder of the year, 10 cents at all times for the children, and 15 cents at all times for the adults. The Criterion Theater, 10 cents at all times for children, and 20 cents at all times for adults, during the months of January and February. The balance of the year was 10 cents at all times for children, and 25 cents at all times for adults. The Mecca Theater charged 10 cents for children, and adults, through May, 1939, and then 10 cents the remainder of the year at all times for children and 15 cents at all times for adults.

Guthrie, Oklahoma: The Melba Theater, 10 cents at all times for children, 15 cent matinee price for
3215 adults, and a 20 cent balcony price in the evening for adults, and a 30 cent lower floor price for adults. The State Theater, 10 cents at all times for children, 20 cents at all times for adults.

Henryetta, Oklahoma: The Blaine Theater, 10 cents at all times for children, and 25 cents at all times for adults. The Morgan Theater, 10 cents at all times for children, and 20 cents at all times for adults.

Hobart, Oklahoma: The Kiowa Theater, 10 cents at all times for children, a 15 cent matinee price for adults, and a 20 cent evening price for adults.

Hugo, Oklahoma: The Erie Theater, 10 cents at all times for children, 15 cent matinee price for adults, and 25 cent evening price for adults. The Ritz Theater, 10 cents at all times for children, and 15 cents at all times for adults.

Kermit, Texas: The Kermit Theater, 10 cents at all times for children, a 25 cent matinee, and 35 cent evening price through May; the rest of the year was 10 cents for children, 25 cents for adults on the matinee, and it shows here 38 cents. The Texas Theater——

Q. 38 cents for what?

A. Adults in the evening.

Q. All right.

A. Texas, 10 cents at all times for children, and
3216 25 cents at all times for adults.

Norman, Oklahoma: The Sooner Theater, 10

cents at all times for children, 30 cents at all times for adults. The University Theater, 10 cents at all times for children, and 15 cents at all times for adults. The Varsity Theater, 10 cents at all times for children, and 20 cents at all times for adults.

Oklahoma City: The Rialto Theater, 10 cents at all times for children, 15 cents at all times for adults.

Okmulgee, Oklahoma: The Inca Theater, 10 cents at all times for children, a 15 cent matinee price for adults, and 20 cent night price for adults. The Orpheum Theater, 10 cents at all times for children, and 30 cents at all times for adults. The Yale at Okmulgee, 10 cents at all times for children, a 15 cent matinee price for adults, and a 20 cent night price for adults.

Pampa, Texas: The LaNora Theater, 10 cents at all times for children, and a 35 cent adult price for matinee and balcony, and 40 cents night price for adults until December 15th, 1939; the price then became 10 cents for the children at all times, 30 cents for the matinee and balcony prices for adults, and 35 cents night prices for the adults, lower floor.

3217 The Rex Theater, 10 cents at all times for children and 25 cents at all times for adults.

The State Theater, 10 cents at all times for children and 20 cents at all times for adults.

Seminole, Oklahoma: Rex Theater, 10 cents at all times for children and 25 cents at all times for adults. Rialto Theater, 10 cents at all times for children and 15 cents at all times for adults. The State Theater, 10 cents for children and 20 cents at all times for adults.

By Mr. WRIGHT:

Q. On Shawnee, where you just have two prices, I take it those are just the children's price and adult prices at all times?

A. Yes, sir.

Q. Go ahead with Stillwater. What are those?

A. Stillwater, the Aggie Theater, 10 cents at all times for children and 25 cents matinee for adults and 30 cents at night.

The Campus Theater, 10 cents at all times for children, 15 cents matinee for adults and 20 cents at night for adults.

Mecca Theater, 10 cents at all times for children and 15 cents matinee prices for adults and 20 cents night price for adults.

Wellington, Texas: Ritz Theater, 10 cents at all times for children and 15 cents matinee price for

3218 adults and a 20 cent balcony price at night for adults and 25 cent lower floor price for adults.

Wink, Texas: 10 cents at all times for children and 25 cents at all times for adults.

The Rig Theater, 10 cents at all times for children; 20 cents for the matinee for adults and 25 cents balcony price for adults and 35 cents the lower floor price.

Q. Before you came here to testify, there had not been any changes in any of those prices you have just recounted for the period 1934 through 1939. What, if anything, did you refer to or look at to refresh your recollection in that respect?

A. I did not look at anything.

Q. Did you talk to anyone or make any inquiry of anyone?

A. No, sir, I did not.

Q. You just recall that information as you sit there on the stand. Is that right?

A. Well, that is right. I remember that——

Q. Just answer the question and then explain.

A. I recalled it as I sat here on the stand.

Q. Do you recall now when there was a change?

A. I do.

Q. When was that?

A. The change was after the federal tax was added
3219 in 1940.

Q. I am talking about prior to 1939.

A. You will pardon me, the question that was asked me at that time was to give an answer on the admission price in general during that period of time, and I replied there had been no change over that period of time in general. I can't tell you specifically as to any one town, when it might have changed.

Q. You do not want to be understood then as testifying these prices you have given here in detail were the prices which were in effect in those theaters in those towns throughout that period, 1934, through 1938?

A. I will say generally those prices were in effect for the full five years, but if you were to ask me specifically about one town as to whether a change might have occurred on a certain date, why I don't know.

Q. As far as you know there might have been changes in all of those towns during one time or another. Is that correct?

A. No, that isn't correct, because I would know about it. There was not any change in all those towns.

Q. Which ones do you know there were no changes in?

A. Do you want me to point them out from this list?

Q. Yes.

A. All right, give me the list and I can tell you
3220 certain towns that I know positively that there were no changes. There were no changes, in my opinion, during that period of time——

Q. Are you giving us an opinion or telling us something you actually know?

A. All right; I got my language mixed up. There were no changes from the admission prices shown here in Altus, Oklahoma.

Q. During what period?

A. During the period of 1934 to April——

Q. When was the last change there before '39?

A. I don't believe there has been a change at Altus, Oklahoma, in admission prices, to speak of, before the state tax was passed in 1933, in July.

Q. Well, do you know?

A. Well, I will say positively there was not.

Q. What did you mean by "to speak of"?

A. You see we absorb the mills, the state tax levied on us.

Q. You said there wasn't any change to speak of.

A. That would be a slight change, the mills.

Q. You mean less than a penny?

A. Yes, sir.

Mr. Cochran. What are you trying to say. The over all price was not changed, but so far as his net
3221 price is concerned, it was reduced by the tax which they absorbed.

By Mr. Wright:

Q. So far as the price charged in public is concerned in Altus, you haven't still gone back to the point before 1939 when there was no change you say. In 1933 you said your net return was lessened by the state tax. Is that correct?

A. That is correct. I referred to that as a change. We lost considerable.

Q. When was the first date prior to 1939 that there was an actual change in the admissions charged in Altus?

A. I couldn't tell you that. I couldn't answer you specifically on that.

The Court. We will recess at this time until 10 o'clock tomorrow morning.

(Hereupon court adjourned until 10 o'clock a. m., September 25, 1945.)

3222 PROCEEDINGS.

September 25, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. WRIGHT. There is a correction I think that should be made in the transcript first. At page 2979, the third question from the bottom of the page now reads: "You had the information as to what your admission prices were from January 1, 1934, until April 28, 1939, at the time you prepared this answer, didn't you?" That first date should be January 1, 1939, instead of 1934. Is that correct?

Mr. GRIFFING. That is right.

Mr. WRIGHT. Then over on page 2980 the question reads: "You did have the information on 439 at that time?" That should be 1939 instead of the figure 439.

B. J. McKENNA, was thereupon recalled, and further testified as follows:

Cross-examination (continued) by Mr. WRIGHT:

Q. As I recall, Mr. McKenna, you were going to check some of these prices that you had listed on Exhibit 133 against the records last night and give us the results?

A. Yes, sir. Of the Griffith Amusement Company, the Circle Theater listed at Borger, Texas, 10 cents for
3223 children at all times and 20 cents for adults at all times.

By Mr. COCHRAN:

Q. As of what date is this information?

A. This information—the Circle Theater, that was the point we were checking on——

By the COURT:

Q. At Borger, Texas?

A. At Borger, Texas, yes, sir.

By Mr. COCHRAN:

Q. What date, when?

A. I am telling you; the question I am answering for Mr. Wright now. This date is from the first of January to the 22nd of April.

3224 By the COURT:

Q. What year?

A. 1939. The other was at Enid, Oklahoma, on the Arcadia, showing in the month of February, a 10 cent price and 15 cent price, a 20 cent price and a 25 cent price. The answer is that it was 10 cents at all times for children, 15 cents at all times for adults, on subsequent run, a 20 cent

matinee for adults when the theater played first run pictures, and a 25 cent evening admission on a first run picture.

Q. What year was that?

A. This was 1939, your Honor; all these prices are for 1939.

The Arcadia at Enid, the same explanation applies to that shown as the balance of the year at 10, 15, 20 and 25 cents.

The other difference is on Kermit, Texas. On Kermit, Texas, my figures were not too readable and in typing this on that balance of the year price, it was typed as 38 cents, and it should have been all of the year at 10 cents for children at all times, a 25 cent matinee for adults, and a 35 cent night price for adults. Those are all of the notations I had, Mr. Wright.

By Mr. WRIGHT:

Q. As I understand it, then on Kermit there was no change?

A. There was no change.

3225 Q. Through the year?

A. That's correct.

Q. And in Borger, you said the Circle, according to the records, charged 10 and 20 until, January 1st to April 22nd, 1939. What was the price after that?

A. The Circle was remodeled into a mercantile building.

Q. Then it was closed on April 22nd, '39?

A. Yes, sir.

Q. Now, what were these records that you say you checked the information against?

A. It is what we call a ticket continuity record.

Q. A ticket continuity record?

A. Yes, sir.

Q. And those are the—I take it those records are available for our inspection?

A. Yes, sir.

Q. You have those now for the year of '39 and all of the subsequent years down to date, is that right?

A. Yes, sir; I am pretty sure we have.

Q. And those are the records which as I understood your testimony yesterday, according to your normal procedure you destroyed at the end of three years?

A. That's correct.

Q. And the records for the year 1939, if the normal procedure had been followed, I assume would have

3226 been destroyed at the end of the year 1943, is that right?

A. That's right, yes, sir.

Q. And the records for the year 1938, assuming your normal procedure was followed, would have been destroyed at the end of the year 1942?

A. Let's see, three years, '38—'41, wouldn't it be, three years? It would be—anyhow, it is three years; it is easy to figure out.

Q. Well, I am trying to determine what you did as nearly as you know.

A. '41; '39, '40, '41.

By the COURT:

Q. You mean at the end of '41?

A. At the end of '41.

By Mr. WRIGHT:

Q. As I understood it, at the time you prepared your interrogatory answer, which I believe was in September of 1943, you still had all of your records for the year 1939, is that correct?

A. Yes, sir, we did, we had the records, and we still have them.

Q. And I take it those records, if your normal procedure of destruction had been followed, would have been destroyed at the end of 1943, is that correct?

A. '42, Mr. Wright, wouldn't it? The end of the year 1942. Three years would be '40, '41—at the end of the year 1942.

3227 Q. Well, you know that as of September, 1943 you had not destroyed the records for the year 1939, that's correct, isn't it?

A. Well, I don't actually destroy these records myself, but all I know is that we have a practice of destroying, each year we destroy a year's records, and we keep three years records. That has been in effect for years.

3228 By the COURT:

Q. Why were not the 1929 records destroyed?

A. Well, when this suit was filed, I believe sometime in 1939, as I recall, our attorneys instructed us to keep the records from a certain date on. I don't remember when that was called to our attention, but in other words, they told us not to destroy any records that applied subsequent to this suit so we followed their instructions on that.

By the COURT:

Q. That is the reason you did not destroy the 1939 records at the end of '42?

A. Yes, sir.

By Mr. WRIGHT:

Q. Then as far as you know the 1938 records were destroyed at the end of 1941?

A. As far as I know, yes, sir.

Q. And the 1937 records were destroyed at the end of 1940?

A. That would be correct.

Q. And the 1936 records destroyed at the end of 1939.

A. That is correct.

Q. Now these records that you have just described and which you consulted in checking your exhibit here—by the way, I notice your exhibit apparently omits prices for the Midwest and Ritz Theaters at Chickasha, Oklahoma.

A. I noticed that yesterday. That should have been put in. It is my mistake. I will get those figures for you.

3229 Q. You didn't check to see what those were?

A. No, I didn't. I didn't make a note of it. I did make a note of those other items that you and I discussed, but I will check those for you. I noticed another thing this morning, that Lubbock was not listed on there, on the Consolidated list there, and should have been.

Q. You can fill those in?

A. I can fill those in, yes, sir.

Q. This record, in any event, that you offered here for 1939, this Exhibit No. 133, of course, does not include theaters which were not operated during that year?

A. Well, I don't know what theaters were not operated offhand, but it doesn't include theaters that were not operated, if there were any.

Q. I mean to say it is your testimony that these prices were the prices which generally prevailed during the prior years, of course, does not apply to theaters which are not on your list but which might have operated in the prior years?

A. Well, it could not apply to theaters that were not on the list.

Q. And there were, of course, a number of theaters which had operated in prior years which were not operated in 1939. Is that correct?

3230 A. I wouldn't be able to answer that without looking at the record.

Q. Now the records you have just described, do they disclose the extent to which so-called give-ways or special concessions or other stimulants, as you described them, were used?

A. No, they do not.

Q. So you have no record as to the extent to which these prices were modified by stimulants of that character?

A. No, I don't think I do other than my own memory.

Q. And these records that you referred to in preparing this Exhibit No. 133, do they disclose what you describe as special departures from the regular price for stimulation purposes?

A. I just don't quite understand that.

Q. Where your departure does not take the form of a give-away or special inducement, but is simply an actual cut in the price itself, are those special cuts reflected in this admission price record from which you prepared Exhibit 133?

A. Well, I don't know what you mean——

The Court. If there was a change in the price.

A. This record will show, your Honor, the admission prices as they were covered by ticket numbers. In other words, there will be a 10 cent series of tickets and it
3231 will show a 10 cent series; 15 cent series, it will show a 15 cent series. The purpose of that is to reconcile the amount of the income with the actual ticket used from the beginning of each month or each week. As far as special prices are concerned, it wouldn't have any designation as a special price.

By Mr. Wright:

Q. I suppose whether or not special prices are reflected in your admissions, ticket records would depend then on whether special tickets were issued showing that price.

A. That is correct.

Q. As I understand your testimony finally, when you undertook to cover the prior period of 1934 through 1938, your recollection was confined to what you termed the general price policy. Is that right?

A. Yes, the general admission price policy over that period of time.

Q. You do not want to be understood as saying in these towns covered by your exhibit there were no special cuts or departures from those prices at particular times in particular towns, do you?

A. No, I do not.

Q. And you do not, I suppose, as you sit there, have any independent recollection as to the precise number or character and general extent of those departures?

3232 A. No, I don't have a memory of any specific cases.

Q. You did, I believe, undertake to tell us with respect to the Rex Theater in Shawnee, Oklahoma, there was a 10 cent matinee price there during that period but not a 10 cent evening price for adults. Is that right?

A. That is correct, yes, sir.

3233 Q. You have an independent recollection on that point, do you?

A. Yes, sir, I had looked that up.

Q. How did you look it up?

A. I was going over it with our attorneys, and I looked it up.

Q. What did you go over to determine that?

A. The admission prices.

Q. You did what?

A. Checking the admission prices.

Q. How did you check the admission prices for the period prior to 1939?

A. Well, I didn't check it prior to '39. Are you covering the period prior to '39?

Q. Yes, sir; I understood that was the period which you covered on Mr. Cochran's examination with respect to the Rex at Shawnee, in which you said, as I recall, that during the prior period the Rex had charged 10 cents at matinees, but had never been operated at 10 cents evenings. Is that correct?

A. Well, that's correct, Mr. Wright, and I said I have an independent recollection of the fact that we had 10 cent matinees in the Rex Theater at Shawnee, Oklahoma.

Q. Do you also have an independent recollection of the fact that you didn't charge 10 cents in the evening

3234 also there?

A. I do, yes.

Q. And that is not based on an examination of any records?

A. Not any records.

Q. Of any kind, or references?

A. I remember that very definitely.

Q. You do?

A. I do, yes.

Q. You are quite sure about that?

A. Yes.

Q. Now, with respect to the questions or the data that was set forth in these items 2 through 13 of the admission of facts that was given to you Friday, you have made a check now, have you, so that you can say the extent to which those statements are correct?

A. Yes, sir, I have.

Q. Now, the first item I believe that you checked is the statement that on December 31st, 1932 the defendant exhibitors owned or had a financial interest in 72 theaters in the following 37 towns, and then there is a list of 4 columns headed "Griffith Amusement Company," "Con-

solidated Theaters, Inc.," "R. E. Griffith Theaters, Inc.," and "Westex Theaters, Inc.," with the names of the towns and the number of theaters in which those corporations were respectively interested set forth under each
3235 column. Can you tell us whether the data is correctly set forth there, or are there any corrections?

A. No, it is wrong, Mr. Wright; there are some corrections.

Q. Let's have the corrections.

A. Shall I read the corrections?

Q. Read the data as corrected by you.

The COURT. Do you have a copy of that?

A. No, sir, I do not.

Mr. WRIGHT. I have a copy, Judge.

Mr. COCHRAN. If the Court please, I object to the use of the tabulation as prepared in the manner in which they are attempting to use it. I have no objection in the world to having them asking any questions based on this, but so far as this tabulation is concerned, I have the same objections that I had at the time it was submitted. It doesn't correctly reflect the situation, and to ask him to read this into the record in the way they have it, it is still further confusing. Now, they can ask him in regard to each particular town, if they want to, or he can prepare a corrected list, or they can ask him in regard to any variations, but this thing isn't in evidence, and it is not competent in the way it is set up.

The COURT. What is this, a request?

Mr. COCHRAN. A request for admission.

3236 Mr. WRIGHT. If the Court please, I am not attempting to put this in evidence. All I am trying to get from the witness is a correct statement and to have him read that, with respect to the true facts, as to the theaters these people owned on this date.

The COURT. It is entirely proper; go ahead.

Mr. COCHRAN. I have no objection.

The WITNESS. May I ask a question?

Mr. WRIGHT. Sure.

The WITNESS. In reading this into the record, as an illustration, do you want me to take column 1 on question 2 on Griffith Amusement Company and read each town and the number of theaters?

By Mr. WRIGHT:

Q. The first table is 72 theaters in the following towns.

A. I have already stated that is wrong.

Q. What is correct?

A. Do you want me to state the facts?

The COURT. State why that is not correct.

Mr. COCHRAN. If the Court please, I submit that is not the proper way. He is going to have him list each town and the number of theaters, and when you get through with that it is a matter of mathematical computation as to what it would be. If he wants to ask him what the total is, that's all right, but to ask him if the statement which
3237 was submitted for an agreed statement of facts which wasn't made——

Mr. WRIGHT (Interrupting.) Go ahead and do it Mr. Cochran's way.

The COURT. I think both of you gentlemen have the same thing in mind. I don't see anything wrong with it. He says this statement of his, he doesn't say it is in evidence.

Mr. COCHRAN. Another thing, your Honor, is this, on this No. 2 statement, as to the number of theaters involved with R. E. Griffith Theaters, Inc., and Westex Theaters, Inc., this witness hasn't qualified as to knowing the situation on those. He can go ahead and read the ones he knows about, which are Griffith Amusement Company and Consolidated Theaters, Inc., and total those up.

The COURT. The question here is, do you know how many theaters there were and in how many towns the four concerns had theaters?

A. Your Honor, I know nothing at all about R. E. Griffith Theaters, Inc., or Westex Theaters, Inc. I have checked as per Mr. Wright's request on the Griffith Amusement Company and Consolidated Theaters, Inc., and I have that information.

By Mr. WRIGHT:

Q. Why don't you read those figures on those, then?

3238 A. Griffith Amusement Company, column 1, Ada, Oklahoma; is that the method you refer to?

Q. Yes, sir, the number of theaters?

A. The number of theaters, 3.

By Mr. COCHRAN:

Q. This is as of what date?

A. As of December 31st, 1932. Ada, Oklahoma, number of theaters, 3 is correct; Bartlesville, Oklahoma, 4 is correct; Chandler, Oklahoma, 2 is correct; Duncan, Oklahoma, 2 is correct; Elk City, Oklahoma, 1 is correct; Enid, Oklahoma, 4 is correct; Guthrie, Oklahoma, 2 is correct; Henryetta, Oklahoma, 2 is correct; Hugo, Oklahoma, 1 is correct; Maude, Oklahoma, 1 is correct; Norman, Oklahoma, 3 is incorrect; it should be 2.

By Mr. WRIGHT:

Q. Which are the two?

A. The Sooner and the New University.

Q. As I understand, you say you had no interest in any other theater in the town at that time, opened or closed?

A. That's correct.

Q. All right, go ahead.

A. Oklahoma City, 1 is correct; Okmulgee, 3 is incorrect, it should be 2.

Q. Those are what theaters?

A. The Orpheum and the Cosy—the Rex; the Rex or Cosy, it is the same theater, the name was changed.

3239 Q. Seminole, Oklahoma?

A. 2 is correct; Shawnee, Oklahoma, 3 is correct; Stillwater, Oklahoma, 2 is correct; Borger, Texas, 2 is correct; Pampa, Texas, 3 is correct; Wellington, Texas, 1 is correct; Wink, Texas, 2 is correct; that is all of the Griffith Amusement Company on the list, but in addition, the list doesn't show Fairfax where we had 1 theater, and it should be added to the list.

3240 Q. You had one theater in Fairfax in addition to those you have named?

A. Yes, sir.

By the COURT:

Q. How many in Fairfax?

A. One theater. Column 2, Consolidated Theaters, Incorporated, as of December 31, 1932; Altus, Oklahoma, three theaters is correct. Chickasha, Oklahoma, three theaters is correct; Claremore, Oklahoma, two theaters is correct; Cushing, Oklahoma, one theater is correct; Oklahoma City, one theater is correct; Sapulpa, one theater is correct. Vinita, two theaters is correct; Cleburn, Texas, two theaters is correct; Lubbock, Texas, two theaters is correct; Midland, Texas, three theaters. That is incorrect. We had no theaters in Midland, Texas as of that date.

By Mr. WRIGHT:

Q. Can you give us the additional theaters that were acquired by the Griffith Amusement Company and Consolidated Theaters, Inc., and the names of the towns in which they were located after December 31, 1932, and by April 28, 1934?

A. The additional theaters which were acquired in the period beginning December 31, 1932, and ending April 28, 1934, for Griffith Amusement Company, as listed in column 1, question 3; Guthrie, Oklahoma, one theater is correct; Hobart, Oklahoma, one theater is incorrect.

Q. That is, there are no additional theaters?

3241 A. There were no operating theaters acquired in Hobart between that period you have mentioned.

Q. You say operating theaters. The question is not limited to operating theaters. Did you acquire an interest in any other theater, either opened or closed?

A. You mean with this Hobart, regardless of whether the theater was open or closed?

Q. That applies to all these questions I am asking you about, are theaters in which these companies had an interest, whether they are open or closed.

Mr. COCHRAN. We submit if he is going to ask about closed theaters he should specifically direct his attention to that because in most of these cases where they had buildings or something of that kind, if they were not being operated they were not theaters; they were not in shape to run as theaters.

The COURT. He can make an explanation as to each one as he goes along. You say Guthrie is correct?

A. Guthrie is correct, and in view of what Mr. Wright has said, Hobart was acquired within the period of December 31, 1932, and April 28, 1934, but it was not opened as an operating theater until November, 1934. That is the situation I explained to your Honor the other day wherein this Consolidated Amusement Company receivership sold the Kiowa Theater in Hobart, Oklahoma, to the Griffith

3242 Amusement Company because the Griffith Amusement Company had been a guarantor on a loan by the Great Southern Life Insurance Company.

By the COURT:

Q. When did you come into possession of that theater?

A. We came into possession of that theater about the end of 1932 or the beginning of 1933. I mean December or January. Hugo, Oklahoma, one theater is correct; Wellington, Texas, one theater is correct. That is all for the Griffith Amusement Company. Consolidated Theaters, Incorporated——

Mr. COCHRAN. Just a minute.

By Mr. COCHRAN:

Q. Was there any theater in which the Griffith Amusement Company, or rather was there any town in which the Griffith Amusement Company disposed of its interest in the theater during that period?

A. Yes, sir. The Griffith Amusement Company sold its interest in Fairfax, Oklahoma, as of April 1, 1934. Consolidated Theaters, Incorporated, column 2 of question 3,

Chickasha, Oklahoma, one theater is correct; Clinton, Oklahoma, two theaters is incorrect. It should be three.

By Mr. WRIGHT:

Q. What are the three?

A. The three are the Del Rio, Rialto, and Rex.

By Mr. COCHRAN:

Q. In connection with Chickasha, you stated the addition of one theater was correct. Was there any change in
3243 theaters in Chickasha? Did they drop one theater and add a theater during that period?

A. Yes, sir, that is correct.

Q. Give us the names.

A. The Ritz Theater was acquired in that period and the Sugg Theater was abandoned in that period.

By the COURT:

Q. Then you had the same number of theaters in 1934 at Chickasha that you did have in 1932?

A. Yes, your Honor.

By Mr. WRIGHT:

Q. When you say the Sugg was abandoned, you mean it was simply closed as a theater, or did you give up whatever interest you had in it?

A. Gave up our lease.

Q. And that was done before April 28, 1934?

A. Done on September 1, 1933. That is all of the Consolidated Theaters.

Q. Did you cover Lubbock, Texas?

A. Lubbock, Texas, it shows here that Consolidated Theaters, Incorporated acquired one theater in Lubbock, Texas. Now that is incorrect because the Consolidated Theaters, Incorporated, did not own any theaters in Lubbock, Texas.

Q. This refers to towns in which you had a total or partial financial interest? I take it you did have a 50 percent interest in the theater that was acquired by the Lindsey Theaters, Incorporated.

3244 A. Well, we had a 50 percent stock interest in the Lindsey Theaters, Incorporated, and Lindsey Theaters, Incorporated, did acquire an additional theater in that period of time.

By Mr. COCHRAN:

Q. Did you cover Clinton?

A. Yes, I covered Clinton.

By Mr. WRIGHT:

Q. Can you give us the additions, if any, that occurred in any year following April 28, 1934?

A. Yes, sir. Between April 28, 1934 and April 28, 1935, the Griffith Amusement Company, as referred to in Column 1, question 4, acquired a financial interest in two theaters in Blackwell, Oklahoma, and this list doesn't show any acquisition by Griffith Amusement Company. Those theaters were acquired in August, 1934.

Q. Those were what theaters?

A. The Palace and Midwest, and that is all the acquisition by the Griffith Amusement Company.

Mr. COCHRAN. You stated that it was all provided you covered Hobart back in a former year, when you had the real estate?

A. Yes, sir. I had a note I was just going to read.

Q. Go ahead.

A. The Kiowa Theater at Hobart was open for operation in November, 1934, which is between this period of April 28, 1934 and April 28, 1935.

3245 By the COURT:

Q. But you really acquired it in the other period?

A. We acquired the building in late '32.

Q. That was covered in your prior answer?

A. Yes, sir.

Mr. COCHRAN. We don't think it should be covered——

The COURT. The fact is in. He acquired the property but he didn't operate it as a theater.

Mr. COCHRAN. The fact is they tried to lease it and did lease it to somebody else. In fact, they had no interest in it. In other words, they didn't start operating a theater until 1934.

Mr. WRIGHT. That fact appears in the record.

By the COURT:

Q. In the Hobart matter you say you began operating in October, 1934?

A. In November, 1934.

Q. When did you acquire an interest in that theater?

A. We acquired an interest in that theater, your Honor, about December, 1932.

Q. In what way did you acquire an interest?

A. We acquired the full hundred percent ownership from the receiver of the Consolidated Amusement Company, who sold us the building, which the Griffith Amusement Company at the time the Consolidated Amusement Company had built that building, had guaranteed a loan

3246 from the Great Southern Life Insurance Company.

Q. So you took it over then?

A. We took it over in the latter part of 1932. It was a closed house, and we carried it, and in the fall of 1933 we leased it to a gentleman by the name of Gillam from Ardmore, Oklahoma. He operated it for a while and then gave it up and gave it back to us but we didn't open it up as an operating theater until November, 1934.

Q. Take your next column.

A. Column 2, question 4, Consolidated Theaters; Clinton, Oklahoma, one theater is incorrect. There was no acquisition in Clinton during the period of April 28, 1932, to April 28, 1934.

By Mr. WRIGHT:

Q. I take it then the information you gave us in answer to the interrogatory as to the date you took over the Clinton Theater is incorrect.

A. I prepared it wrong. I made a mistake.

Q. What is the correct date of acquisition of the Rex Theater which you show in the interrogatory answer as having been acquired on July 16, 1934?

A. It should be January 20, 1934.

By the COURT:

Q. Is that the one you covered in a preceding period?

A. Yes, sir, that is correct. Cushing, Oklahoma, Two theaters is correct.

3247 By Mr. WRIGHT:

Q. Can you give us the acquisitions for the succeeding year?

A. That is between April 28, 1935, and April 28, 1936. The Griffith Amusement Company, column 1, Blackwell, Oklahoma, is incorrect. We did not acquire a theater in that period in Blackwell, Oklahoma. Elk City, Oklahoma, is incorrect, although we did open up a new theater called the Elk in the period mentioned and we abandoned a theater called the Rex so there was no acquisitions.

Q. When you say you abandoned the Rex, just exactly what did you do?

A. The lease expired and it was not renewed.

Q. The lease expired prior to April 28, 1936?

A. That is correct. We built a new theater called the Elk. Seminole, Oklahoma, one acquisition is correct. Shawnee, Oklahoma, one acquisition is incorrect. While we did acquire the Avon Theater in that period we abandoned the Rex Theater.

3248 Q. You acquired the Avon?

By Mr. COCHRAN:

Q. That was erected, wasn't it, built?

A. Yes, sir, it was built.

By Mr. WRIGHT:

Q. When was that?

A. Within the period of April 28th, 1935 to April 28th——

Q. (Interrupting.) You say you abandoned the Rex. What do you mean by that?

A. I mean the lease expired and it wasn't renewed.

Q. All right.

A. In Kermit, Texas, you show one acquired. There was no theater acquired in Kermit, Texas in that period. That is all of the information asked for on Griffith Amusement Company.

In column 2, Sapulpa, Oklahoma.

By Mr. COCHRAN:

Q. Just a minute. In that period, April 28th, 1935 to April 28th, 1936, did you abandon a theater in the town of Maude?

A. No, sir. That is in the next period. Sapulpa, Oklahoma, you show one theater acquired; there was no acquisition in Sapulpa, Oklahoma during that period. Vinita, Oklahoma, you show one theater acquired; there was a new, there was a lease entered into on the Aztec Theater in Vinita, Oklahoma, but the Grand Theater was abandoned in the same period, so there was no actual acquisition.

3249 By Mr. WRIGHT:

Q. Do you mean that your lease on the Grand expired?

A. That is correct.

Q. What is the date of the expiration?

A. December 1st, 1935.

Q. All right. How about the next year?

A. The period between April 28th, 1936 and '37, one theater acquired in Blackwell, Oklahoma is correct; however, we also in that period acquired a theater in Kermit, Texas.

Q. What theater?

A. In Kermit, Texas.

Q. What was the theater?

A. The Kermit.

Q. The Kermit?

A. Yes, sir.

Q. Do you have the date on that?

A. December 15th, 1936, it opened as the Kermit Theater.

By the COURT:

Q. Blackwell is correct, you say?

A. Blackwell is correct, but we disposed or sold the Arcadia Theater in Maude, Oklahoma on 9-1-36. That's all of the Griffith Amusement Company. In column 2, question 6, Consolidated Theaters, Drumright, Oklahoma, you show three theaters acquired; we acquired only two theaters.

By Mr. WRIGHT:

Q. Which were the two?

A. The two were the Midwest and the Rex. In
3250 Holdenville, Oklahoma, three theaters is correct; Hominy, Oklahoma, one theater is correct; Sayre, Oklahoma, two theaters is correct; Sunray, Texas, one theater is correct.

Q. Can you give us the following year?

A. Between April 28th, 1937 and April 28th, 1938, Griffith Amusement Company, column 1: Enid, Oklahoma, one theater acquired is incorrect. There were no theaters acquired in that period in Enid, Oklahoma. Okmulgee is correct, one theater acquired; Kermit, Texas is correct, one theater acquired; however, the least expired on the Palace Theater in Blackwell, Oklahoma and it was abandoned.

Q. When did the lease expire?

A. It expired on 9-20-37. That's all of the Griffith Amusement Company.

By the COURT:

Q. Did you say Enid was incorrect?

A. Incorrect, your Honor.

Q. And Okmulgee correct?

A. Okmulgee is correct.

Q. And Kermit is correct?

A. That's right.

Q. You abandoned one in——

A. In Blackwell, Oklahoma, the Palace. Consolidated Theaters, column 2, Altus, Oklahoma, one theater is correct; Frederick, Oklahoma, three theaters is correct; Mangum, Oklahoma, one theater is correct; Sapulpa,
3251 Oklahoma, one theater acquired is incorrect. We acquired no theater in that period.

By Mr. WRIGHT:

Q. You say you acqquired none?

A. No, sir. Wewoka, Oklahoma, three theaters is correct; Alvin, Texas, interest in one theater is correct; Bay City, two theaters is correct; El Campo, Texas, two the-

aters is correct; Goldsmith, one theater is correct; Texas City, two theaters is correct; Victoria, two theaters is correct; Wharton, Texas, two theaters is incorrect, there was only one theater acquired in Wharton, Texas, an interest in one theater.

Q. Which was that?

A. The Queen.

Q. All right.

A. Now, in addition to what you show here, there was acquired two theaters in Kingfisher, Oklahoma as of 4-1-37, and these were sold on December 31st, 1937, within that same year.

Q. The next year?

A. Between April 28th, 1938 and April 28th, 1939, column 1, Griffith Amusement Company: Blackwell, Oklahoma, one theater is correct; Norman, Oklahoma——

Q. (Interrupting.) Is that one theater in Blackwell, that is the one you referred to previously, the Palace that you referred to as having been disposed of during the
3252 previous year, is it?

A. Yes, sir. It was acquired in 1939.

Q. It was reacquired?

A. Well, it isn't during the previous year—yes, it is too, I will take that back, a year and a half, approximately. Norman, Oklahoma, one theater acquired is correct.

By the Court:

Q. Did you say Blackwell is correct?

A. Yes, your Honor, it is correct. Stillwater, Oklahoma, you show one theater acquired. That is incorrect.

By Mr. Wright:

Q. It should have been none?

A. It should have been none, yes, sir. Borger, Texas, you show two theaters acquired; that is incorrect, it should be one.

Q. What is the one?

A. The one is the State, and at the same time the Circle Theater, or shortly after the Circle Theater was abandoned as a theater.

Q. When was the Circle Theater abandoned as a theater?

A. It was abandoned April 22nd, 1939, in this period.

Q. Did you still have a lease on it?

A. Yes, sir, we did. It was subleased to a music company.

Q. When did the lease expire?

A. It expired in 1945, this year.

Q. Well, as of this date, you still had an interest in the Circle by virtue of that lease, did you not?

3253 A. We are talking about theaters.

Mr. COCHRAN: We submit, if the Court please, that when a building is changed to a business building and is no longer operated as a theater——

The COURT. (Interrupting) Well, the facts are in the record.

By Mr. WRIGHT:

Q. When was it changed?

A. November 11th, 1938.

Q. All right.

A. In addition to what has been listed, Enid, Oklahoma, should be added one theater acquired. And that's all on the Griffith Amusement Company.

Now, Consolidated Theaters, column 2, question 8: El Reno, Oklahoma, three theaters is correct; Mangum, Oklahoma, two theaters is correct; Ponca City, three theaters is correct; Cuero, Texas, two theaters is correct; New Braunfels, Texas, two theaters is correct; Refugio, Texas, two theaters is correct; Uvalde, Texas, two theaters is correct. That's all on that particular question.

Mr. WRIGHT. Now, I think we have actually covered this question 9 in your testimony last May on Mr. Cochran's examination.

Q. Is that right; do you recall whether he covered that before?

A. Yes, sir, I recall it; I am pretty sure it was in
3254 the May examination.

Q. As to this item 10, it is a fact, is it not, that you closed the Palace at Blackwell, Oklahoma after you acquired the Rivoli there?

A. In answer to the question, subparagraph 1,——

Mr. COCHRAN (Interrupting.) Mr. McKenna, I think the record will be clearer if you will just go ahead when counsel asks a question and you answer it without reference to this document, because the document isn't in evidence, and it is confusing, if the Court please.

The COURT. Read the question.

(Question read by the reporter.)

Mr. COCHRAN. If you are going to get it so the question can be understood, why not read the question and let Mr. Wright propound a question?

The COURT. It is cross examination.

Mr. COCHRAN. I know, but I mean in order to get the record intelligently, this record, this document is not in evidence.

Mr. WRIGHT. The question doesn't depend on any reference to the document.

Mr. COCHRAN. But in the question you said as to this Item 10. The record doesn't show what Item 10 is.

The COURT. Don't refer to Item 10.

Mr. WRIGHT. Cut out the reference to Item 10.

3255 The WITNESS. Will you read the question, please?

(Question read by the reporter as follows: "It is a fact, is it not, that you closed the Palace at Blackwell, Oklahoma after you acquired the Rivoli there?")

A. No, sir, it is not a fact that we closed it immediately.

Q. When did you acquire the Rivoli?

A. We acquired the Rivoli on the 1st of November, 1936.

Q. And when did you close the Palace?

A. We closed the Palace November 30th, 1936.

Q. Then the Palace remained closed until you reopened it in March of 1939, is that right?

A. No, sir. The lease on the Palace ran until September 20th, 1937, and we operated the Palace for a short time in June of 1936—'37.

Q. In June?

A. Possibly two weeks or so.

Q. How long, two weeks?

A. A couple of weeks, then the lease ran out September 20th, and it wasn't renewed.

Q. With the exception of the two weeks that you operated it in June of 1937, the Palace remained closed from November 30th, 1936 until you opened it up again in March of 1939, is that right?

A. We gave up the lease in September, 1937, and during the period of time subsequent to that I don't know

3256 what happened to it.

Q. You don't know whether it was closed or opened?

A. No, I do not.

Q. You do know it was closed at the time you reopened it, at the time you reacquired it in 1939, do you?

A. Yes, sir, it was.

Q. But you don't know how long it had been closed before that?

A. My recollection—I don't remember when they had a fire in that theater, but it was damaged, badly damaged by fire sometime in that period, and it was rebuilt.

By the COURT:

Q. Your lease expired when?

A. Our lease expired in 1937, and then it wasn't renewed at that time.

By Mr. WRIGHT:

Q. Calling your attention to the Rex at Okmulgee, Oklahoma, that was closed, was it not, on September 25th, 1937?

A. It was.

Q. And it remained closed ever since?

A. Yes, sir, that's correct.

Q. And that was the date on which you acquired the Inca, is that correct?

A. Yes, sir. Now, that was the date, yes, of the Inca, uh-huh.

By the COURT:

Q. Did you have a lease on the Rex?

3257 A. Yes, sir.

Q. When did that expire?

A. Why, it expired, I don't know exactly when, your Honor.

Q. When with reference to the time you closed it on September 25th, 1937?

A. I just don't recall, your Honor; I don't remember.

By Mr. WRIGHT:

Q. Now, you acquired the Ritz Theater at Seminole, Oklahoma in 1936, didn't you?

A. No, sir.

Q. When did you acquire the Ritz?

A. There is no Ritz Theater in Seminole, Oklahoma.

Q. Not at any time?

A. No, sir—yes, there was a Ritz Theater in Seminole, Oklahoma about the year 1926 to 1930, but there was no Ritz in this period.

Q. Did you acquire any theater in Seminole in 1936?

A. No, sir.

Q. I think we have already covered the State at Shawnee through Mr. Jones' testimony. I believe Altus was covered by Mr. Hamm. Mr. Moran, I think, testified on Chickasha. Now, the Paramount Theater at Altus, Oklahoma was kept closed, was it not, for a period from April 28th, 1934 to April 25th, 1936?

A. No, sir, it was not; it was operated at different

3258 periods of time during that two years, those two years referred to; in fact, I testified to that yesterday.

Q. What periods of time was it operated?

A. It was operated during the fall season of 1934 and 1935, in that period you are referring to there.

Q. What do you mean by "fall season"?

A. I mean from about the beginning of October until the end of November, during the so-called cotton season out in that area.

Q. Other than that, it remained closed during that period, is that right?

A. Yes, sir, that's right. It was an obsolete theater.

By the COURT:

Q. Was it opened in the fall of 1935?

A. Yes, your Honor.

Q. In the same way?

A. We opened it a few weeks in that fall.

By Mr. WRIGHT:

Q. The Sugg Theater at Chickasha, Oklahoma, you acquired that in February, 1932 and kept it closed until October, 1934, did you not?

A. No, sir, we did not.

Q. When did you acquire it?

A. We acquired the Sugg Theater in Chickasha, Oklahoma on March 1st, 1932, and we operated it, it was opened as an operating theater on March 5th, 1932.

Q. March what?

3259 A. March 5th, 1932.

Q. Until when?

A. It was operated until June 21st, 1933.

Q. Then you closed it?

A. It was closed and the lease expired September 1st, 1933, and it wasn't renewed.

Q. Then you reacquired it?

A. We reacquired it in February, 1934, after the landlord had operated the theater for a period of between September and that date. We made a one year lease on the theater and it was operated during that entire period.

Q. That is the period of February, 1934 to February of 1935?

A. Yes, sir.

Q. Then what did you do with it?

A. At that time we entered into a new five year lease with the landlord, who agreed to share in the remodeling of the building. It was an old opera house type of theater, obsolete, and it was remodeled and renamed the Washita Theater and opened June 1st, 1935, and it was operated continuously after that until it was destroyed by fire on December 23rd, 1939.

Q. Now, the Rex Theater at Clinton was closed from November, 1935 until July, 1937, was it not?

A. Yes, sir, it was.

3260 Q. And the Grand Theater at Frederick was closed when it was purchased on February 13th, 1938, was it not?

A. Yes, sir.

Q. And it was kept closed until when? Is it still closed?

A. No, we don't have it any more; the lease expired and we didn't renew it.

Q. When did the lease expire?
A. In 1945, in August.

By the COURT:

Q. Why was the Rex Theater in Clinton kept closed?
A. Why was it?
Q. Yes, sir.
A. Your Honor, the Rex Theater at Clinton was what we call a reverse type theater. In other words, the screen, as you go inside, why the screen is in the rear of the theater rather than the front of the theater, and it was in a dilapidated condition and in terrible repair, and we had acquired in Clinton in January of 1934 a theater called the Rialto, so it was a better building, more up-to-date theater and all, so we moved the policy of the Rex over into the Rialto and we closed the Rialto a short time after that, after we improved the Rialto building to some extent, and we let the lease expire and it was converted into a mercantile building.

3261 By the COURT:

Q. You mean you closed the Rex?
A. Closed the Rex, yes, sir.

By Mr. WRIGHT:

Q. Now I believe I covered the Grand Theater at Borger. The Rialto Theater at Mangum, you acquired that theater at Mangum in 1938?
A. Yes, sir.
Q. As I recall your testimony the other day, that was closed when you acquired it.
A. It was a closed house when we acquired it.
Q. You kept it closed for about two years?
A. No, sir. Right immediately after we acquired it we closed the Temple Theater at Mangum, Oklahoma, for a major remodeling job and while the Temple was being remodeled we opened the Rialto and operated it for a period of two and a half or three months.
Q. With the exception of that period when it replaced the Temple it was kept closed until it was destroyed by fire?
A. Yes, sir.
Q. It was not destroyed by fire until about two years after you acquired it, was it?
A. That is correct.
Q. When was it you acquired the Empress at Sapulpa?
A. We acquired the Empress in Sapulpa in 1933.
Q. And that was a closed or open theater when you acquired it?

3262 A. It was just a closed theater; had been for years.

Q. You kept it closed then until the spring of 1938?

A. We have never operated the Empress at Sapulpa at any time during the entire period. We just used it as a storage place for popcorn supplies and things of that nature.

Q. Do you still have it under lease?

A. No, sir, we do not. We sold the building to the American Legion.

Q. When was that?

A. Sometime this year.

Q. And it was never operated as a theater by you from the time you acquired it until you sold it to the Legion?

A. No, it never was operated by us and had not been before we had purchased it.

By the COURT:

Q. How long had it been prior to that purchase it had been operated?

A. I would say offhand three or four years prior to the time we acquired it. I believe it was operated as a theater as far back as 1930.

Mr. COCHRAN. I think we are getting an erroneous conception of the nature of these questions. We speak of this as a theater. Here is a building that was not occupied as a theater and it was not a theater.

Mr. WRIGHT. Let's have the testimony from the witness.

3263 By the WITNESS:

A. I have said that, Mr. Cochran.

Mr. COCHRAN. It was not a theater when it was acquired.

By the COURT:

Q. What was it when you bought it?

A. It was just an old building in Sapulpa that had formerly been the Empress Theater.

Q. Was it suitable for a theater? Could you have used it for a theater at the time you bought it?

A. We could not have.

Q. What did you use it for?

A. We used it for a storage building to store our popcorn supplies, replacement parts for equipment. We had no place to take care of that and we used it strictly for storage purposes and did at the time we disposed of the building.

Q. Did you ever use it as a theater?

A. No, sir, we never did.

The COURT. Well, the facts are in the record.

By Mr. WRIGHT:

Q. You have got the Ismo Theater at Chickasha on December '37. The Ismo Theater at Chickasha was acquired by you in December, '37?

A. I don't recall we ever acquired the Ismo as a theater.

Q. What do you mean, "acquired it as a theater"? It was a theater, was it not?

3264 A. Yes, it had been a theater, but as I recall, it was never acquired by us as a theater in 1937.

Q. Well, it was acquired by you?

A. I don't believe we ever acquired it, no, sir.

Q. Never acquired any interest in the Ismo?

A. Never did, no, sir.

Q. Now the Liberty Theater at El Campo; do you remember when you acquired that?

A. We acquired an interest in the El Campo on February 29, I believe, 1938.

Q. You closed it on March 1, 1938?

A. We had nothing to do with the operation of the El Campo Theater or the Liberty Theater. We just have an investment with J. G. Long in that town but we have nothing to do with the operation of the theater.

Q. The theater was closed March 1, 1938?

A. I don't know.

Q. You don't have knowledge whether or not it was closed then?

A. No, I do not.

Q. Do you get any reports from Mr. Long as to what transpires with those theaters you have a financial interest in?

A. Yes, sir, we do.

Q. Does he tell you when he closes one?

3265 A. No, sir.

Q. Do you get statements as to the box office receipts of those theaters?

A. Yes, sir.

Q. It is quite apparent from the statement of the box office receipts whether or not a theater is operating, isn't it?

A. That's correct.

Q. So you are given the information. You do have a record, I take it, your box office record, of those theaters, that will show whether the Liberty was closed and when, will it not?

A. I think the records will show, but I said I didn't know.

Q. Will you check those and find out for us?

A. Yes, sir.

By Mr. COCHRAN:

Q. Do you get the box office reports from the Long theaters?

A. No, we do not get box office reports but we get a statement. He asked me if we got a statement.

Mr. COCHRAN. No, he asked you about the box office receipts.

By Mr. WRIGHT:

Q. Your statement includes a statement of the receipts, does it not?

A. We get a profit and loss statement each month.

3266 Q. Your profit and loss statement, I take it, shows the receipts from the theaters in the town during the month, doesn't it?

A. Yes, sir.

Mr. COCHRAN. I just wanted to correct that erroneous statement. I do not have any objection to him checking the records.

By the COURT:

Q. Do you know what he wants?

By the WITNESS:

A. Yes, sir, I know what he wants.

By Mr. WRIGHT:

Q. It is a fact, is it not, that in May, 1936, the Consolidated Theaters bought the Dixie Theater from one exhibitor and the Grand and the Liberty from another exhibitor at Holdenville, Oklahoma, who were operating in opposition to each other prior to the time of their acquisition by the Consolidated.

A. We did not buy the Dixie in Holdenville from one exhibitor and the Grand and Liberty from another exhibtor in opposition.

Q. Who did you buy them from?

A. Mr. Foster McSwain at Ada, Oklahoma.

Q. He owned all three at the time you bought them?

A. Yes, sir, he owned all three.

By the COURT:

Q. Owned all three theaters?

A. In Holdenville.

By Mr. WRIGHT:

Q. When were these purchased?

3267 A. The purchase was in May of 1936.

Q. The date is correct but you say you bought all three from Foster McSwain?

A. Yes, sir. We bought an interest in all three from Foster McSwain.

By the COURT:

Q. Before you leave that, Foster McSwain owned all three of the theaters at Holdenville?

A. Yes, sir.

Q. Were there any other theaters in Holdenville?

A. No, sir.

Q. What kind of a deal did you make with McSwain?

A. We formed a partnership with him. In other words, he came to us and we made a partnership deal with him. He offered us a partnership with him.

By Mr. WRIGHT:

Q. Was McSwain an officer or director in either of your companies at that time?

A. He was an officer in the Griffith Amusement Company.

Q. Do you know when he acquired the theaters?

A. No, but shortly before that time.

Q. How long before?

A. I would say not over a week; maybe a week possibly.

Q. Do you know who he bought them from?

A. Yes, he bought the Grand and Liberty Theaters from Bob Howell of Holdenville.

Q. Whom did he get the Dixie from?

3268 A. I don't recall the gentleman's name he bought it from.

Q. Prior to the time he acquired it the Dixie had been operated independently of the Grand and Liberty. Is that right?

A. Yes, I believe it had.

Q. Now in July, 1936, the Consolidated bought the Rio and Princess, afterwards called the Ute, from two different exhibitors at Sayre, Oklahoma, did it not?

A. No, sir, it did not.

Q. What did it do with reference to those theaters?

A. The Consolidated Theaters, Inc., made a partnership with George Stovall, who owned the Rio Theater, and then George Stovall and the Consolidated Theaters later on purchased from Mr. Cornell, the Princess Theater, which was later remodeled and renamed the Ute Theater.

Q. When was the partnership with Stovall made on the Rio?

A. About June 1, '36.

Q. Was it in July that Consolidated and Stovall bought the Princess?

A. Yes, sir, I believe it was.

Q. How long had Cornell had the theater before you bought it?

A. I don't know how long he had it.

3269 Q. Would you say about a week?

A. No, I would say longer than that.

Q. You don't know?

A. Yes, sir, that is right, I don't know.

Q. I think the agreement between the Consolidated Theaters and Isley and Moran with reference to Chickasha is in evidence. When was it that you first went to work for the Griffith Amusement Company?

A. In August, 1928.

Q. And what was it you had been doing before that?

A. I was in the meat packing business; chief accountant for Armour & Company.

Q. You were an accountant?

A. Yes, sir.

Q. Here in Oklahoma City?

A. Yes, sir.

Q. What was the position you assumed when you first went with the Griffith Amusement Company?

A. Chief accountant.

Q. How long did you hold that position?

A. Until January, 1933.

Q. And what were your duties in that position?

A. I had complete charge of all the accounting, separation of profit and loss statements, financial reports and balance sheets, the usual duties of a chief accountant

3270 plus the fact that in the Griffith Amusement Company I was given a much wider latitude than the ordinary chief accountant based on my experience that I had with the packers. I was consulted quite regularly with respect to general management.

Q. What about?

A. Oh, about everything that came up.

Q. But your responsibility was limited to accounting matters, is that right?

A. That is right.

Q. After beginning in 1933, what was the next position you held with Griffith?

A. I was promoted to comptroller.

Q. And how long did you hold the position as comptroller?

A. Until March, 1939.

Q. What duties did you have while you were comptroller?

A. I had complete supervision over the financial end of the business; the spending of money; authorizing the expenditures; I still supervised all the accounting features of the business and continued to work in a sort of capacity as

assistant to Mr. H. J. Griffith, who was at that time the general manager.

Q. When was this period you kept the books for Mr. R. E. Griffith?

3271 A. Well, in keeping books for R. E. Griffith, as I referred to yesterday in talking to Mr. Wright, was just a personal favor to Mr. Griffith for a few months, about May 1, of 1931, when he went to New Mexico.

Q. What was the period?

A. I would guess three or four months, from May to August, maybe.

Q. In '33.

A. '31.

By the COURT:

Q. Did you have anything to do with his business after that time?

A. No, sir, I did not.

3272 By Mr. WRIGHT:

Q. In connection with your duties as supervising the financial matters, did you make the determination as to what, if any money was to be spent in acquiring theater properties or did someone else?

A. Well, yes, I helped make the determinations.

Q. Who actually made it?

A. Well, in the final analysis, I did because I was handling the money.

Q. You mean you as comptroller approved the expenditure?

A. That is what I mean, approved the expenditure.

By the COURT:

Q. Who determined whether or not you would make the purchase?

A. Mr. L. C. Griffith would make the final determination, and Mr. H. J. Griffith.

By Mr. WRIGHT:

Q. It was during this period from 1933 to 1939 when you were comptroller that Mr. H. J. Griffith was general manager and Mr. L. C. Griffith was president. Is that right?

A. That is correct.

Q. And you yourself are familiar with the Universal Chain Theaters transaction?

A. I am familiar with the agreement. I have read the agreement.

Q. And do you know who Universal Chain Theaters was owned by?

3273 A. Yes, I think I do.

Q. Who?

A. It was owned by a group of stockholders who lived at various places in the United States.

Q. One of the main stockholders was the Universal Picture Corporation, was it not?

A. No, sir, it was not.

Q. You say that Universal Chain Theatrical Enterprises Company was not owned in any part by the producer or distributor of Universal film?

A. I say that very definitely so far as my knowledge is concerned.

Q. Do you know that to be a fact?

A. Yes, I know it to be a fact. They don't own any of the stock.

Q. You know who all the stockholders were, do you?

A. I have seen a record of all the stockholders, and I know Universal Pictures Corporation you referred to, was not one of them.

Q. You don't know whether stock was held for them in the name of a nominee or not, do you?

A. Oh, no, I don't know that.

Q. You don't know at all, do you, whether or not the producer and distributor of Universal films actually had an interest in the Universal Chain Theaters Company?

3274 A. All I know is that the list of stockholders as I have seen it did not show anything relative to the Universal Pictures Corporation.

Q. When was it you saw a list of it?

A. I saw a list back in 1928, '29, '30, '31, '32, '33, and '34, and there was no Universal Pictures on it.

Q. You were just giving your recollection as to what you saw on the list of stockholders?

A. That is right.

Q. Other than that you have no knowledge?

A. You mean if there was something underneath, I don't know anything about that, no, sir.

Q. As to that agreement, one of the purposes of that agreement was to provide the Griffiths with substantial sums of money for expanding that Griffith chain of theaters, wasn't it?

A. Well, I don't know what the original purpose of the agreement was. I was not working for the company at the time the agreement was made.

Q. Well, do you know what was done under it?

A. Well, if you ask me specifically about certain things that were done, I probably can answer the question.

Q. It is a fact, isn't it, that substantial sums of money were made available under that agreement, and used for the purpose of expanding the Griffith operations?

3275 A. There were certain loans made under the agreement which were repaid by the Griffiths at 10 per cent interest.

Q. Do you know what was done with the money?

A. The money was spent.

Q. It was spent largely for the purpose of expanding the holdings of the circuit, wasn't it?

A. We bought theaters, as I testified the other day, we bought theaters and we had an understanding they would loan us certain monies, and we paid 10 per cent interest for use of the money.

By the COURT:

Q. You are speaking of this corporation?

A. Universal Chain Theatrical Enterprises, Inc.

By Mr. WRIGHT:

Q. In fact, you know the money you got, regardless of the amount of interest you paid, was used for acquiring theaters?

A. Yes, sir.

Q. Now, when was it you say that Consolidated Theaters Corporation was formed?

A. The corporation itself was formed on May 7th, 1929, and didn't actually begin doing business until April 27th, 1930.

Q. And you said that corporation was formed as a result of some disagreement that the Griffiths had with the Universal Chain Theatrical Enterprises over the operation of that agreement?

3276 A. That is correct, yes, sir.

Q. When was it you say that corporation referred to, the Consolidated Theaters, Inc. was acquired?

Mr. COCHRAN. You mean the Consolidated Amusement Company, I assume.

By Mr. WRIGHT:

Q. Or the Consolidated Amusement Company?

A. The Consolidated Amusement Company was acquired by the Griffith Amusement Company as of May 1st, 1927.

Q. From whom was that acquired?

A. Well, it was acquired from a group of individuals who lived in and around Ardmore, Oklahoma.

Q. And that acquisition was made pursuant to the terms of that agreement with Universal Chain Theatrical Enterprises?

A. I was not with the company when the acquisition was made.

Q. You remember, do you not, certain provisions of that agreement which required approval of the Universal Chain Theatrical Enterprises Company for the acquisition of theaters through corporations other than the Griffith Amusement Company, do you not?

A. Yes, I remember that provision.

Q. Now, at the time Griffith Consolidated was organized, was there any written agreement in effect which concerned or modified that provision?

3277 A. Yes, sir, there was.

Q. Were you able to find that agreement? I think you referred to it the other day. There was some question as to whether it was oral or written.

A. Yes, sir, I think they have one.

Q. Have you got the agreement here?

Mr. GRIFFING. (Hands Mr. Wright an instrument.)

By Mr. WRIGHT:

Q. This document that is marked Exhibit 386 for identification is dated March 27th, 1930. Is this the agreement you were referring to in your testimony on cross examination, that was made at the time of this dispute between the Griffiths and the Universal Chain Theatrical Enterprises?

The COURT. The Court has a matter to take up, and we will adjourn at this time until 1:45 p. m.

(Whereupon, Court was recessed until 1:45 o'clock p. m. this same date.)

3278 PROCEEDINGS

September 25th, 1945, 1:45 o'clock p. m.

The COURT. You may proceed, gentlemen.

Mr. WRIGHT. I think there is an unanswered question in the record. He was asked, if I recall it, if that agreement was the one that he had referred to on his direct examination, arising out of this dispute between Universal Chain Theatrical Enterprises, Inc. and the Griffith brothers, and he was reading it when we adjourned and had not answered it.

The COURT. Read the question.

(Question read by the reporter as follows: "This document that is marked Plaintiff's Exhibit No. 386 for identification, is dated March 27th, 1930. Is this the agreement you were referring to in your testimony on direct examination, that was made at the time of this dispute between the Griffiths and the Universal Chain Theatrical Enterprises?")

B. J. McKenna, a witness for the defendants, being recalled, was examined and testified further as follows:

Cross-examination (resumed) by Mr. Wright:

Q. What is your answer?

3279 A. Yes, sir, it is.

Q. The agreement that was here, which this exhibit you have just identified here, Plaintiff's Exhibit No. 386, modifies, was simply one by which in substance the control of the Griffith Amusement Company was roughly divided equally between the Universal Chain Theatrical Enterprises and the three Griffith brothers, was it not?

A. Divided each; yes, sir, each of the parties had the same powers, except Griffith brothers had the contract for the operation of the theaters.

Q. And they each held an equal amount of stock, that is, Griffith brothers had all the "A" stock, what was it, 1,000 shares, and the Universal Chain Theatrical had all of the "B" stock?

A. Yes, sir.

Q. Now then, when this stock was purchased, the so-called "B" stock was purchased from the Universal Chain Theatrical Enterprises, when was that you said, in '34, December, 1934?

A. Will you read the question?

(Question read by the reporter.)

A. December 11th, 1934.

Q. I believe you testified on your direct examination that stock was purchased by a group of individuals, is that right?

3280 A. Yes, sir, it was a group of individuals in Oklahoma and Texas.

3281 Q. In your interrogatory answer I believe you showed the purchase as having been made largely by two corporations in addition to the Griffiths.

A. There were two corporations with the individuals but I don't believe it was "largely."

Q. Well, the notation I am referring to is your answer to interrogatory No. 7 there where you refer to the changes in the stock since April 28, 1934, and then you state on April 28, '34, the larger stockholders were then, Universal Chain Theatrical Corporation owning the B stock and the three Griffiths owing all the A. Then you make the statement that on December 11, '34, the Universal stock was cancelled and released as follows: "R. E. Griffith, 12; L. C. Griffith, 12; H. J. Griffith, 4; W. T. Speers, Treasurer of Western States—I take it that refers to a corporation?

A. Yes, sir, I understand what you mean now.

Q. And 751 after his name, and then you have Harry M. Lowenstein, Treasurer, G. A. C.—I take it that stands for Griffith Amusement Company, 618.

A. I understand what you mean. At the time this stock was purchased from the Universal Chain Theatrical Enterprises there was in formation an organization to hold the stock called the Western States Theaters, Incorporated, and it was to acquire the stock and then issue to these
3282 individuals I spoke of this morning or yesterday, whenever it was, their pro rata of the stock they had agreed to purchase in the Griffith Amusement Company, Class B stock, so in making the actual purchase themselves it was purchased through the corporation, just as a matter of convenience, but the actual stock itself was reissued in Western States Incorporated, and continued on that basis until December, 1938, at which time Western States was completely dissolved, and individuals whom I mentioned in my testimony here have received the Griffith class B stock in their names.

By the COURT:

Q. Who were those individuals?

A. The individuals are Mr. W. T. Speers at Altus, Oklahoma; Mr. Harry Lowenstein at Ardmore, Oklahoma; Mr. Sol Lowenstein at Ardmore, Oklahoma; Mr. Emanuel Lowenstein; Mr. McSwain of Ada, Oklahoma; Mr. and Mrs. Killough of Ada, Oklahoma; Mr. Moore of Fairfax, Oklahoma; Mr. Giffen of Miami, Oklahoma; Mr. Powell of Guthrie, Oklahoma; Mr. Roberts, deceased now, of Clinton, Oklahoma and Mr. Zartaludes of Sapulpa. Do you have the list?

Mr. WRIGHT. Yes. I take it the people you are talking about are those whose names appear in your answer to the interrogatories who ultimately wound up with the stock?

A. Yes, that is correct.

Q. Without tracing through the process by which each of them acquired the stock, it is a fact, is it not, that these new stockholders never at any time had control of the
3283 Griffith Amusement Company. Isn't that correct?

A. That is correct, yes, sir.

Q. At the time the Universal Chain Theatrical Enterprises let go of your "B" stock, the three Griffith brothers got control of the corporation and have retained it ever since, is that correct?

A. That's correct, yes, sir.

Q. Now, I think Judge Cochran asked you if there had ever been an expansion department of the Griffith Amuse-

ment Company or Griffith Consolidated, and you said there had never been any such thing?

A. That's correct.

Q. Now, actually, all you meant to say was that there simply wasn't any department which had that official title, isn't that a fact?

A. No, what I meant to say, Mr. Wright, was that there had never been an expansion department in our office, operating as such.

Q. Well, as such. You had a department engaged in expansion activities, didn't you?

A. We never had any such department.

Q. In which employees sometimes referred to it as the expansion department?

A. I don't know what the employees referred to. I am telling you that as the man in charge of the office we
3284 never had any such department. I will furthermore tell you that each one of our departments is set out, and it would be known by me certainly if we had any such department.

Q. Do you remember that list that you used when you were testifying last May, as to what these employees of the corporation did?

A. Yes, sir, I do.

Q. And do you remember that, I believe, you testified that was a list that you had prepared, was it not, a typewritten list?

A. Yes, that is right.

Q. And do you remember on the list there after the name E. R. Slocum, appeared the words, "Expansion Department"?

A. Yes, sir, I do.

Q. That was a typographical error, was it?

A. I don't know what it was insofar as the word itself, but you asked me that same question in May and I gave you the reply, and I still tell you that we had no such department as the expansion department at any time.

Q. I am asking you now to account as best you can for the fact that on the list you had prepared the duties of Mr. Slocum were listed as "Expansion Department"?

A. I cannot account for it, Mr. Wright.

By the COURT:

Q. Who was the man in charge of the expansion department according to your list there?

3285 Mr. WRIGHT. E. R. Slocum.

A. Your Honor, there was no man in charge of the expansion department. We had a man working for us by

the name of E. R. Slocum; he was a field man, and worked out in the territory, on leases and real estate and things of that nature. He testified on the stand, if you recall, and they have referred to him, Mr. Wright has, as expansion department. We never had any such department.

By Mr. WRIGHT:

Q. Now, calling your attention to the occasions when you dealt with Mr. Jake Jones at Shawnee, as I understood your direct examination, you saw him about a dozen times in 1930 about a reduction of the rent on the Ritz Theater there. Do you recall saying that?

A. No, I don't recall saying that. I recall saying that I had seen him at least a dozen times about the matter of reducing the rent at the Ritz Theater, but I didn't say it was in 1930.

Q. Well, as I understood you to say, that you had seen him about a dozen times before or during the time that the theater was closed there; then you had reopened it for a brief period, then you saw him a number of times after that, again attempting to get him to reduce the rental, is that correct?

A. That's correct.

Q. This first dozen times, do you know where you
3286 saw him?

A. Well, now, Mr. Wright, I used the term "a dozen times" to reflect the total number of times approximately that I had seen Mr. Jones. Yes, sir, I remember very well where I have seen him at various times. Do you wish me to state it?

Q. Where was the first time that you saw him about reducing the rental on the Ritz Theater at Shawnee?

A. I saw him right at his own place of business over there at Shawnee.

Q. Do you remember who else was present?

A. There wasn't anybody present; we were standing right out in front.

Q. This was in front of the theater itself?

A. Yes, sir.

Q. Was anybody with you?

A. No, sir.

Q. That was when?

A. That was sometime in 1930, the early part of 1930.

Q. You don't know when, other than it was in the early part, is that right?

A. That's right.

Q. Then when was the next time you saw him?

A. I met him one time down in front of the Criterion Theater which we were leasing from him in Shawnee, Okla-

homa. I can't give you the exact sequence, your
3287 Honor, of these times, but I, further than that, have met him numerous times right here in Oklahoma City on Film Row. We very very congenial with one another, and we visited one another.

Q. When you saw him in 1930 about reducing the rental—just give me the various places you saw him on these dozen or so occasions in 1930 about reducing the rental? Once was, you say, in front of the Criterion Theater, and another one was in front of the Ritz Theater, and where else?

Mr. COCHRAN. Are you speaking about the rentals on the Ritz now?

Mr. WRIGHT. Yes.

A. I saw him in Shawnee to my knowledge four times, twice in front, right around in front of the Ritz Theater, and twice down around the Bison and Criterion Theaters. And if we want to count the numbers, which I might be off one or two, I have seen him, or I had seen Mr. Jones and discussed this rental with him seven, eight, or nine, maybe ten times right here in Oklahoma City on Film Row.

3288 Q. That would be when he came in to buy film?

A. Yes, sir, whatever he came in for, we would sit down and talk in the coffee shop under our building there.

Q. How much was that rental? Do you remember?

A. The rental was $450.00 a month.

Q. How much?

A. $450 per month.

Q. The rental on the Ritz?

A. Yes, sir.

Q. Are you sure about that?

A. Positive.

Q. What were you trying to get it reduced to?

A. Well, we thought $200 a month would be plenty.

Q. And then you say after you opened up you saw him again. That is, after you had opened it and closed it again, in 1931, I believe you said in your direct examination you were talking about it all the time. Do you know about how many times you talked to him about it then?

A. Read that question.

Q. (Question read.)

A. Well, I think I talked to him—you are referring there to after we opened up in December of 1930 and ran it until March, 1931?

Q. Yes. Then after you closed the second time.

A. How many times had I seen him after that?

3289 Q. Yes.

A. I would say not over two times because the last time I talked to him was in film row here in Oklahoma

City. I thought he was kidding me when he said that "Things are going down hill right now" and he said, "There is going to be a stop to it." He said, "Things are going to get back in line and carry along all right." He said, "You don't need any adjustment. You leased it for a period of time and agreed to pay that rental so that is the situation." I told him, I said: "Jake, the lease is going out in September and we have a five year option and we can't pay that kind of rental on an option and I will tell you, in sort of a friendly sort of way, we would like to make an adjustment of it." He grinned and was very nice about it in his conversation, but just said there wasn't any adjustment he would agree to make, so I didn't personally have occasion to go into the matter again after he had given me that thorough an answer.

Q. Who else was present?

A. There was nobody present at any time when I talked to Mr. Jones.

Q. Where did this conversation on film row take place?

A. Principally in the coffee shop under our building, I used to have my lunch with him.

Q. Did he first come in and make a date with you
3290 to talk about reducing the rent?

A. No, he did not. We just ran into one another and sat down at lunch together and we discussed the matter.

Q. At times that you talked to him about reducing the rental on the Ritz, was there any other representative of the Griffith Company with him?

A. There never was to my knowledge. I don't recall any of them being present.

Q. Did you have anything to do with negotiating the original lease on the Ritz?

A. I did not.

Q. You had nothing to do with the final turning back of the Ritz property to Mr. Jones?

A. No, sir, I did not.

Q. When was the first time you talked to him about a reduction of rental on the Criterion?

A. I never talked to him about a reduction of rental on the Criterion.

Q. Never attempted to see him in that connection?

A. No, sir, other than the time I testified I met him in the Aldridge Hotel in Shawnee, Oklahoma.

Q. There, as I understand it, you didn't participate. You were just there. Is that right?

A. I was just there. That is right.

Q. At no time did you ever discuss with him the
3291 rental reduction on the Criterion?

A. I did not, no, sir.

Q. You continued to see him regularly in Oklahoma City, did you, during the period of 1931, '32 and '33?

A. No, I did not. I didn't see Mr. Jones for a period of several years. Those years you referred to were the depression years and I just didn't run across him or didn't see him. The fact of the matter is, I don't believe that I saw him again to my memory, I don't believe I saw him again for any period of time until possibly 1935 or '36.

Q. That is, from the summer of '31, which you say was possibly the last time you saw him in the coffee shop in your building here in Oklahoma City?

A. I will make an exception to that. I did see him after that, about the time he acquired a lease on the Ritz Theater, and we sold him the personal property. I believe that was the last time I saw him for several years.

Q. You saw him where?

A. In our office.

Q. Who else was present?

A. I believe Mr. L. C. Griffith was there and Mr. Clark—we were just standing around visiting at the time.

Q. Then from that time on you didn't see Mr. Jones at all when he came to Oklahoma City until you saw him sometime in 1935?

3292 A. I would say 1935 or '36 when he came to see me.

Q. Was he still making regular visits to Oklahoma City at that time?

A. I don't know whether he was or not. I know there was a period of years in there he was not feeling good. He had an illness and he had to go somewhere for his health. I don't know when that was, though.

Q. This meeting you refer to as having occurred on June 23, 1934, that was arranged by Mr. Adam Hornbeck, your Shawnee partner?

A. That is right.

Q. How long had Mr. Hornbeck been your partner there?

A. Since 1926.

Q. And he has managed theaters there for you continuously ever since?

A. No, sir, he has not. Mr. Hornbeck had a very unfortunate accident and had to go to Mayo Brothers and was laid up with a lame limb for several years and we had other managers in there.

Q. When was that?

A. That was in 1929 and part of '30 and again in '32 and part of '33, and then again as late as '38 and '39. The fact of the matter is, we don't know whether his leg is entirely healed yet or not.

Q. He is still there, is he, running the theater now?

3293 A. Yes, sir, he seems to be getting along better and he is over there in charge.

Q. You don't know what period in 1933 he was away from town, do you?

A. No, I don't remember exactly.

Q. Do you remember whether he was away from town in 1934 or not?

A. I don't know exactly whether he was or not. I don't know the exact date. I am just giving you a general history of why he was away at times.

Q. With respect to this exhibit which I think was offered as part of the plaintiff's case showing the reduction of rental in the Criterion from $500 a month to $400 per month, I take it from your previous testimony you had nothing to do with negotiating that reduction?

A. No, I did not.

Q. Do you know who did?

A. No, I do not.

Q. Now, do you know whether there were any negotiations looking toward a further reduction of that rental prior to June 23, 1934, or not?

A. No, I do not know.

Q. And on that date I believe you testified that Mr. H. J. Griffith said something about a reduction in rental. What was the amount of money that was mentioned?

3294 A. There wasn't any mentioned, as I recall.

Q. Well, what did he say?

A. He said—after we shook hands and sat down in our chairs he said, "Well, Jake, I came over to see you. I understand from Adam you are interested in making a new lease on the Criterion Theater at a reduced rental."

Q. Is that all he said?

A. That is all he said and he didn't get to say much more.

Q. Had you given them information that Mr. Jones was interested in making such a reduction?

A. Yes, I had. I had told him so.

Q. I take it that information had not been gained from Mr. Jones. Is that right?

A. Yes, that was my understanding—

Q. I say, you had not gotten the information from Mr. Jones?

A. No. I understood you to ask me if I gave Mr. Griffith the information.

Q. Now, did you ever at any time accompany Mr. R. E. Griffith to Shawnee?

A. Yes, sir, I did.

Q. When was that?

A. It was about the year 1935; about the middle of the year.

3295 Q. What was the purpose of that visit?

A. To see Mr. Hornbeck, who was ill in the hospital.

Q. Had you ever been with him before that?

A. Never had.

Q. Had you ever been to Shawnee with any other representative of the Griffith Company other than this one time you say you went there in June, 1934?

A. With another representative of the Griffith Company?

Q. Yes.

A. Well, now, I have been in Shawnee when Mr. Hornbeck was there.

Q. How about H. J. Griffith?

A. No, I have never been there with him. Yes, I am wrong. Mr. H. J. Griffith was with me at the time we went to see Mr. Hornbeck.

Q. Was there any other time you went to Shawnee with him?

A. No, sir.

Q. That was the only occasion?

A. That is right.

Q. You are quite sure, are you, that the date of this conversation you had in the Aldridge Hotel was June 23, 1934?

A. Yes, sir, I am positive that was the date.

3296 Q. You are positive that was not sometime in 1933?

A. I am very positive.

Q. Did you make any memorandum at the time that conference occurred which would fix the date?

A. Well, I have this. I wrote a letter to Mr. Hornbeck under date of June 21st, and I know that the next day Mr. Hornbeck called me in reply to my letter and said he would set the following day for the meeting.

Q. Did you have any prior correspondence with Mr. Hornbeck?

A. No, I didn't have any prior correspondence but he had written me as per one of the letters.

Q. Over what period of time?

A. He wrote to me regarding this matter on May 12, 1934.

Q. You had no correspondence prior to that date?

A. No, sir, about this matter.

Q. You had other correspondence with Mr. Hornbeck?

A. I have written to Mr. Hornbeck about daily reports and matters pertaining to the accounting for years; numerous letters.

Q. Have you kept your file of correspondence with Mr. Hornbeck?

A. No, sir, I have not.

Q. You don't have that?

3297 A. No, sir, I do not.

Q. What do you have?

A. I don't have anything at all relative to correspondence with Mr. Hornbeck, other than the correspondence I would have had with him in the last three years.

Q. These letters of 1934 you are talking about, you don't have?

A. Yes, I do. They have been introduced here.

Q. I don't think they have been introduced.

A. I thought they had.

Q. As I understand your testimony, then, you now say you have how many letters from Mr. Hornbeck that were written in 1934?

A. I have one letter from him is all I know of; a copy of a letter.

3298 Q. A copy?

A. A copy of the letter.

Q. A copy of the letter he wrote to you?

A. He wrote to Mr. L. C. Griffith and sent a copy to me.

Q. A letter dated what?

A. May 12th, 1934.

Q. That's a letter from Mr. Hornbeck to L. C. Griffith?

A. Yes, sir.

Q. And a copy was sent to you, and you have that copy?

A. Yes, sir.

Q. Do you have any copies of any letters or originals, that he wrote into the office there before or after that date?

A. No sir, I don't have.

Q. Then, as I understood you to say, you also have a copy of a letter you wrote to him shortly afterwards?

A. Yes sir, I have that.

Q. And what is the date of that letter?

A. June 21, 1934.

Q. And that's the only copy you have of any correspondence that you had with Mr. Hornbeck?

A. Except as I said, letters which I might have written to him in the last three years, the correspondence file for the last three years.

Q. That's all the correspondence you have had
3299 with Mr. Hornbeck for the last three years, that you still have, is that right?

A. Yes, sir.

Q. But the only corresponence for the entire period of [redacted] prior to that time are these two letters that you have referred to, that you still have, is that right?

A. That's correct.

Q. Do you know when the rest of it was destroyed?

A. It was destroyed in the regular course, as I explained.

Q. As soon as it got to be three years old?

A. That's correct.

Q. So that, in the regular course of business, these letters in June would have been destroyed in May, 1937, is that right?

A. Well, now, those letters that we are referring to have to do with a lease contract and due to the fact that leases as a rule are more or less perpetuated, we had attached such copies of letters to the lease itself because that lease is still in effect, and that isn't the procedure we follow on the leases, your Honor. In other words, anything pertaining to an original lease is supplemented.

Q. So that you want to correct your prior testimony that you destroyed all correspondennce at the end of three years; you keep that correspondence that relates to leases, is that right?

3300 A. That's right, yes, sir.

Q. Then, you do have all the correspondence relating to leases going how far back?

A. Well, I would imagine as far back as the lease originated, the beginning of the lease.

Q. That is, you now have in your files all of the correspondence relating to leases that has occurred since you made the lease in question, is that right?

A. Yes sir; except, you understand if the lease expires we don't keep it.

Q. Except with reference to leases that are currently in effect, is that right?

A. That's correct.

Q. You have all your correspondence relating to leases on any building which is still leased, is that correct?

A. I believe we do, uh-huh.

Q. Do you destroy the correspondence at the end of the lease period, or when you make a renewal, or what do you

do in the case of property that you have a lease expiring on and then you make another lease on it?

A. If we renew the lease, well, if there was any correspondence supplementing the original lease, where it pertains to the matters within the lease itself, that correspondence would be attached to the lease.

Q. Have you got now all of the correspondence
3301 that relates to the lease on the Criterion Theater that was made at any time?

A. Yes, we have got all the correspondence that relates to it, as far as I know.

Q. Is there anything other than——

A. No, sir.

Q. —these two letters you are talking about?

A. There is not, other than the agreement, a two-year agreement which I have already brought to you.

Q. That is in evidence?

A. Yes sir; we had that in there too, attached to the agreement.

Q. Apart from that agreement for the reduction which is in evidence and these two letters, which you have just referred to, you have no other letters in your file which relate to the lease on the Criterion Theater at Shawnee, is that right?

A. That's right, to my knowledge.

Q. And if the file has been kept as you understood it was kept, if there was any other correspondence, it should be in the files?

A. It should be, yes sir; that's correct.

Q. So that you say now there was no other correspondence?

A. I said there was these two letters.

Q. I say other than these two letters and the re-
3302 duction agreement that is in evidence?

A. That's right; that's all I recall.

Q. Now, other than these two letters that you are talking about, is there anything besides that which leads you to believe that the date on which this conversation at the Aldridge Hotel occurred was in 1934 rather than 1933?

A. Well, other than these two letters and my memory, that's all.

Q. You have nothing else?

A. Not that I know of.

Q. Now, the Aldridge Hotel isn't mentioned in these letters, is it?

A. No, sir.

Q. And neither of these letters refers to any meeting between you and Mr. H. J. Griffith and Mr. Jones, does it?

A. No, sir, they do not.

Q. And your recollection that the meeting occurred in June, 1934 rather than in 1933 is simply based upon the fact that this correspondence in 1934 refers to the rental of the Criterion Theater, is that right?

A. No, that isn't right, Mr. Wright. My recollection of it is very definite, in that after receiving the first letter of May 12th I made arrangements and called Mr. Hornbeck and told him to contact Mr. Jones for some kind of a discussion on this rental.

3303 Q. There isn't anything in either of these letters that refers in any way to any telephone conversation between you and Mr. Hornbeck, is there?

A. I am not sure whether in that letter of the 21st I mentioned the telephone conversation or not.

Q. Take a look at it (handing).

A. All right. No, it doesn't say anything about it, Mr. Wright, but I had the conversation just the same.

Mr. WRIGHT. Now, will you read the preceding question, please?

(The preceding two questions and answers were read by the reporter.)

Q. Is your answer still, "No".

A. My answer is what I just gave you.

Q. Insofar as these letters you are talking about are concerned, there isn't anything in there except a reference to the extending of the rental or to the rental on the Criterion Theater? Now, in these letters I am talking about, not what you say you recall doing after or before receiving the letters; nothing else in the letters which leads you to believe that the conference occurred in June, 1934, other than the fact that these letters refer to the rental on the Criterion Theater, is that right?

A. Well, your Honor, I practically don't understand what he is trying to get at.

3304 The COURT. I think it is argumentative, Mr. Wright. I think he has answered the question. The letters speak for themselves.

By Mr. WRIGHT:

Q. Getting back to these interrogatory answers that you filed in 1943, did you fill in any of this data on the acquisition dates from memory?

A. The information relative to the acquisition dates as submitted on the interrogatories, I instructed our attorney's office to fill in that information, and they handled that.

Q. I take it they filled it in from information you supplied, didn't they?

A. I presume they did.

Q. Well, there seems to be a fairly large number of errors on there as to those dates. I just wondered if you could tell us how that occurred?

A. Well, Mr. Wright, I think we did a pretty nice job, considering all the questions we had to answer. I don't know how the errors occurred, other than we are just human beings.

Q. The Varsity interrogatory answer shows as to Norman as having been acquired in July, July 14th, 1927. Now, as I recall your testimony from the stand, you said that you didn't have that theater there in 1932?

A. That's correct.

3305 Q. Do you know how it happened to have been——

A. (Interrupting.) I further testified as to the fact that the Varsity was originally what we called the Old University Theater, which was acquired in 1927, and that the lease expired in 1931 and was not renewed, and years later we bought that building, and that was in 1937, in July, and we opened it as a theater in November, and it was renamed the Varsity.

Q. In your answer for Okmulgee, Oklahoma, the Yale Theater, it shows that was acquired in April, April 15th, 1932, in the interrogatories, and you testified you didn't have that theater in Okmulgee in December, 1932?

A. No sir, Griffith Amusement Company didn't have that theater then.

Q. Do you know why the other date was given in your answer?

A. No, I don't, Mr. Wright; I don't know how that happened.

Q. In Midland, you testified you didn't have three theaters there in December, 1932, and as I recall your interrogatory answer stated three theaters were acquired in April, April 27th, 1930. Is that right?

A. Yes sir, that's right; the three theaters were acquired April 27th, 1930, and were sold December 27th, 1931, and therefore I don't believe the dates fit in with

3306 the information you asked for in your admission of facts.

Q. As to Clinton, your interrogatory answers show that the Rex was acquired July 16th, 1934, and you testified, I believe, that it had been acquired at an earlier date, that it had been acquired January 20th, 1934. Do you know how that happened?

A. I don't know how that information was given incorrectly.

Q. Then in Drumright, the Midwest and the Rex and the Tower were acquired, according to your interrogatory answer, September 2nd, 1936?

A. Well, the interrogatory answer is wrong. The Tower Theater was not acquired until August, 1937. In fact, we built the Tower Theater and opened it August 1st, 1937, or thereabouts.

Q. And in Enid, the interrogatory answer shows the Cherokee as acquired February 17th, 1938. That was another wrong date, was it?

A. It showed it February 17th, 1938?

Q. Yes.

A. Well, we acquired, as of February 17th or thereabouts, we acquired a site, purchased a site in Enid, Oklahoma, but we actually didn't build a theater and open a theater until November 16th, 1938.

Q. Now, in Stillwater, your interrogatory answers
3307 show, do they not, that you acquired the Campus Theater on December 1st, 1938?

A. We acquired a site in Stillwater at about that date, but actually didn't have a theater until May, 1939, May 5th.

Q. The Interrogatory answers as prepared were prepared on the basis of the acquisition of the property, and you testified in accordance with the dates of the opening, is that right?

A. The date of the actual theater openings, yes sir.

Q. The interrogatory answer shows, does it not, that you acquired the State Theater at Sapulpa on April 5th, 1938?

A. We purchased the site on April 5th, but we didn't actually have a theater until August 17th, 1939.

By Mr. COCHRAN:

Q. Was that theater built also?

A. Yes sir; we built it, completely built.

By Mr. WRIGHT:

Q. Now, in preparing the information that you gave in the interrogatory answers as to the periods when your theaters were opened and closed, just how did you go about doing that?

A. We have that information listed on our profit and loss statements at the end of the year; we show the number of weeks opened and the number of weeks closed.

Q. Did you fill those in from memory, or did you take them from the profit and loss statements?

A. We took them from the profit and loss statements.

3308 Q. I believe your interrogatory answer listed the operation of the Empress Theater at Sapulpa as spasmodic; do you recall that?

A. No, I do not, Mr. Wright; I don't recall that.

Q. The answer you have here is, "Spasmodic operation, 1934, closed in 1935, and abandoned as a theater," isn't that right?

A. That's the way it is down here, yes sir.

Q. Well now in your testimony, as I understood you, it was never operated at all?

A. That's still the way I believe, and the operation referred to in your interrogatory answer there, in my opinion, is the fact that we had used it for wrestling matches and that type of entertainment, but not for theater operation.

Q. I was under the impression that you were only using it for storage?

A. We used it for storage principally too, but our partner up there was pretty close to the Veterans of Foreign Wars, and he let them use it for special wrestling matches and entertainment of that kind.

Q. So it was used for entertainment purposes part of the time, was it?

A. Yes, but the answer I gave was with reference to theater entertainment.

3309 Q. Guthrie, Oklahoma, you list the operation of the Guthrie Theater there. You then say, "Theater closed, spasmodic operation."

A. That is correct.

Q. As a matter of fact, according to your profit and loss records, that theater was closed half of 1935 and all of '36, '37, '38 and '39, wasn't it?

A. No, it was not. It was operated, as we say here, in a spasmodic manner. Your profit and loss record will show exactly what the situation was there.

Q. Will you check that against your profit and loss record and see what the correct answer is?

A. Yes, I will do that.

Q. Do you have a positive recollection on it now that it was operated during the period '36, '37, '38 and '39?

A. My recollection is that it was operated as we say here, spasmodically, part times.

Q. During that time, those years?

A. During those years I will say we did operate it part time.

Q. I believe the only closed period in the interrogatory answer here for the Delta, also called the Rex Theater at

Altus is for about six weeks of 1936 for remodeling. Is that right?

A. That is right, yes, sir.

3310 Q. Now, is it your recollection that is correct?

A. Yes, that is my recollection.

Q. It is a fact, isn't it, that your profit and loss record will show that theater was not operated for the entire years 1934 and 1935?

A. No, they won't show that.

Q. You think not?

A. That is right.

Q. Will you make a check of that too?

A. Yes, I will. If I might mention there, Mr. Wright, this Delta Theater is a renamed theater, and in 1934 and '35 it was called the old Empire Theater.

Q. The alternate name you have on here is the Rex.

A. It was also called the Rex.

Q. When was it called the old Empire?

A. It was called the old Empire in '28, '29, '30, '31 and '32, I believe up to about 1934.

Q. Up until 1934 it was the old Empire, then it was the Delta?

A. No. From 1928 to '34 it was known as the old Empire, somewhere around 1934. In that period of cleaning it up and so forth, we renamed it the Rex. In later years, in '36, it was renamed the Delta. It has had three names.

Q. I notice you have in this same interrogatory after the word "theaters: Plaza and N. Empire."

3311 A. That was the New Empire.

Q. The Plaza was called the New Empire when?

A. From 1928 on up through about 1938, I believe.

Q. When it became the Plaza?

A. Yes, sir, it was remodeled, a major remodeling.

Q. And the theater was called continuously the old Empire, Delta and Rex?

A. No, old Empire, Rex and Delta.

Q. Old Empire, Rex and Delta. Will you check your box office statements on that?

A. You want me to check it as if it were one?

Q. Yes. You don't show any closed for the Odeon Theater in Chandler, do you, in your answers to the interrogatories?

A. No, it doesn't seem to.

Q. What is your recollection now as to whether that theater was closed for a period of time?

A. My recollection is that it was.

Q. As a matter of fact, it was closed for half of '37 and all of '38 and '39, wasn't it?

A. I believe it was.

Q. Your box office records will again show the accurate date, will they not?

A. It isn't the box office record. I have a profit and loss record.

3312 Q. Well, your profit and loss record will show that?

A. Yes, I will check that for you.

By Mr. COCHRAN:

Q. Wasn't that theater renamed?

A. Yes, sir, it was renamed the Dixie.

By Mr. WRIGHT:

Q. Will you take it under both names?

A. Yes, sir.

Q. When was it renamed, do you know?

A. I don't recall exactly. I will find out for you and check the records.

Q. You don't show any closed period for any theaters at Wink, Texas, do you, in this interrogatory answer?

A. No, sir.

Q. What is your recollection now as to whether the Rex was closed during any of the years 1934 to 1935, the Rex in Wink?

A. My recollection is it was closed for some of that period.

Q. Would you say the years '34 and '35 sound right to you?

A. Yes, sir, I believe that is about right. That was when the oil boom—when Wink started going down hill.

Mr. COCHRAN. I wonder if counsel would ask the purpose of closing in order to save time. Otherwise, I will have to ask him on re-direct.

Mr. WRIGHT. I am not interested in what the
3313 purpose was. You can ask him that on re-direct examination if you wish.

By the COURT:

Q. Why did you close it? The Court will ask the question.

A. That was an unprofitable operation.

By Mr. WRIGHT:

Q. What about 1939?

A. Yes, I believe in '39 too.

Q. Will you check that also?

A. Yes, sir.

Q. Now, before you swore to those interrogatory answers did you make any effort to see that the information reflected there was correct?

A. Well, I checked them over but as I recall the night that I signed the interrogatories, or the evening, rather, the amount of work necessary in preparing them was such that they were hurried at the last moment in order that they could be submitted up here to the clerk or somebody, and we rushed them up here and I never had an opportunity to study every bit of detail in those interrogatories.

By the COURT:

Q. In filling out those interrogatories were the answers you gave what you thought to be correct?

A. Yes, they were, your Honor.

By Mr. WRIGHT:

Q. With reference to these matinee prices at the Rex Theater in Shawnee that you testified about this
3314 morning, it is a fact, isn't it, that actually you ran the Rex Theater there for a substantial period of time at a 10 cent admission price for everybody?

A. Not to my knowledge it isn't.

Q. You are sure that is not a fact?

A. Not to my memory, no.

The COURT. What theater is that?

A. The Rex in Shawnee, Oklahoma.

Q. Do you think it will help your recollection if we show you the newspaper ad for that period of time?

A. Well, it would not help my recollection because I don't remember it ever running other than matinees at 10 cents.

Q. Well, if it appeared that the Rex was advertising 10 cents to anyone at that time, then you would believe you were mistaken. Is that right?

A. Yes, sir, I would.

Mr. WRIGHT. I think that is about all we have at this time until we make this check and we have some of these newspaper ads here.

Re-direct examination by Mr. COCHRAN:

Q. Mr. McKenna, do you recall about the time these interrogatories were filed, having been in an automobile accident?

A. Yes, I recall it very well.

3315 Q. Were you in the hospital sometime?

A. Yes, sir.

Q. Can you tell us whether at the time you signed these interrogatories, or during the time you were attempting to get them prepared, you were in the hospital, or just getting out of the hospital, when you signed these?

A. I had just gotten out of the hospital.

Q. You spoke of giving instructions to your attorneys to prepare them. You were endeavoring to get these interrogatories answers prepared as best you could while you were in the hospital and through your attorneys?

A. That is correct.

Q. Then when you got out of the hospital you say you signed them?

A. I remember they brought them down there one evening and I was feeling pretty nervous, having been in a wreck, and Mr. Griffing, I believe, told me they had to be submitted to some person up here right away, and they had been checked and they were all right, so I signed them.

Q. You checked them as well as you could under the circumstances at that time?

A. Yes, sir.

Q. Now relative to that Empress Theater in Sapulpa, you told us awhile ago that it was used during a portion of the time while you were using it, for storage and
3316 part of it was used by the Veterans of Foreign Wars for wrestling matches and things of that kind?

A. That is right.

Q. You also told us that recently you had disposed of the building.

A. We sold it to the Veterans of Foreign Wars.

Q. They bought the building?

A. They bought the building.

Q. Speaking of the town of Sapulpa, you are acquainted with Mr. Moulder, are you?

A. Speedy Moulder?

Q. Yes.

A. Yes, sir.

Q. Were you in Sapulpa about July or August of 1937 in company with H. J. Griffith?

A. No, sir.

Q. At any time were you in Sapulpa with H. J. Griffith and called on Mr. Moulder?

A. Yes, sir.

Q. When was that?

A. That was in August, 1938.

Q. Well, is that the only time you called on Mr. Moulder in company with H. J. Griffith?

A. The only time, yes, sir.

Q. Mr. Moulder testified that at a time which he
3317 stated, "I would say July or August of 1937" that Mr. Griffith, H. J. came to Sapulpa with Mr. McKenna and—I am reading from page 986 of the record—"we could not come to terms. Then I suggested to him

'How about a partnership' and he said, 'Well, we don't want two partners in the same town; but we are satisfied with the one we have' and later he says, 'Well, Speedy, we will lower the admission price in the Yale Theater and build another theater in the town and buy your pictures out from under you', and he says, 'Where will you be then?' and I said, 'Well, that is for me to worry about.' I believe he told me at the same time that I didn't have a good lease, and I told him that I did."

Did any such conversation take place at any time when you were present with H. J. Griffith with Mr. Moulder in Sapulpa?

A. No, sir.

Q. Or anything in substance to that effect?

A. Nothing like that at all.

The COURT. We will recess for a few minutes.

3318 Q. I hand you Defendants' Exhibits 135-A and 135-B and ask you to state what they are.

A. 135-A is an exterior view of the Aztec Theater in Enid, Oklahoma, and 135-B is an inside view of the auditorium and balcony looking from the stage.

By the COURT:

Q. Of the same theater?

A. The Aztec Theater, yes sir.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 136-A and 136-B and 136-C, and ask you to state what they are.

A. 136-A is an exterior view of the Chief, formerly the Criterion Theater in Enid, Oklahoma; 136-B is an exterior view of the Criterion Theater in Enid, Oklahoma.

Q. Now, was that theater remodeled?

A. Yes sir, it was.

Q. And 136-A, was that before or after it was remodeled?

A. It was after it was remodeled and renamed the Chief.

Q. And 136-B, was that before or after remodeling?

A. That was before it was remodeled, when it was called the Criterion.

Q. When was this theater remodeled?

A. In 1940, in the spring of 1940.

Q. What is the next?

A. 136-C is an inside view of the auditorium looking toward the stage.

3319 Q. Of the Chief?

A. Yes sir, the Chief. Wait just a minute—yes, the Chief.

Q. Is that as it existed before the remodeling?

A. That occurs to me as it was before it was remodeled.

Q. What remodeling was done on the interior of the theater at the time the exterior was remodeled, if you know?

A. I believe it was reseated. Yes, it was reseated and the exterior and the lobby and the foyer and all that part of the theater was modernized and brought up to date.

Q. This exhibit that we have here was taken before the remodeling?

A. Yes sir, in my opinion, it was. I might be wrong.

Q. I hand you Defendants' Exhibits 137-A and B, and ask you to state what they are.

A. 137-A is an exterior view of the Cherokee Theater in Enid, Oklahoma; 137-B is an interior view of the Cherokee Theater in Enid, Oklahoma, looking from the foyer toward the stage.

Q. I hand you Defendants' Exhibits 138-A and B, and ask you to state what they are.

A. 138-A is an outside or exterior view of the Arcadia Theater in Enid, Oklahoma; 138-B is an inside or auditorium view of the Arcadia Theater in Enid, Oklahoma, looking from the foyer to the stage.

3320 Q. I hand you Defendants' Exhibits 139-A and 139-B, and ask you to state what they are.

A. 139-A is an exterior view or an outside view of the Rivoli Theater in Enid, Oklahoma; 139-B is an interior view of the Rivoli Theater in Enid, Oklahoma, looking from the foyer to the stage.

Q. I hand you Defendants' Exhibit No. 140 and ask you to state what that is.

A. Exhibit No. 140 is an interior view of the Royal Theater in Enid, Oklahoma, looking from the foyer towards the stage.

Mr. COCHRAN. I will state that I haven't been able to locate an exterior view of the Royal. We will see if we can produce that.

Q. I hand you Defendants' Exhibits 141-A, B, and C, and ask you to state what they are.

A. 141-A——

Mr. COCHRAN. Just a minute. I will offer in evidence now Defendants' Exhibits 135-A and B, 136-A, 136-B, 136-C, 137-A, 137-B, 138-A, 138-B, 139-A, 139-B and 140.

Mr. WRIGHT. To which we object, as to all of them, as being incompetent, irrelevant, and immaterial.

The COURT. Overruled and exception allowed.

By Mr. COCHRAN:

Q. Proceed.

A. Defendants' Exhibit 141-A is an exterior view

3321 of the Palace Theater in Duncan, Oklahoma. In my

opinion, Judge Cochran, that is not an up-to-date picture; the Palace is a much better looking theater outside than that.

Q. As of what date?

A. That looks to me like it might have been back in 1938 or seven or six, back in there.

Q. When was that theater remodeled?

A. We brought it up-to-date and modernized it about 1941, or thereabouts. The front is a lot better looking. I saw it the other day.

Q. All right.

A. 141-B is an inside or auditorium view of the Palace Theater in Duncan, Oklahoma, looking from the foyer toward the stage; and 141-C is an inside view looking from the stage toward the foyer.

Q. I hand you Defendants' Exhibits 142-A and B, and ask you to state what they are.

A. 142-A is an outside or exterior view of the Trail Theater in Duncan, Oklahoma, and 142-B is an inside or auditorium view of the Trail, looking from the stage toward the foyer.

Q. I hand you Defendants' Exhibit No. 143-A and B, and ask you to state what they are.

A. Exhibit 143-A is an exterior view of the Ritz Theater in Duncan, Oklahoma; 143-B is an interior view of the
3322 Ritz Theater, Duncan, looking from the foyer towards the screen.

Q. Is the Ritz Theater operated by Mr. Guest?

A. Yes, sir.

Q. And the Trail and Palace are operated by Griffith Amusement Company?

A. And the Folly.

Q. You also have another theater, the Folly?

A. Yes, sir.

Mr. COCHRAN. We do not have pictures of the Folly. We will have to obtain those and produce them later. We offer in evidence Defendants' Exhibits 141-A, B, and C, 142-A and B, 143-A and B.

Mr. WRIGHT. The same objection.

The COURT. Overruled, and exception allowed.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 144-A, B, and C, and ask you to state what those exhibits are.

A. 144-A is the exterior view of the Bison Theater in Shawnee, Oklahoma; 144-B is the inside or interior view of the lower floor and balcony looking from the stage toward the balcony of the Bison Theater in Shawnee, Oklahoma;

and 144-C is the inside view looking from the foyer toward the stage of the Bison Theater in Shawnee, Oklahoma.

Q. Is that Griffith Amusement Company's best theater in the town of Shawnee?

3323 A. Yes, sir.

Q. What is the next best theater there?

A. The Criterion.

Q. I hand you Defendants' Exhibits 145-A and B, and ask you to state what they are.

A. Exhibit 145-A is the exterior view of the Criterion Theater in Shawnee, Oklahoma; 145-B is an interior view of the Criterion Theater in Shawnee, looking from the foyer toward the screen or stage.

Q. I hand you Defendants' Exhibits 146-A, B, and C, and ask you to state what they are.

A. 146-A is an exterior view of the Avon Theater in Shawnee, Oklahoma; 146-B is an interior view of the Avon, looking from the foyer toward the screen; and 146-C is an interior view of the Avon, looking from the stage or screen toward the foyer.

Q. Now, this Avon is now the second run house of the Griffith Amusement Company, is it?

A. Yes, sir.

Q. In Shawnee?

A. Yes, sir.

Q. That replaced what theater?

A. The Rex Theater.

Mr. COCHRAN. We do not appear to have a photograph of the Rex, which is the theater which has been under

3324 discussion here in regard to the 10 cent admission.

The WITNESS. Yes, sir.

Mr. COCHRAN. We will see if we can locate a picture of that theater.

Q. I hand you Defendants' Exhibits 147-A and B, and ask you to state what they are?

A. 147-A is the outside or exterior view of the Odeon Theater in Shawnee, Oklahoma; and 147-B is the inside auditorium view looking from the foyer toward the screen of the Odeon, in Shawnee, Oklahoma.

Q. Is this the theater which has been referred to in the testimony as now being operated by someone of the Jones family under the name of the Jake?

A. Yes, sir.

Q. At the time this picture was taken—kill that. During the time that A. B. Momand operated it until I believe Mr. Jones took it over and renamed it the Jake, that theater was the Odeon Theater, was it?

A. Yes, sir.
Q. And operated for many years?
A. Yes, sir; it is a very old theater.
Q. As the Odeon?
A. Yes, sir.
3325 Q. And it at this time is being operated by some member of the Jones family?
A. Yes, as far as I know. I think they testified to that.
Q. I hand you Exhibit 148–A to 148–B, and ask you to state what that is.
A. Exhibit 148–A is an exterior or outside view of the Ritz Theater, Shawnee, Oklahoma. Exhibit 148–B is the inside or auditorium view of the Ritz Theater looking from the foyer toward the screen or stage.
Q. That is a theater which is operated by some of the Jones family also. Is that right?
A. As far as I know, Jake Jones, yes.
Q. This is the theater which was originally operated by the Griffith Amusement Company in Shawnee, isn't it?
A. In 1926, yes, sir.
Q. And is the theater in which you said there was first installed sound by the Griffith Amusement Company?
A. Yes, sir, I believe that is right.
Q. That Ritz Theater is the one where the Griffith Amusement Company lease expired in September, 1931?
A. That is correct.
Q. Then Jake Jones took it over or someone he was connected with took it over and he acquired the equipment from the Griffith Amusement Company?
3326 A. Jake Jones took it over himself.
Q. And has been operating it ever since?
A. As far as I know, yes, sir.
Mr. Cochran. We offer in evidence Defendants' Exhibits 144–A, B and C, and Exhibit 145–A and B; Exhibit 146–A, B and C; Exhibit 147–A and B; Exhibit 148–A and B.
The Court. Let them be admitted subject to the objection.

By Mr. Cochran:

Q. I hand you Defendants' Exhibits 149–A and B and ask you to state what they are.
A. 149–A is the outside or exterior view of the Ritz Theater in Hominy, Oklahoma; Exhibit 149–B is the exterior view of the Ritz Theater in Hominy looking from the stage toward the foyer.
Q. Now, that is a theater which was operated in Hominy by McLain prior to the time that the Consolidated Theaters acquired it?

A. Yes, sir; it was.

Q. And the other theater at that time was the Pettit?

A. Yes, sir.

Q. And after Griffith Consolidated acquired the Ritz, the opposition continued to be the Pettit until the Pettit was acquired by Consolidated?

A. In February, 1940.

Q. I hand you Exhibits 150–A and B and ask you to state what they are.

3327 A. Exhibit 150–A is the outside or exterior view of the Pettit Theater in Hominy, Oklahoma, about 10 or 12 years ago, and Exhibit 150–B is the interior view of the Pettit Theater showing the lower floor and auditorium; also the balcony looking from the stage, but in my opinion this was taken away back, years ago.

Q. This notation here says 12-4-39.

A. I said ten or twelve years.

Q. In your opinion, it is the condition of that theater prior to the time the Consolidated remodeled it?

A. Yes. That is the way it looks.

Q. That is the way it looked when the Consolidated acquired it?

A. Yes, when we acquired it. It doesn't look that way today.

Q. Has it been remodeled?

A. Yes, sir.

Q. Both inside and out?

A. Yes, sir.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 149–A and B and Exhibit 150–A and B.

Mr. WRIGHT. Same objection.

The COURT. Same ruling.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibits 151–A, B, and C, and ask you to state what they are.

3328 A. Exhibit 151–A is an exterior view of the Elk Theater in Elk City, and Exhibit 151–B is the interior view of the auditorium of the Elk Theater looking from the foyer toward the screen, and Exhibit 151–C is the interior view of the auditorium of the Elk looking from the stage toward the booth and foyer.

Q. I hand you Defendants' Exhibit 152–A and B, and ask you to state what they are.

A. Exhibit 152–A is the exterior view of the Rex Theater in Elk City, and Exhibit 152–B is the interior view of the Rex Theater in Elk City looking toward the balcony from the screen.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 151–A, B and C, and Exhibit 152–A and B.

The COURT. The same ruling.

Mr. WRIGHT. It seems to me if we had re-direct examination now we might be able to get rid of this man. This is a continuing offering of this material which started to go in on direct examination.

The COURT. I don't see the necessity of it.

Mr. COCHRAN. I will be through in just a moment.

By the COURT:

Q. Who operates the Royal Theater?

A. A man by the name of Roy Shield.

Q. And the Rivoli?

A. The Rivoli is no longer a theater. It is a mer-
3329 cantile building.

Mr. COCHRAN. The Royal is operated under that pooling arrangement that has been introduced in evidence between the Griffith Amusement Company and Shield.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibits 153–A, B, C, and D, and ask you to state what they are.

A. Exhibit 153–A is an exterior view of the McSwain Theater in Ada, Oklahoma. Exhibit 153–B is an interior view of the McSwain Theater, Ada, Oklahoma, looking from the foyer. Exhibit 153–C is an interior view of the McSwain Theater, Ada, Oklahoma, looking from the stage toward the balcony and shows the lower floor and balcony, and Exhibit 153–D is also an interior view of the McSwain Theater showing the lower floor and a portion of the balcony looking toward the stage.

Q. Is the McSwain Theater the Griffith Amusement Company's present theater in Ada?

A. Yes, sir.

Q. I hand you Defendants' Exhibit 154–A and B and ask you to state what they are.

A. Exhibit 154–A is the exterior view of the Kiva Theater in Ada, Oklahoma, and Exhibit 154–B is the interior view of the Kiva looking from the stage toward the foyer.

Q. Is that a Griffith Amusement Company house?

A. Yes, sir.

3330 Q. What operation is it?

A. It is a B operation.

Q. Defendants' Exhibit 155–A is what?

A. An outside view of the Ritz Theater, Ada, Oklahoma.

Q. Exhibit 156–A is what?

A. An interior view looking from the stage of the Ritz at Ada, and 156–B is an interior view of the Ritz Theater looking from the foyer toward the screen.

Q. Is the Ritz a Griffith Amusement Company theater?

A. Yes, sir.

Q. What operation do you have there?

A. Second run, subsequent run.

The COURT. Are 155–A and 156–A the same?

Mr. COCHRAN. There is a mistake in numbering and it takes those three to cover the Ritz Theater at Ada.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 157–A and B and ask you to state what that is.

A. Exhibit 157–A is the outside view of the Ada Theater at Ada, Oklahoma. Then 157–B, I don't know what it is. It looks like an auditorium of a theater.

Q. It is entitled "Ada Theater, Ada, Oklahoma"?

A. I have never been in it.

Q. The Ada Theater is operated by Miss Kyser?

A. That is their best house now.

Q. I hand you Defendants' Exhibit 158–A and B,
3331 and ask you to state what they are.

A. Exhibit 158–A is the outside view of the Strand Theater in Ada and 158–B—well, it looks the inside view of the old Hamly Theater. I have never been in it since it became the Strand.

Q. Formerly the Hamly was operated by the Griffith Amusement Company and that became the Strand?

A. Yes, sir.

Q. And Miss Kyser operated the Strand?

A. Yes, sir, Mr. Kyser and Miss Kyser.

Q. And that looks like the interior of the old Hamly?

A. It does.

Mr. COCHRAN. We offer in evidence Defendants' Exhibit 153–A, B, C and D; Exhibit 154–A and B; Exhibit 155–A; Exhibit 156–A and B, and Exhibit 157–A, and Exhibit 158–A and B.

The COURT. Let them be admitted over the objections of the plaintiff.

Mr. COCHRAN. That is all.

Re-cross-examination by Mr. WRIGHT:

Q. Do you remember the day of the week it was when you went down to Shawnee in June, 1934, to have that meeting?

A. No, I do not.

3332 Q. Do you know what kind of a day it was?

A. It was a very nice day.

Q. No rain?

A. No rain, no, sir. The sun was shining, nice day.

Q. Do you know the newspapers that were published there in Shawnee?

A. I don't know the names of the newspapers. I have seen them.

3333 Q. There is a Shawnee Morning News there, is there not?

A. Yes, sir, I think so.

Q. A paper that you advertise, your theaters advertise in?

A. I am sure they do.

Q. There is also an evening paper in Shawnee, is there not, called the Shawnee Evening Star?

A. I believe there is, Mr. Wright.

Q. I call your attention to page 6 of the Shawnee Evening Star for June 18th, 1934. Do you see an ad for the Rex Theater there?

A. Just a moment.

Q. Do you see the Rex ad?

A. Yes, I do.

Q. That says 10 cents, anyone 10 cents, doesn't it?

A. Yes, sir, it does.

Q. In reading that ad, you don't have any doubt that that means 10 cents for anyone at night as well as in the afternoon, do you?

A. Well, I don't see how I can have, because it seems to be very definite.

Mr. GRIFFING. We can't hear you.

A. I said I don't see how I can have, because it seems to be very definite, that the advertisement shows 10 cents here, anyone 10 cents.

Q. And that means evening or night, is that right?

3334 A. That's why I was looking at the paper. Well, it seems to be, yes, sir.

Mr. WRIGHT. I am going to suggest that instead of handing him each one of these in the presence of the Court, I will leave this file of papers here covering the period 1933 through 1934, and ask him to look at the places we have marked, then he can tell us whether or not he recognizes the ads in question as showing that the Rex was charging 10 cents evening admission price on the dates in question. Is that agreeable to you, Judge Cochran?

Mr. COCHRAN. Yes, just so we have the dates.

Mr. WRIGHT. Then we can make a record on it outside of the presence of the Court. It might take some time is all.

The COURT. Well, you can do that. It is only ten minutes to 4:00. Are you through with this witness with that exception?

Mr. WRIGHT. I think that is probably all. One more thing.

By Mr. WRIGHT:

Q. Do you remember what kind of room it was at the Aldridge Hotel that you had that meeting in?

A. Yes, it was, as I recall, a twin bedroom.

Q. Do you know what floor it was on?

A. The second floor.

Q. You don't remember the number?

3335 A. No, no, I don't.

Q. But you remember it did have twin beds in it?

A. Yes, sir, it occurs to me that we had to sit on the beds.

Mr. WRIGHT. I think that is all, other than these ads. We can make a record on that outside of the presence of the Court.

The COURT. Very well, you may recess Court until 10:00 o'clock tomorrow morning.

(Whereupon, Court was recessed until 10:00 o'clock a. m., tomorrow morning, to-wit, September 26th, 1945.)

(Proceedings after the recess, and in the absence of the Court:)

By Mr. WRIGHT:

Q. Mr. McKenna, you have checked the Rex ads in the Shawnee newspapers for April 30th, May 4th, June 1st, June 8th, June 18th, June 30th, November 1st, November 28th, and November 30th, 1933, and for May 1st May 30th, June 4th, June 29th, 1934, and January 1st, 2nd, 3rd, 4th, and 8th, 1935, have you not?

A. Yes, sir.

Q. And the prices advertised there for the Rex on May 4th, 1933 were 10 cents for children and 15 cents for adults, is that right?

A. Yes, sir.

3336 Q. And on June 1st of the same year, two for 15 cents, adults or children?

A. That was two for 15 cents on Thursday, a mid week price we used.

Q. I say on that date?

A. Yes, sir.

Q. And June 8th, 1933, the price also was two adults for 15 cents?

A. Yes, sir; that was on Thursday too.

Q. And the prices on June 18th and June 30th were 10 cents for children and adults, matinee and evening?

A. Yes, sir.

Q. Then the price on November 1st, 1933 was a two for one 10 cent admission, either adults or children, matinee or evening?

A. Yes, sir.

Q. Then on November 28th and 30th, 1933, and on May 1st, 1934, May 30th, 1934, June 4th, 1934, and June 29th, 1934, and January 1st, 2nd, 3rd and 4th, 1935, the advertised price was 10 cents for children or adults, matinee and evening, is that right?

A. Yes, sir.

Q. And the price on January 8th, 1935 was children 10 cents, matinee and evening, and adults 15 cents, matinee and evening?

3337 A. That's correct; yes, sir.

Mr. WRIGHT. All right.

(End of proceedings out of the presence of the Court.)

3338 PROCEEDINGS

September 26, 1945, 10 o'clock a. m.

The COURT. You may proceed.

Mr. COCHRAN. At this time we desire to advise counsel for the plaintiff that the deposition of Neal P. Agnew is now on file.

The COURT. There was something you were going to agree on last night about these advertisements.

Mr. COCHRAN. Shall we have the reporter read what was dictated into the record?

The COURT. That will be fine.

Mr. WRIGHT. We have the transcribed record.

Mr. COCHRAN. Also Mr. McKenna was going to do some additional checking and Mr. Wright advised him it would not be necessary for him to work last night, so he is not ready on that, and we are just calling another witness and going ahead.

Mr. WRIGHT. This is the proceeding after the recess in the absence of the Court.

(Hereupon Mr. Wright reads from the proceedings described of September 25.)

The COURT. Do I understand that those advertisements merely provided for the admission on the date that the advertisement appeared?

3339 Mr. WRIGHT. Yes, sir.

The COURT. It was not a continuous proposition?

Mr. WRIGHT. We have brought the books here. We just spot booked these. This doesn't represent the only dates on which the 10 cent price was charged.

3340 The COURT. I think you should determine whether or not that was charged on the day that the adver-

tisement appears, for that single day, or whether it was a continuous advertisement.

Mr. WRIGHT. Well, the extent to which the advertisements were continued, of course, appears in the record of the papers themselves. And we turned our newspaper records over to counsel last night and they will be available to them, and if there are any other dates on which they wish to read into the record the Rex prices, that is agreeable to us.

The COURT. I would like for you to examine these advertisements and determine yourselves. You can stipulate.

Mr. WRIGHT. Yes, sir.

The COURT. Whether or not this advertisement, this advertised price was for the day advertised, or whether it was for the whole week.

Mr. WRIGHT. There is no question but what the advertised prices that I read in here were for the day on which the ad appeared, but if you are interested in the continuity of the prices, of course, that means checking on every day for the entire period. We can do that.

The COURT. If there is no misunderstanding as to what you mean by this, very well.

Mr. WRIGHT. I don't think there is any misunder-
3341 ing about that.

The COURT. Let that be considered as evidence in the case.

A. R. POWELL, called as a witness on behalf of the defendants, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?

A. A. R. Powell.

Q. Where do you live?

A. Guthrie, Oklahoma.

Q. How long have you been living in Guthrie, Oklahoma?

A. Since 1923.

Q. What is your business?

A. Theater business.

Q. Do you own an interest in any theaters in Guthrie, Oklahoma?

A. Yes, sir, I own a half interest in two theaters.

Q. What theaters are those?

A. The State and the Melba.

Q. Who owns the other one-half interest in those theaters?

By the COURT:

Q. What was the name of the first theater?

3342 A. The State.

Q. The State?

A. Yes, sir, and the Melba. The Griffith Amusement Company.

By Mr. COCHRAN:

Q. Who manages the theaters which are operated there?

A. I do.

Q. You have charge of the operations of the theaters?

A. Yes, sir.

Q. How long have you been associated with Griffith Amusement Company in the operation of theaters in the town of Guthrie?

A. Nineteen and a half years.

Q. That would put it back to what year?

A. 1926.

Q. Prior to that time——

By the COURT:

Q. (Interrupting.) 1926?

A. 1926.

By Mr. COCHRAN:

Q. Then, have you been associated with Griffith Amusement Company in the operation of theaters there since the organization of the Griffith Amusement Company?

A. Since the original organization?

Q. Yes, sir, ever since the company was organized?

A. Yes, sir.

Q. Had you been associated with Griffith Brothers

3343 in the operation of theaters there prior to the organization of Griffith Amusement Company?

A. Yes, sir.

3344 Q. When did you first become associated with Griffith Brothers in the operation of theaters in Guthrie?

A. May 12, 1936.

Q. I mentioned Griffith Brothers. What Griffiths were they?

A. Well, it was known as Griffith Brothers.

Q. Who were they?

A. L. C. Griffith and R. E. Griffith.

Q. Was H. J. Griffith connected with the Griffith Brothers at that time that you knew of?

A. I don't think so.

Q. So far as you knew he had no interest at that time in the theaters in Guthrie?

A. No, I don't think he was in it.

Q. Where did you first start to operating motion pictures, where did you first have any connection with the operation of motion pictures?

A. At Chickasha, Oklahoma.

Q. During what period was that?

A. 1917 to 1923.

Q. In what capacity were you connected with motion pictures at that time?

A. I was manager of two theaters.

Q. What were they?

3345 A. The Sugg and Cozy.

Q. And from Chickasha where did you go?

A. Guthrie.

Q. That was in 1923?

A. Yes, sir.

Q. Did you acquire a theater in Guthrie at that time?

A. Yes, sir.

Q. What theater?

A. The Highland.

Q. Who was associated with you in the ownership of the Highland at that time?

A. No one.

Q. You individually had that theater?

A. Yes, sir.

Q. What other theaters were operating in that town when you acquired the Highland?

A. The Pollard Theater was the only one operating full time. There was another theater there that operated part time.

Q. Who was operating the Pollard?

A. Mr. Pettigo.

Q. What is the other theater which you speak of as being operated part time.

A. Well, it has had several names. It was originally the Brooks Opera House, and then it became the

3346 Royal Theater and then the Guthrie Theater, and then the Paramount Theater; then back to the Guthrie Theater.

Q. Is that the theater operated in the same building which has been referred to in this case as the Guthrie Theater?

A. I suppose so. It is the only Guthrie Theater that has been there.

By the Court:

Q. Was that the theater that was attached to the old Royal Hotel?

A. Yes, sir.

By Mr. COCHRAN:

Q. I hand you Defendants' Exhibit 159-A and ask you if that is an exterior view of that theater which you referred to as having been the Brooks Opera House, Royal, Guthrie and so forth?

A. Yes, sir.

Q. That shows the Royal Hotel at the side of it, doesn't it?

A. Yes, sir.

Q. And Exhibit 159-B, is that the interior of that theater?

A. Yes, sir.

Q. That is, it is a part of the interior?

A. That is the stage, looking toward the stage.

Q. That theater was constructed to be used for an opera house, wasn't it?

3347 A. Yes, sir, it was an opera house.

Q. You say that theater was closed at the time you acquired your interest in the Highland?

A. Yes, sir.

Q. Then what was the next change which was made in the theater operations there at Guthrie?

A. After when?

Q. After 1923.

A. Well, the next change was in 1925, when I sold a half interest to the Griffith Brothers.

Q. Prior to that time hadn't Mr. Pettigo sold his theater to someone?

A. Yes, Mr. Pettigo sold the Pollard Theater to a man named J. L. Carr from Kingfisher.

Q. What year was that?

A. I don't know. I would say about 1922. I mean about 1924, about '24.

3348 Q. Then in 1926 you became associated with Griffith Amusement Company?

A. Yes, sir.

Q. At that time did you acquire the Pollard Theater?

A. Yes, I bought the Pollard Theater from Mr. Carr.

Q. So you and Griffith Amusement Company at the beginning of your association had an ownership in two theaters there?

A. Yes, sir.

Q. The Pollard and the Highland?

A. Yes, sir.

Q. Was the Guthrie being operated at that time?

A. Just occasionally, for short periods only.

Q. What was the occasion for you buying out the Pollard? First, who was operating the Pollard at the time you acquired it?

A. J. L. Carr.
Q. Who?
A. J. L. Carr.
Q. What was the occasion of you acquiring that theater?
A. Why did I buy it?
Q. Yes.
A. Well, we had, I had one theater, the Highland Theater; and in those days we bought pictures in blocks of 40 or 50 and sometimes 60, and the pictures in a group
3349 that size wouldn't be suitable for a one class theater, and I had been in the habit of running two theaters, and it just didn't meet my way of operating a theater to have to run class "B" and class "A" pictures both in the same house, it wasn't satisfactory, and I needed another theater, so when the opportunity was presented to me and they wanted to sell it to me, why, I wanted it and I bought it.
Q. Did Mr. Carr approach you to sell?
A. Yes, sir.
Q. Did you make a deal with him?
A. Yes, sir.
Q. Now what was the name—after that, was the name of the Pollard changed?
A. Later on it was changed to the Melba.
Q. And does the name still remain the Melba?
A. Yes, sir, since 1929.
Q. Along after 1926 did someone else open up another theater there in Guthrie?
A. Yes, the man that had been in business there and had had the Pollard sometime before we bought it, he went in partners with a man named J. W. Crews and built a theater and called it the State Theater—called it the Pettigo Theater is what they called it.
Q. What happened to that theater?
A. Mr. Pettigo operated it for about nine or ten
3350 months, then his partner, Mr. Crews, took it over and operated it for a short period of time, and then Mr. Crews sold it to Mr. A. B. Momand, he leased it to Mr. A. B. Momand.
Mr. WRIGHT. Was that period fixed?
Mr. COCHRAN. Beg pardon?
Mr. WRIGHT. What time was this?
By Mr. COCHRAN:
Q. What is the period that you speak about; when was the State opened?
A. I can look at my notes and see.
Q. All right.

A. I don't remember. (Referring to notes.) Mr. Pettigo and Mr. Crews built the Pettigo Theater and opened it July 22nd, 1926, and Mr. A. B. Momand leased it October 11th, 1927.

Q. How long did Mr. Momand, continue to operate the State Theater?

A. From October 11th, 1927 to April 7th, 1928, about six months.

Q. During that time did Momand attempt to operate the Guthrie also, or the theater that we refer to now as the Guthrie?

A. I think so, yes, sir; I think so.

Q. Was it operated full time?

A. No, just occasionally.

Q. Was it ever, has it ever been operated as a full
3351 time theater?

A. Not since I have been in Guthrie.

Q. Then what happened to the State Theater?

A. That was the Pettigo at that time, do you mean the Pettigo Theater?

Q. Well, after Momand acquired it, it became the State, didn't it?

A. At the time Momand bought it he renamed it the State.

Q. And you have given us the time he acquired it and the time he operated it, haven't you; did you give us that?

A. Yes, sir.

Q. After he ceased to operate it, what became of it?

A. Mr. A. B. Momand sold it to me, sold the lease to me.

Q. You and Griffith Amusement Company?

A. Yes, sir.

Q. Now, when was that?

A. That was on April 7th, 1928.

Q. Who handled that deal in acquiring that lease from Mr. Momand?

A. I did.

Q. Did you acquire any personal property in the theater in that deal?

A. No, sir; we just took over the lease on the theater building and the theater equipment.

Q. Did you buy the theater equipment from him?
3352 A. No, sir; he didn't own it; he just had it leased.

Q. Mr. Momand in operating that State Theater had the building and the theater equipment leased, is that right?

A. Yes, sir; he didn't own anything.

Q. And you took over that lease which Mr. Momand had?

A. Yes, sir.

Q. Did you approach him in regard to obtaining that lease, his rights in that lease, or did he approach you?

A. He approached me.

Q. Had he discontinued the operation of the State Theater at the time that lease was assigned to you?

A. No, sir.

Q. He was still operating it?

A. Yes, sir.

Q. What was the purpose of the acquisition of the State Theater at that time?

A. Well, the Highland Theater was operated as our class "B" theater, and it was an old junky storeroom theater, and the building was in very bad shape, and the owners of the building wouldn't repair it, and the Fire Chief and State Fire Marshal had warned me that it would be condemned, so when the State Theater was presented as another place to move our "B" operation, why, I was very glad to get it.

3353 Q. Did you discontinue the operation of the Highland?

A. Yes, sir, it was discontinued sometime later on and the building was condemned as a theater building by the State Fire Marshal.

Q. Did you and the Griffith Amusement Company lease that property or did you own the fee to the property?

A. We just leased the building and owned the theater equipment.

Q. Did you give up the lease at its expiration date?

A. We gave up the lease at the time the theater was condemned.

Q. At the time you acquired the State Theater, did Mr. Momand still have a lease on the Guthrie Theater property or do you know?

A. I don't know about that. I don't know what he owned.

Q. After you had abandoned the Highland Theater did you afterward obtain a lease on the opera house, where a theater had been operated?

A. Yes, quite a while later; several years.

Q. Was there any theater being operated there when you obtained it?

A. No, sir.

Q. Had there been for a period of a considerable time?

A. No, it had not been operated for a period of two or three years.

3354 Q. What was the purpose of acquiring a lease on that building?

A. Well, we had an idea of making it into a colored theater later on. That was the purpose of it at that time.

Q. When did you acquire that lease?

A. In 1933, the first of September, '33.

Q. Did you open it up and attempt to operate it?

A. We did. We ran it as a white theater.

Q. Speaking about taking care of the colored people, did you intend to operate it entirely as a colored theater?

A. We intended to operate it white, you might call it white, downstairs and black upstairs.

Q. That old opera house had a considerable balcony, did it?

A. The balcony was as big as the downstairs.

Q. Did you open it up on that policy?

A. Yes, sir.

Q. The Melba has a balcony too, doesn't it?

A. It is not a balcony. We have a room upstairs where we can seat about 35 or 40 people.

Q. Was it your desire to operate the other two theaters purely as white theaters?

A. Yes, sir, we did.

Q. What was the result of your initial effort to operate the opera house as a black and white theater?

3355 A. Well, in regard to being successful, it wasn't very successful. We operated for a while and then closed it down.

Q. Then at intervals, from that initial time for a period of several years, did you at various times attempt again to operate it on the same policy?

A. Yes. We opened it up and ran it again one time. We set a definite policy of five and ten cents and operated for a period of six months.

Q. What happened then?

A. That was the longest period we ever operated it at one time.

Q. Was that successful?

A. No, sir, not very.

Q. Do you have the Guthrie Theater at this time?

A. No, sir.

Q. Did you have it in 1939?

A. Yes, sir.

Q. Was it being operated in 1939?

A. I think we operated it in 1939 once a week on bank night.

Q. Was there a period along in 1939, and maybe in 1938, when it was not operate as a regular theater policy? I mean by that, where you charged admissions for going to that house?

3356 A. No, if you are speaking about the policy along about 1935 to 1939, we operated then on one night a week policy, on bank night. We didn't charge admission to it. We let the people go in there and sit, and we announced bank night down there because the other two theaters were so crowded on that night that everybody couldn't get in, and they would go down there and sit and we would announce bank night down there.

Q. You mean by that you didn't exhibit any pictures in that house on those nights, but simply used it as an overflow accommodation for the crowds from the other theaters on your bank nights?

A. Yes, sir, that is right.

Q. When did you decide to abandon that theater?

A. Right after the war broke out; I think it was in January, 1942.

Q. What was the occasion for giving it up at that time? Had you discontinued bank night?

A. We had discontinued bank night. We couldn't get vaudeville shows any more. We couldn't get anything like that, and business was very bad in Guthrie about a year before the war and about a year after the war. We had bad business and we decided to give it up.

Q. You decided it was an unprofitable proposition?

A. We were trying to save expenses at that time.

3357 Q. And since that time you have operated two theaters in Guthrie, the Melba and State Theaters. Is that right?

A. Yes, sir.

Q. Is there any opposition theater in Guthrie at this time?

A. Yes, sir. We still have the opera house there, the Guthrie Theater, and we have a new theater called the Cimarron.

Q. The Guthrie Theater, is that still operated?

A. It operated for three months this summer. That is the only operation it has had since we gave up the lease.

Q. When did you say you gave up the lease?

A. In January, 1942.

Q. And the three months it operated in the summer of 1945 is the only operation that has been there since you gave up the lease?

A. Yes, sir.

Q. You spoke of the Cimarron here. When did that house go in?

A. December 6, 1941.

Q. And has continuously operated since that time?

A. Yes, sir.

Q. Who operates that theater?

A. Mr. Dudley Tucker.

Q. Where is that theater located?

3358 A. You mean the street address?

Q. Well, relative to some location that will identify the location of it.

A. It is five doors east of the State Theater on the corner of Oklahoma and Division.

Q. When that theater was opened was a regular theater building constructed or was it a reconstructed store building?

A. No, it was a grocery store and they converted it into a theater.

Q. How many seats in it?

A. 210.

Q. I hand you Defendants' Exhibits 160-A and B and ask you to state what they are.

A. Exhibit 160-A is the exterior front of the Melba Theater.

Q. Exhibit 160-B?

A. 160-B is the interior of the Melba Theater looking from the stage toward the foyer.

Q. Has there been any change in the exterior or interior of those theaters since 1939?

A. No, sir.

3359 Q. I hand you Defendants' Exhibit No. 161–A for identification and ask you to state what that is.

A. That is the exterior or outside view of the State Theater.

Q. And 161-B?

A. That is the interior view of the State Theater, looking from the stage toward the foyer.

Q. Both as they existed in 1939?

A. Yes, sir.

Mr. COCHRAN. We offer in evidence Defendants' Exhibits 159-A and B, 160-A and B, and 161-A and B.

Mr. WRIGHT. We have the same objection as we had to the other photographs.

The COURT. They will be admitted, and an exception allowed.

Mr. COCHRAN. Take the witness.

Mr. WRIGHT. We have no cross examination. I think we may as well make our position clear, however, by a motion to strike his testimony; that so far as we can see, nothing he has said has any relation to the issues of this suit. I have been waiting patiently for some connection, for something that was intended to rebut, but I haven't been able to detect it.

The COURT. I think it is competent. We have just about given the history of every other town in the
3360 circuit so far as the business, the theater business is concerned. It will be admitted and an exception allowed.

(Witness excused.)

W. T. SPEARS, called as a witness by and on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?
A. W. T. Spears.
Q. Where do you live?
A. Altus, Oklahoma.
Q. How long have you lived in Altus?
A. Since June of 1928.
Q. What is your business?
A. I am in the motion picture theater business.
Q. Are you associated with anyone in the operation of theaters in Altus?
A. Well, I am in charge of the theaters' operation there, yes.
Q. I mean by that, the ownership of the theaters?
A. Yes.
Q. Who?
A. I have, I am associated with the Consolidated Theaters, Inc.
3361 Q. Have you been so associated since about the time that the company was organized in 1930?
A. Yes, I have.
Q. What theaters do you have an interest in in Altus?
A. The Plaza, the Delta and the Ritz.

By the COURT:

Q. The Delta?
A. The Delta, yes, sir.
Q. What is your interest in the Plaza and the Delta and the Ritz?
A. A 50 per cent interest, your Honor.
Q. And the Consolidated owns 50 per cent?
A. Yes, sir.

By Mr. COCHRAN:

Q. Do you recall the circumstances in connection with the acquisition of the Ritz Theater from Mr. Hamm?
A. Yes, sir, I believe I do. Sometime along in, I believe it was in 1937, I had asked——

Q. (Interrupting.) Was that the date of the acquisition, sometime in 1937?

A. Yes, sir; it was along in July or August of 1937.

Q. All right; at that time what theaters were you operating?

A. I was operating the Plaza and the Delta.

By the COURT:

Q. That was in '27?

A. '37.

3362 By Mr. COCHRAN:

Q. And Mr. Hamm had been operating the Ritz Theater?

A. Yes, sir.

Q. Just prior to the time you acquired this Ritz, had you been seeking either a location or another theater in the town of Altus?

A. Yes, sir; I had. I had a real estate and lease broker there, a Mr. Bob Matthews, whom I had asked to see if he could locate me some lots or some building that we could remodel into another theater building.

Q. Prior to that time had you operated another theater and had abandoned that theater?

A. Yes, sir.

Q. What theater was that which had been abandoned?

A. That was known as the Paramount Theater.

Q. Were you seeking a location to build a theater to replace the Paramount Theater which had been abandoned?

A. That's correct.

By the COURT:

Q. When did you abandon the Paramount?

A. Our lease expired sometime in the fall of 1936, your Honor, and we didn't renew it.

By Mr. COCHRAN:

Q. You say then you made known your desire to this real estate man?

A. I did.

Q. Later, did the information come to you that the

3363 Ritz Theater was available?

A. Yes, sir; Mr. Matthews came to me and told me——

Q. (Interrupting.) Don't say what he said. Did you receive that information from Mr. Matthews?

A. I did.

Mr. WRIGHT. If the Court please, I don't see how that is competent, what information he got from Mr. Matthews at any time.

The COURT. Well, as to the basis of the conversation, I don't know. The Court will disregard anything between this man, any conversation between this witness and his real estate agent. What did you do?

By Mr. COCHRAN:

Q. What did you do when you received the information that this Ritz was for sale?

A. I told Mr. Matthews——

Q. (Interrupting.) Don't say what you told him. Did you give him any instructions?

A. I instructed him to see if he could buy the theater from Mr. Hamm.

Mr. WRIGHT. If the Court please, this is entirely incompetent.

The COURT. Yes, I think so.

Mr. WRIGHT. And we move to strike it.

The COURT. That is hearsay.

By Mr. COCHRAN:

Q. After that, did you have a conference with Mr.
3364 Hamm?

A. Yes, sir.

Q. By whom was that arranged?

A. By Mr. Matthews.

Q. At the time you had that conference with Mr. Hamm, who was present besides yourself?

A. Mr. Matthews, Mr. Hamm and Mr. Frank Berry, my assistant.

Q. Had you already received the information as to the price which Mr. Hamm desired for the property?

A. Yes, sir, I had.

Mr. WRIGHT. If the Court please——

The COURT: (Interrupting.) Yes.

Mr. COCHRAN. If the Court please, I think that is competent.

The COURT. You can ask him anything that occurred between him and Hamm, but as to what he heard, I doubt that that is proper.

Mr. COCHRAN. Your Honor, I think it is competent to show that he had been advised at that time what the price on the property would be.

The COURT. Well, you can ask him if he knew at that time, if he had any idea what the price was.

By Mr. COCHRAN:

Q. At the time you had this conference, did you know the price that Mr. Hamm was asking for the prop-
3365 erty?

A. I did.

Q. (Interrupting.) Was that the date of the acquisition, *sometime in 1937*?

A. Yes, sir; it was along in July or August of 1937.

Q. All right; at that time what theaters were you operating?

A. I was operating the Plaza and the Delta.

By the Court:

Q. That was in '27?

A. '37.

3362 By Mr. Cochran:

Q. And Mr. Hamm had been operating the Ritz Theater?

A. Yes, sir.

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A. Yes, sir.

Q. What theater was that which had been abandoned?

A. That was known as the Paramount Theater.

Q. Were you seeking a location to build a theater to replace the Paramount Theater which had been abandoned?

A. That's correct.

By the Court:

Q. When did you abandon the Paramount?

A. Our lease expired sometime in the fall of 1936, your Honor, and we didn't renew it.

By Mr. Cochran:

Q. You say then you made known your desire to this real estate man?

A. I did.

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The COURT. Well, you can ask him if he knew at that time, if he had any idea what the price was.

By Mr. COCHRAN:

Q. At the time you had this conference, did you know the price that Mr. Hamm was asking for the prop-
3365 erty?

A. I did.

Q. Was that price satisfactory to you?
A. It was.
Mr. WRIGHT. Now, if the Court please, why can't we have just what the man did and what occurred.
The COURT. Yes.

By Mr. COCHRAN:

Q. Then was a contract drawn up at that time?
A. Yes, sir.
Q. A written contract?
A. Yes, sir.
Mr. WRIGHT. What time was that?
Mr. COCHRAN. At the time of this conference.

By the COURT:

Q. Who drew up the contract?
A. My attorney, Mr. Robinson, Mr. Tom Robinson.
Q. The information that your attorney had on which to draw this contract, was that information that he had received through you or your agent, the real estate agent?
A. No, Mr. Hamm and I were there together when he drew it up, in his office together.
Q. What did Mr. Hamm say to you in regard to the sale of the property?
A. He made a price. Shall I give you the figure?
Q. Yes, sir.
A. $7,500, the price that he asked me.

3366 By Mr. COCHRAN:

Q. What did you say?
A. I said that was agreeable, or words to that effect.
Q. At that time was there anything said by you about desiring to have an agreement that he would not enter into competition in any of their towns or the Griffith towns?
A. No, sir, there was not. I asked him to sign an agreement if he would, to agree not to come into Altus in the show business for a period of 10 years.
Q. I hand you Defendants' Exhibit 162 and will ask you if that is a contract which was prepared by Mr. Robinson?
A. Yes, sir, it is.
Mr. COCHRAN. We offer in evidence Defendants' Exhibit 162.
Mr. WRIGHT. No objection.

By the COURT:

Q. In 1937, you bought it?
A. 1937, yes, sir.
(Hereupon Defendants' Exhibit 162, being agreement above referred to, was received in evidence.)

By the COURT:

Q. When did you begin operating the Plaza?

A. Well, the Plaza Theater, when I first went in there was known as the New Empire and it was remodeled and the name of the theater was changed to the Plaza in 1938.

Q. When did you buy this theater which later became the Plaza?

3367 A. In June of 1928.

Q. When did you acquire the property that is now the Delta?

A. That same time. At that time it was known as the old Empire.

Q. Then the Ritz in 1937?

A. The Ritz in July of 1937, yes, sir.

Q. Are there any other theaters in Altus at this time?

A. Yes, sir, there is another theater called the State.

Q. Who operates the State?

A. A gentleman by the name of H. C. Merriott.

Q. When was that opened?

A. That was opened in August of 1940.

Q. Does he still operate it?

A. Well, he didn't open it. There were two gentlemen that opened it. One of them was a Mr. Homer Gimlin, who had run the Ritz for Mr. Hamm. He was one of the gentlemen, and a barber by the name of Allen, who lives in Altus was another one.

Q. Has the State been operated since 1940?

A. Yes, sir.

Q. And is being operated now?

A. It is being operated today, yes, sir.

By Mr. COCHRAN:

Q. Relative to this Ritz Theater after you acquired it did you continue its operation?

3368 A. Yes, sir.

Q. There has been some testimony here about that theater not being operated full time for the present time. Is that correct?

A. Oh, yes, we have been operating it ever since we bought it in 1937.

By the COURT:

Q. When was the Ritz Theater opened as a theater?

Mr. COCHRAN. By Mr. Hamm?

A. Mr. Hamm opened it sometime in 1936, July or August. It was in the summertime. One of those two months.

By the COURT:

Q. My notes show Mr. Hamm testified he opened the Ritz in 1933.

Mr. COCHRAN. That is wrong.

A. No, that is wrong, your Honor.

The COURT. It was 1936?

A. 1936, yes, sir.

The COURT. I had it 1936 and changed it to 1933.

Mr. COCHRAN. At page 1219 of the record Mr. Hamm said, "Q. Did you formerly operate a theater at Altus, Oklahoma?

"A. Yes, sir.

"Q. When was that?

"A. 1936–37.

"Q. What theater was that?

3369 "A. The Ritz Theater.

"Q. When did you open that?

"A. It was in July, 1936, I believe."

By the COURT:

Q. Then at the time Mr. Hamm opened the Ritz in 1936, there were two theaters in operation there, the Plaza and Delta?

A. The Plaza and Delta.

By the COURT:

Q. Were there any others?

A. We had our lease on this Paramount Building that ran out in September there.

Q. That is the one you abandoned?

A. Yes, sir, we abandoned it; didn't renew our lease. That is still there today.

Q. That was abandoned in 1936?

A. Yes, sir, in about September, as I recall.

By Mr. COCHRAN:

Q. Mr. Spears, you are still operating the Ritz, and I got the impression somewhere that theater, or one of those theaters at Altus was operated just during the cotton season?

A. No, that was the Paramount Theater that we abandoned in 1936. It was while we had that. That is the theater we operated during the cotton season.

Q. But you are operating of three theaters there in Altus on a regular program?

A. Every day.

3370 Q. Every day?

A. That is right.

A. That is right.

Cross-examination by Mr. WRIGHT:

Q. As I understand it, you have been operating the Ritz and Delta and Plaza full time ever since 1937. Is that right?

A. Yes, sir.

Q. And the Paramount, you say the lease expired in the fall of 1936, had been closed by you sometime before that; you discontinued operating it as a theater?

A. We operated it at various times.

Q. What was the last time before the lease expired?

A. The last time we had run it I believe was 1936, when we operated it for a while.

Q. When in 1936?

A. It was around the middle of the year, as I recall.

Q. Had you operated it in the summer of 1936?

A. I think we had.

Q. How long?

A. Oh, it varied. I think we operated it until our lease ran out sometime in September.

Q. It was operating then when your lease expired?

A. As I recall it was, yes, sir.

3371 Q. And had you operated it in 1935 and '34?

A. We had operated it from '34. I am rather sure of that.

Q. How much?

A. Well, we operated full time during the cotton season. That is what we used the theater for. We used it about three or four months a season.

Q. You operated it three or four months, did you, in 1934?

A. As I remember it we did.

Q. And the same in '35?

A. I am not so sure about '35, the time of the year because sometimes the crop would be short and we wouldn't operate it as long.

Q. You don't think it might have been closed during those years?

A. No, I am reasonably sure it was not.

Q. In 1934 and '35?

A. No.

Q. Then the theaters you were operating in 1934 and '35 were what, in addition to the Paramount?

A. In 1934 and '35 it would have been the New Empire, what is now the Plaza and the Delta was either the old Empire or the Rex, I think about 1934 we did some fixing

3372 up on that house and changed it to the Rex, and it was the Rex until 1936.

Q. Were you operating the Delta full time during 1934 and '35?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. The profit and loss record would be more accurate than your memory as to the time that those theaters were opened?

A. Yes, any books would be more accurate.

Q. And the profit and loss statement would reflect, of course, the exact period of time when all those theaters were open, would it not?

A. It probably would.

By the COURT:

Q. I understood you to say a moment ago that the two theaters, the Plaza and Delta, regardless of the name they were going by, had been operated continuously since 1928?

A. Yes, sir.

By Mr. WRIGHT:

Q. As I understood your testimony as to the Paramount, you say you began operating that again in the summer of 1936. That would be about the time that Hamm took over the Ritz?

A. He built the Ritz and opened it, I believe, in
3373 July of 1936.

Q. That was about the time you reopened the Paramount?

A. It could have been about the same time; I don't recall that.

Q. Where did this real estate broker you mentioned have his office?

A. Where did he have his office?

Q. Yes.

A. He has it in his home.

Q. Where is that?

A. It is on North Hudson Street, Altus.

Q. That is in Altus?

A. In Altus, yes, sir.

Q. That is all.

By the COURT:

Q. When did you sell a half interest in these three theaters to Griffith?

A. I believe it was in July of 1928.

Q. Was that transaction between you and the Griffiths voluntary on your part?

A. Yes, it was. I had contacted Mr. Griffith by letter the previous winter when I was in Florida with my father and mother in law, that I would like to find a town and have an interest with him. I had met Mr. Griffith when I was in the show business in Duncan the year before. He had sold me pictures and I had booked vaudeville with Mr. L. C. Griffith.

3374 By Mr. COCHRAN:

Q. You spoke of that acquisition of the interest with Griffith. At that time Consolidated Theaters hadn't been organized, is that right?

A. No, I believe they were organized in May, 1930, or something around there.

Q. Your first interest there at Altus was with whom?

A. With Mr. H. J. Griffith, Sr.

Q. Did that condition continue until the property, until that H. J. Griffith, Sr. interest was disposed of to Consolidated?

A. That's correct.

Q. You retained your half interest all the way through?

A. Oh, yes; I have the same interest I had when I started.

Q. You have explained to the Court your connection with H. J. Griffith, Sr. grew out of your contact with which one of the Griffiths?

A. Mr. L. C. Griffith.

Q. Mr. L. C. Griffith?

A. Yes, sir.

Q. Now, counsel was asking you about the Delta operating, and he asked you about the Rex and the old Empire. Is the Delta one and the same theater as the Rex and the old Empire?

A. Yes, sir; it was the old Empire when we acquired it, and about 1934, why, we done some work on it, and I
3375 wanted to change that name because our other theater was called the New Empire, and I didn't want two by the same name.

Q. And you changed it?

A. To the Rex.

Q. And was that later changed?

A. In 1936 we did a good remodeling job, and it was changed to the Delta.

Q. In 1936, when the theater was remodeled, was it closed during the period of remodeling?

A. Yes, sir, it was closed I think about six weeks, possibly, while we were doing the work.

Q. For the purpose of remodeling?

A. Yes, sir.

Mr. WRIGHT. What theater is that?

Mr. COCHRAN. You have referred to it as the Delta, the Rex, and the old Empire. It was the Rex at the time it was closed for remodeling, and it was reopened as the Delta.

By Mr. COCHRAN:

Q. Is that correct?

A. That's correct.

Q. Speaking of that Paramount being operated prior to 1936, the cotton season, were you renting that property?
A. Yes, sir.
Q. Do you remember what the rental of it was?
A. No, I don't; it was about $100 a month; I don't
3376 remember the figure.
Q. Was that theater what is commonly referred to as a store type theater?
A. Oh, yes, it sure was.

By the COURT:

Q. Was what?
Mr. COCHRAN. A store type, a converted store building, instead of being a regularly constructed theater building.

By Mr. COCHRAN:

Q. In 1935, in the fall of 1935, was that theater operated during all of the cotton season?
A. Yes, sir.
Q. And you say that you think that you started the operation of it again in 1936, along in the late summer?
A. Yes, sir.
Q. And continued to operate it during the cotton season?
A. Until our lease ran out, sometime along in September, as I recall it, in 1936. We didn't renew the lease.
Q. And you did operate it until that time?
A. Yes, sir.
Mr. COCHRAN. That's all.

By the COURT:

Q. After your lease expired, what became of that theater building?
A. Well, the building is still standing there today. There has no one been in it since 1936. The owner of it died, and it became in the hands of his heirs, and they didn't
3377 fix it up, and it just got in such bad shape that it would take a lot of money to fix it up to be used for anything any more.
Q. And it hasn't been occupied at all?
A. It hasn't been occupied at all since that time.
Mr. COCHRAN. That's all.
Mr. WRIGHT. That's all.
(Witness excused.)

H. R. FALLS, called as a witness on behalf of the defendants, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?

A. H. R. Falls.

Q. Where do you live?

A. Oklahoma City.

Q. What is your business, Mr. Falls?

A. I am associated with the Griffith Amusement Company.

Q. How long have you been associated with the Griffith Amusement Company?

A. Since 1926.

Q. Since the time it commenced to do business as Griffith Amusement Company?

A. No, shortly after that; I believe I went with
3378 them in October.

Q. Had you been connected in any way with Griffith Brothers prior to the time Griffith Amusement Company was formed?

A. No, sir.

Q. Prior to going with Griffith Amusement Company, had you been connected with the motion picture industry in any way?

A. Yes, sir.

Q. In what capacity?

A. I had worked for several different distributors in the capacity of booker in the exchange, and salesman on the road.

Q. When did you first commence, when did you have your first connection with any motion picture business?

A. It was either 1916 or 1917, I don't remember which year.

Q. What was that connection?

A. I was with the Universal Film Company. I went in as, well, I guess they would call it in those days as assistant booker; anyway, I was working in the booking department.

Q. When you came with Griffith Amusement Company, in what capacity did you come?

A. As theater booker.

3379 Q. Just explain to the Court what you mean by "theater booker"?

A. Well, it is arranging the pictures that will play, be exhibited in the various theaters, booking them with the film exchange for exhibition in Griffith Theaters.

Q. At that time did you have charge of the booking of pictures into all of the theaters in which Griffith Amusement Company then owned an interest or were operating?

A. Well, when first going with them I had charge under the supervision of R. E. Griffith.

Q. But your work was in connection with the booking of pictures into all of the theaters for which Griffith Amusement Company was furnishing booking service?

A. It was.

Q. You say you were performing that service under R. E. Griffith?

A. Yes, sir.

Q. How long did you continue in that capacity, the capacity you say or assistant booker, or were you booker?

A. I was really the booker. Mr. Griffith didn't have time to perform the actual physical booking; he supervised it for a period of time because I had had no experience in booking theaters for a theater company. I continued five or six years, I guess, the actual booking.

Q. Under his supervision?

3380 A. Yes, sir.

Q. Then later what change was made in the way you handled that booking?

A. Well, later I began assisting Mr. Griffith in negotiations for film contracts, and we had acquired additional theaters and towns, and we needed the services of more people in the booking department, so another booker was employed.

Q. All right. Well, since that time have you been in charge, or rather have you supervised the booking after you discontinued the actual booking yourself?

A. Yes, sir, and still do.

Q. And still do?

A. Yes, sir.

Q. How many employees does Griffith Amusement Company have in its booking department to the exclusion of yourself?

A. At the present time, we have five bookers, and about four secretaries and comptometer operators.

Q. Now, when did you first commence to assist R. E. Griffith in the licensing of pictures?

A. I believe I first started sitting in sometime in 1929.

Q. Was R. E. Griffith living in Oklahoma City at that time?

A. Yes, sir.

3381 Q. Did he later remove from Oklahoma City?

A. Yes, sir.

Q. When was that?

A. I believe in 1931, but I am not positive that that is the year.

Q. Well, it was approximately 1931?

A. I think so, yes, sir.

Q. After he left Oklahoma City, was there a period in which he continued to participate in the licensing of pictures for theaters, Griffith Amusement Company theaters, and Consolidated Theaters?

A. Yes, sir.

Q. After that time what services did you perform in the licensing of pictures?

A. You mean during that same time?

Q. From 1931 down through 1937?

A. Well, I continued with Mr. Griffith as the buyer; we negotiated together during that period from '31 to '38.

Q. During all of the time were you present at the negotiations for the licensing of product which was carried on for Griffith Amusement Company and Consolidated Theaters?

A. I think every deal, probably. I don't know of any that I wasn't present at. Allow me to add——

Q. Yes.

A. —during the negotiations on some particular
3382 deal which might have taken place over a period of days and sometimes weeks, it might have been that Mr. Griffith had a discussion with the distributor representative, one or two, when I wasn't present, I might have been busy on something else, and the same thing could have happened that possibly I talked to them some when he wasn't present, but I was in sometime during the negotiations, and when they were finally closed.

Q. Well, after 1931, after R. E. Griffith left the organization, were you the head of the film licensing department of Griffith Amusement Company?

A. Yes, sir.

By the COURT:

Q. When did that begin now?

A. In 1931, your Honor.

Q. You were the head of the licensing department?

A. I believe that is the year. It was when Mr. Griffith left Oklahoma City, whichever date that is, that is when I received my appointment as the buyer.

By Mr. COCHRAN:

Q. I believe you said that after that time Mr. R. E. Griffith for a period did assist in the licensing of those pictures?

A. Yes, sir.

Q. Well, what was the reason for that?

A. Well, I had had no experience of actually carrying on these negotiations alone; it was a pretty big job, and
3383 frankly I wanted Mr. Griffith to continue to lend me his assistance and his wide knowledge in the years of experience that he had had, and Mr. Griffith wanted to because he had a substantial stock interest in the Griffith Amusement Company. The matter was——

Mr. WRIGHT. (Interrupting.) If the Court please, we object to what Mr. Griffith wanted to do.

Mr. COCHRAN. We think that should be stricken.

The COURT. Yes, that will be stricken.

Mr. COCHRAN. What Mr. R. E. Griffith wanted.

By Mr. COCHRAN:

Q. At that time was R. E. Griffith recognized as an outstanding man in the licensing of pictures?

A. Yes, sir, he was considered that.

Q. In the industry?

A. Yes, sir.

Q. Well, how long did he continue to assist you in the licensing of pictures after he left Oklahoma City?

A. He discontinued with the 1938–'39 season.

Q. Beginning with the '38–'39 season and from that time until the time of his death, did R. E. Griffith participate in any manner in the licensing of pictures for Griffith Amusement Company or Consolidated Theaters?

A. No, sir, not to my knowledge.

Q. Did he assist you in any manner?

3384 A. No, sir, definitely not.

Q. Beginning with '38–'39 season, who carried on the negotiations for the licensing of pictures for Griffith Amusement Company and Consolidated Theaters?

A. Mr. H. J. Griffith and myself.

3385 Q. And during that time did you carry on most of these negotiations that were had with the distributors?

A. Yes, sir.

Q. Did you make the deals with them?

A. Yes, sir, with Mr. H. J. Griffith, who was in on them too.

Q. Mr. H. J. Griffiith participated?

A. Participated, yes.

Q. And that continued until what date?

A. Until Mr. H. J. Griffith moved to Kansas City. Just what date that was I don't remember. I couldn't even tell you for sure the year.

Q. Since that time who has conducted the negotiations and conducted the licensing of pictures for the Griffith Amusement Company and Consolidated Theaters?

A. I have, with an assistant.

Q. Who has been that assistant?

A. Mr. H. O. Stark, Jr.

Q. Mr. Falls, the time you first commenced to participate in the licensing of pictures for the Griffith Amusement Company, can you tell us approximately how many towns

the Griffith Amusement Company was operating theaters in?

A. That would be '29. No, I don't know. I just don't know. There is a record of it, of course, but I have no memory of the number.

3386 Q. At that time did you and R. E. Griffith negotiate with the distributor in the matter of licensing pictures for theaters in each of the towns in which you were operating where the distributor was willing to sell at one time?

A. Yes, sir.

Q. Do you recall in 1930 negotiating with Metro-Goldwyn-Mayer Distributing Corporation a five year franchise beginning with the season 1930–31?

A. Yes, sir.

Q. Did you participate in those negotiations?

A. Some of them; most of them I will say.

Q. In the various deals that were made as between Griffith Amusement Company and the other companies from time to time for the R. E. Griffith Theaters or you associated with someone else licensing pictures, were all of the contracts reduced to writing?

A. I don't know that I particularly understand.

Q. I want to know if the contracts with the various distributors were in writing?

A. Yes, they were in writing; definitely so.

Q. Definitely they were?

A. Oh, yes.

Q. If there were any changes or modifications, were they in writing?

A. Yes, sir.

3387 Q. In this deal which was negotiated, this franchise which was negotiated with Metro beginning with the 1930–31 season, at the time of those negotiations was there any agreement or understanding of any kind or character between the exhibitors to that contract and the distributor to the effect that a distributor would not license his product which was not licensed in that agreement to any competitor of the Griffith Amusement Company or the exhibitors mentioned in that agreement?

Mr. WRIGHT. That is objected to as a conclusion. It should be for your Honor to determine whether, from the facts as to what was done.

The COURT. I think as to what the agreement was would be a conclusion.

By the COURT:

Q. Was anything said by either you or R. E. Griffith or the distributors with reference to that matter?

A. No, sir, definitely not.

By Mr. COCHRAN:

Q. Was there any discussion of that matter at all?

A. There was no discussion.

By the COURT:

Q. Did you or R. E. Griffith on behalf of the Griffith Amusement Company at any time make any suggestions with reference to the disposition of pictures
3388 not included in your contract to the independent or opposition theaters?

A. No, sir, your Honor.

By Mr. COCHRAN:

Q. Did you at any time make any suggestion as to any terms on which pictures might be licensed to your opposition?

A. No, sir.

Q. Now, those questions were directed to the negotiations in connection with the 1930–31 franchise. There has been introduced in evidence here several supplements or modifications of this five year franchise that was entered into between the Griffith Amusement Company and Metro-Goldwyn-Mayer, which reflects certain changes and alterations for the product during the years which were covered by the original franchise. During those seasons,—those would be the seasons, of 1930–31, '31–32, '32–33, '33–34 and '34–35—did you have any discussion with Metro-Goldwyn-Mayer in regard to any terms or conditions on which its product might be licensed to any theater or theaters it operated in opposition to the theaters represented by you?

A. No, sir I did not.

Q. Did you have any discussion with any such representatives as to whether the product of Metro-Goldwyn-Mayer, which was not licensed by companies represented by you should not be licensed to any theater or theaters
3389 operating in opposition to the theaters you represented?

A. No, sir. My discussions were always confined to negotiations for product to be used in the Griffith Theaters. There was no reason to discuss their selling product to anyone else.

By the COURT:

Q. Was that true of the discussions with R. E. Griffith had in your presence?

A. In my presence, it definitely was, yes, sir.

By Mr. COCHRAN:

Q. Is the same true in regard to the period subsequent to the expiration of this franchise?

A. Yes, sir.

Q. Prior to the time that this franchise was entered into in 1930 had the Griffith Amusement Company been dealing with Metro-Goldwyn-Mayer during the entire time you had been connected with the Griffith Amusement Company?

A. I am pretty sure from 1926, the year I went with them—that is my memory, from 1926 right straight through.

Q. And since that franchise was entered into, has it always been true that the Griffith Amusement Company has been the customer of Metro-Goldwyn-Mayer for every season?

A. Yes, with the exception of eleven pictures, which consisted of three blocks, as they are termed, the first year of the Consent Decree selling.

Q. Well, since the Consent Decree, pictures have not been sold by seasons product?

3390 A. No, sir.

Q. You heard the testimony here in regard to the change in the method of selling since the Consent Decree?

A. Yes. I am quite familiar with it myself, of course.

Q. But the pictures are offered in smaller blocks since the time of the Consent Decree?

A. Yes, sir.

3391 Q. Do you recall whether in 1933–'34 Griffith Amusement Company was operating a theater in Sapulpa Oklahoma?

A. Yes, I think we were in there in 1933–'34.

Q. Has Metro-Goldwyn-Mayer licensed its pictures on first run exhibition in the town of Sapulpa, to Griffith Amusement Company—that is Consolidated instead of Griffith Amusement Company?

A. That's Consolidated, yes, sir.

Q. Has Metro-Goldwyn-Mayer licensed its pictures, first run exhibition, to Consolidated in the town of Sapulpa at any time since you have been connected with the Griffith organization, first run?

A. I will have to have that question again.

(Question read by the reporter.)

A. They licensed them to us each year.

Q. In Sapulpa?

A. Yes, sir.

Mr. WRIGHT. What was the answer?

Mr. COCHRAN. They licensed them each year.

A. They have licensed them to us each year.

By Mr. COCHRAN:

Q. Each year?

A. Yes, sir.

Q. In the town of Hobart, the testimony is that Griffith Amusement Company opened the Kiowa Theater in 1934, the fall of 1934. For the season 1934, or for any
3392 season since that time, has Metro leased its pictures to Griffith Amusement Company for exhibition in the town of Hobart?

A. No, sir, they have not.

Q. Those pictures have been played by whom?

A. Mr. Charles Mahone, the Oklahoma Theater.

By the COURT:

Q. Who is the opposition, who runs the opposition theater in Sapula?

A. Mr. Moulder. I don't recall his initials. They call him Speedy Moulder.

By Mr. COCHRAN:

Q. During the years 1933–'34 to and including the season 1938–'39, do you recall to whom the pictures were licensed by Metro in Gallup, New Mexico, Odessa, Texas, and Stamford?

A. No, sir, I am not familiar with those situations. Those are towns owned by the R. E. Griffith Theaters, or maybe Westex, I don't know which owns them.

Q. Well, during the period prior to 1931 did you pay any attention to the way the pictures were licensed, what pictures were licensed for Gallup, New Mexico or any of those R. E. Griffith towns?

A. Well, prior to 1931, Gallup, New Mexico was as I remember, was owned——

Q. (Interrupting.) By Consolidated?

A. Consolidated or Griffith Amusement Company, I was going to say; I guess it was Consolidated.

3393 Q. Well, during that period of time that those towns were operated by Consolidated prior to the time that R. E. Griffith acquired them, do you recall the pictures which were licensed by you and R. E. Griffith for those towns, which I believe were Gallup and Roswell and possibly Hobbs?

A. No, sir, I wouldn't remember what pictures, back that far. I do have a definite remembrance that there was one or two major products that we never had in Gallup at that time, and I don't believe Mr. Griffith had at later dates, but what pictures, I couldn't tell you.

Q. Then, in 1933–'34, was Griffith Amusement Company and the Consolidated Theaters, Inc. licensing pictures from Twentieth Century Fox for exhibition in theaters in certain towns?

A. Yes, sir.

Q. How long has Griffith Amusement Company been doing business with Twentieth Century Fox, if you know?

A. Ever since I was with the company, 1926.

Q. Prior to that time you have no knowledge of what the situation was?

A. No, sir.

Q. Did you participate in the negotiations for the licensing of pictures from Twentieth Century Fox for the season 1933–'34, and for each season thereafter including the season 1938–'39?

3394 A. Yes, sir.

Q. Is it also true that in negotiations carried on with Twentieth Century Fox with Griffith Amusement Company and Consolidated, that R. E. Griffith assisted you in those negotiations until the season 1938–'39?

A. Yes, sir.

Q. During those negotiations, was there any discussion by you or by R. E. Griffith in your presence with any representative of Twentieth Century Fox in regard to the method or manner in which Twentieth Century Fox pictures should be licensed to any opposition theater?

A. No, sir.

Q. Was there any discussion during any of those negotiations, or at any time, by you or R. E. Griffith in your presence, relating in any way to the licensing of second run, subsequent run, or any other run of pictures to any opposition theater?

A. No, sir.

Q. As to each of the seasons which we have mentioned and which are involved in this case, is your answer the same as to the questions which I have just propounded to you?

A. To each distributor, you mean?

Q. No, as to pictures?

A. Each season?

3395 Q. Yes.

A. Yes, sir; it is.

The Court. Gentlemen, we will discontinue now and continue the hearing in this case until 2:00 o'clock this afternoon.

(Whereupon, a recess was taken herein until the hour of 2:00 o'clock p. m. of this same date.)

3396 PROCEEDINGS

September 26, 1945, 2 o'clock p. m.

H. R. FALLS, was thereupon re-called, and further testified as follows:

Direct examination (cont'd.) by Mr. COCHRAN:

Q. Mr. Falls, during the time that you have been connected with the Griffith Amusement Company has Consolidated Theaters at Sapulpa or the Griffith Amusement Company at Hobart licensed season's product of Fox?

A. No, sir, not in either town.

Q. Not in either town?

A. No, sir.

By the COURT:

Q. You mean that Griffith has not licensed it?

Mr. COCHRAN. That is right.

The COURT. First run in those two towns?

By the WITNESS:

A. Yes, sir.

By Mr. COCHRAN:

Q. In Sapulpa did Consolidated Theaters build and open a second run house some several years back?

A. Yes, sir, they did.

Q. Do you recall the year in which that was opened?

A. No, I don't.

3397 Q. Well, was it prior to the consent decree?

A. Yes, it was.

Q. Did you attempt to license Fox product for second run exhibition in that theater at the time it was opened?

A. I made a request for it, yes.

Q. Did you obtain it?

A. I did not.

3398 Q. Since the consent decree you have been able to obtain it?

A. Yes sir, on some pictures from Fox.

Q. On some pictures?

A. Yes, sir.

Q. Mr. Moulder, your opposition in Sapulpa, doesn't have a second run policy, does he?

A. No sir; he has one theater only.

Q. He operates on a first run policy?

A. I think he returns an occasional picture second run, but primarily a first run operation.

Q. Well, was he, so far as the major distributors are concerned, at the time you put in your second run house, did he

have any second run policy of exhibiting major run product?

A. No, he didn't.

Q. Was the product being shown second run as a regular policy by anyone in Sapulpa at the time you put in your second run house?

A. No sir, it wasn't.

Q. Now, as to these Fox contracts which were negotiated by you and R. E. Griffith for the years 1933–'34 and each succeeding year until, up to and including '37–'38, and negotiated by you for Griffith Amusement Company and Consolidated for the season 1938–'39, was there any
3399 request by representatives of Fox made to you or R. E. Griffith that any town or towns which were included in your contract should not be included?

Mr. WRIGHT. If the Court please, I think that calls for a conclusion that can only be drawn by an account of what the negotiations were.

The COURT. Well, if he knows.

Mr. WRIGHT. What was said.

The COURT. If he knows, he can answer.

Mr. WRIGHT. I don't think he can give a proper answer to that.

The WITNESS. There were about two words in that question that I didn't get. Someone coughed.

The COURT. Read the question.

(Question read by the reporter.)

3400 Mr. COCHRAN. Eliminate that "or R. E. Griffith." There is an objection, if your Honor pleases.

The COURT. Overruled. I think it is competent.

A. There was no objection made to me.

By Mr. COCHRAN:

Q. Was there any objection including any of the towns which were included, to R. E. Griffith in your presence or that you know anything about?

A. No, sir.

Q. In the negotiation of the contract during that same period of time with the representatives of Metro was there any request made by the representatives of Metro of you that any town which was included in the contract made by you and R. E. Griffith should be excluded from that contract?

Mr. WRIGHT. Same objection.

The COURT. Overruled. Exception allowed.

A. No, sir, there was not.

By Mr. COCHRAN:

Q. Was there any such request made of R. E. Griffith in your presence, or to your knowledge?

A. No, sir.

By the COURT:

Q. You mentioned this morning in your testimony the name of H. J. Griffith, Sr. Who was H. J. Griffith, Sr.?

A. It was H. J. Griffith, Jr.

Mr. COCHRAN. H. J. Griffith, Sr. was mentioned
3401 by Mr. Spears. That was the only mention of Mr. H. J. Griffith, Sr.

By the COURT:

Q. Who was H. J. Griffith, Sr.?

By the WITNESS:

A. That was the Griffith boys' father.

By Mr. COCHRAN:

Q. He is now deceased, is he?

A. Yes sir, he is.

Q. During the season of 1933–34 and through the season of 1938-39, did you participate in negotiations with Vitagraph, Incorporated, for the licensing of pictures?

A. Yes, sir.

Q. Vitagraph, Incorporated, was the company which distributed the pictures produced by Warner Brothers. Is that right?

A. That is right.

Q. And at one time they also distributed pictures produced by the First National Company. Is that correct?

A. Yes, sir, they did.

Q. In the negotiations had with Vitagraph, Incorporated, for the licensing of pictures during the period that we have mentioned, was there any discussion with you or with R. E. Griffith in your presence, relating to the licensing of pictures to any theater or theaters operating in opposition to the companies for whom you were licensing product?

A. None whatever.

3402 Q. Was there any discussion relating to the terms or conditions on which the product would be licensed to opposition theaters?

A. No, sir, none whatever.

3403 Q. Was there any request made of you in those negotiations by the representatives of Vitagraph that any of the town or towns for which product was licensed in these several contracts should not be included in the contract?

Mr. WRIGHT. If the Court please, we make the same objection. That is quite a conclusion to draw from a whole series of negotiations. I think the only proper way to prove that, if it is a fact that he wants to prove, is to show what the negotiations were; then your Honor has an opportunity to judge for himself as to whether there was anything that could be construed from such as a request or not, but for the witness to undertake to summarize the series of negotiations and draw the conclusion for your Honor as to the ultimate effect, I think is wholly improper.

The COURT. The question is whether or not it calls for a conclusion or whether it is a statement of fact. Now, this is the man who made these contracts, and he knows what towns he desired these pictures to accommodate. Now, if there were any of those towns that were in his list that the distributor objected to for any reason, why, I think he should know it.

Mr. WRIGHT. I submit, if the Court please, that if he knows anything, he knows what was said. And if he knows what was said he can state it. If he doesn't know what was said he is not in a position to draw a con-

3404 clusion as to the effect of what was said.

The COURT. Overruled and exception allowed. It would be impossible to recite the conversation in all these conferences. If you know of your own knowledge, you may answer the question.

A. I definitely know, and there was not.

The COURT. Exception allowed.

By Mr. COCHRAN:

Q. Did you also participate in the negotiations for the licensing of product for Griffith Amusement Company and Consolidated Theaters, Inc. from Columbia Pictures Corporation during that same period of time?

A. Yes, sir.

Q. Do you recall when Columbia commenced the licensing its pictures through an exchange, as distinguished from licensing them through the States Right licensee?

A. I couldn't give you the year. Of course, I do remember when it happened.

Q. Well, was it before or after you commenced to participate in the licensing and the negotiations for the licensing of Columbia pictures for Griffith Amusement Company?

A. They established their own exchange in Oklahoma City after I became affiliated with Griffith Amusement Company; it was after 1926 sometime, I couldn't tell you the year.

3405 Q. Well, do you think at the time you first commenced to assist R. E. Griffith in negotiating for the licensing of pictures, Columbia had its own exchange?

A. Yes. they did have; by 1929, yes, they did have.

Q. Well, from that time on down to the present time, has Griffith Amusement Company been a customer of Columbia?

A. There was one——

Q. (Interrupting.) I will change that question. Prior to the time it established its exchange, had Griffith Amusement Company been the customer of Columbia?

A. Yes, they had.

Q. Before that time?

A. Yes, sir.

Q. Now, in 1933, the season 1933-'34, up to and including the season 1938-'39, did Griffith Amusement Company and Consolidated license product from Columbia during each of those seasons?

A. I think there was one season that we were unable to agree with Columbia. I thought I had a notation of it, but I don't have. I can't name the season.

3406 Q. Well, the contracts are in evidence here showing you did have a contract for 1933-34 through '38-39?

A. Well, the record, of course, will speak for itself. Probably it was after '38-39, then.

Q. Do you recall whether there is any town in which you did not license the season's product of Columbia during those years?

A. No, I can't recall it.

Q. In the negotiations for the licensing of the Columbia pictures, was there any discussion with you or with R. E. Griffith in your presence, relative to whether pictures, should be licensed on first, second, subsequent or any other run to any of the opposition theaters?

A. No, sir.

Q. Was there any discussion in any of those negotiations as to terms and conditions under which pictures might be licensed by Columbia to theaters operating in opposition to theaters for which you were licensing pictures?

A. No, sir.

Q. You testified, as I understand, that as far as you can recollect there was none of the towns in which you were operating theaters in which the product was not licensed to you on first run. Please state whether the negotiations during this period there was any request made by you or

by R. E. Griffith within your knowledge, that any of
3407 the towns which were included in these contracts which you had with Columbia should be excluded?

A. No, sir, there was not.

Mr. WRIGHT. Same objection.

The COURT. Overruled and exception allowed.

By Mr. COCHRAN:

Q. For the 1932-33 season, was there a contract entered into between Paramount Pictures Distributing Company and the Griffith Amusement Company or Consolidated Theaters, Inc. for its pictures for the '32-33 season?

A. No, sir, there was not.

Q. For that season did the representatives of Paramount negotiate with you and R. E. Griffith in an effort to license pictures to you for the towns in which you operated?

A. Yes, numerous times.

Q. Why was no contract entered into?

Mr. WRIGHT. I think he can say what the negotiations were and your Honor will be able to draw the conclusion.

The COURT. Yes. You can just state what you did.

By Mr. COCHRAN:

Q. What did you do?

A. Well, we had several meetings with representatives of Paramount through the usual negotiations discussing terms, play time mostly, pertaining to the confirmation of the contract to play their pictures that season. We were unable to agree on terms and play time.

3408 Q. When you say you were unable to agree on terms, what do you mean by terms?

A. The rental under which the pictures would be exhibited; the rentals we would pay for the privilege of exhibiting the pictures.

Q. Was that inability to agree, did that apply to all of the towns for which you were negotiating or some particular town?

A. No, it was for the entire circuit.

Q. During those negotiations was there any difference in regard to any particular town as distinguished from any other town, so far as the matters on which you could not agree were concerned?

A. Nothing that I can recall. We would have our usual argument about certain towns they might pick out, or I would say pick on. They didn't think they were getting as much money as they were entitled to. Those things came up in our discussions and negotiations. There might have

been several towns mentioned, I don't remember, but as a whole it was a difference in the terms in play time for the circuit as a whole.

Q. What I am getting at is this: Was your failure to agree due in any particular to the fact you insisted on having pictures in some town they were not willing to license your pictures in?

A. Oh, no.

3409 Mr. WRIGHT. If the Court please, this is objectable, both as leading and calling for a conclusion.

The Court. Yes, I think it is leading.

Mr. COCHRAN. If the Court please, I can't see how you can develop that situation in any other way. It is certainly important to show that here their failure to agree wasn't due to any—

The COURT. (Interrupting.) You can ask him what was said in those conferences with reference to the matter.

Mr. COCHRAN. But a negative isn't said.

Mr. WRIGHT. If the Court please, he can develop it through argument, but it is entirely improper to put the argument in the witness' mouth.

By Mr. COCHRAN:

Q. During the course of those negotiations, what request, if any, was made by you or by R. E. Griffith to have some particular town included or some town excluded, any discussion of any kind or character, of that kind?

A. There wasn't any by me and none by R. E. Griffith in my presence.

By the COURT:

Q. Was your failure to make a contract with this distributor due to your failure to agree on the price of the picture, that is, the price of the rental?

A. Yes, sir, and the play time that they wanted us to give them on a certain number of their pictures, a

3410 guaranteed play time, which means your preferred play time, your Saturday and Sunday dates. We frequently had disagreements with distributors about that. That is about as important as the terms under which the pictures played.

By Mr. COCHRAN:

Q. Now, when did you have further negotiations with Paramount in regard to licensing its product?

A. For the same season?

Q. Any time, that season or any other season?

A. Well, we had several that season, and finally, as I said, we were unable to agree at all so they sold our com-

petitors. For the season of 1933-'34, we had negotiations for the product for that season, several of them, and again we were unable to agree with them.

Q. What took place during that season, and why was an agreement not reached?

A. It was the same difficulty that we had the year before, resulting in their selling our competitors.

Q. Well, just state again what particular things it was that caused the failure to get together on an agreement?

A. Our failure to agree on rental terms and preferred playing time for the product.

Q. You speak of preferred playing time. What is preferred playing time?

A. There are two preferred play times in a class
3411 "A" theater. With our particular operation, a picture opening on Sunday is your first preferred play time, playing two, three, or four days. The next best preferred play time is on week-end booking, which includes a Saturday. We have a mid-week change which is not considered preferred.

Q. In these negotiations, what was Paramount seeking in the way of preferred play time?

A. They were seeking far more preferred play dates than we thought their product would justify, and more than we could agree to give them.

Q. How did you try to handle your preferred playing time?

A. We tried to fill it with the best product available that we had under contract from all distributors. Back in those days, before we knew what the product was, we didn't like to commit ourselves to any certain amount of play time unless we knew they had the pictures, and we didn't know.

Q. Why was it that you didn't like to commit yourself to certain playing time?

A. 90 per cent of the pictures we contracted for from any one distributor were not even produced.

Q. 90 per cent?

A. I would say at least that, at the time we made the contracts. If we were making a contract for 50 pic-
3412 tures, they would seldom have over 5 or 6 of them produced, and we didn't know anything about them.

Q. You don't mean to say that out of 50 pictures that they licensed to you, they only produced 5 pictures, do you?

A. At the time our trade was made there would be only that many produced. Maybe I didn't make it clear.

Q. So you didn't know whether they would be of the caliber that you would want to play on your preferred playing time or not?

A. That's exactly right.

Q. And in these deals Paramount was wanting to commit you on playing their pictures in a larger number than you were willing to commit yourself on for each preferred playing time?

A. Yes, sir.

Q. Well, during those negotiations, was there any discussion at all by Paramount relative to licensing you in any town or towns other than the total number that you had been negotiating about?

A. No, just the ones that we were buying for at that particular time.

Q. And the differences that you had related to the whole circuit, and not to just some particular town?

A. Yes, sir.

Q. Well now, then after your failure to agree in
3413 1933-'34, were there other negotiations during that year relative to the '33-34 product?

A. Well, there were several meetings early in the selling season, commencing sometime in August or early September. I don't know just how long they carried on before we definitely knew, they knew and we knew, that we couldn't get together.

Q. During that period was there any discussion of a franchise?

A. Yes, sir, there was, during the '33-34 season. When they were attempting to make a deal for that season, it was suggested that we try to work on a term deal, a franchise of two or three years.

Q. Who made that suggestion?

A. Paramount did.

Mr. WRIGHT. Can't we have something that is a little more easily identifiable?

By Mr. COCHRAN:

Q. He wants to know the representative?

A. Jack Dugger, Southern District Manager for Paramount.

Q. Then later, were negotiations for a franchise resumed?

A. Yes, sir.

Q. There has been introduced in evidence here Plaintiff's Exhibit P-1, A to S, dated September 15th, 1934. Is that the franchise which was entered into with Paramount?

3414 A. Yes sir, for a three year term.

Q. And there has also been introduced in evidence here a supplemental agreement had with Paramount, dated

September 22nd, 1936, identified here as Plaintiff's Exhibit P-1, U to X. I will ask you to examine that and state if that is the supplemental agreement that was entered into?

A. Yes, sir. I recall it.

3415 Q. I notice in this franchise—contract that your theaters in the town of Sapulpa are not included. Has Consolidated Theaters, Incorporated, at any time licensed the pictures of Paramount, first run, in the town of Sapulpa?

A. No, sir, we have never had them in that town.

Q. Were they at any time offered to you on first run?

A. I think not; not to my knowledge; never offered to me.

Q. Well, offered to Consolidated Amusement Company. Who played those pictures there?

A. Mr. Moulder.

Q. Has he played them all during that time?

A. Yes, I think every year.

Q. This contract also does not cover the theaters of R. E. Griffith in Gallup, New Mexico. Do you know anything about that situation?

A. No. As I testified this morning I am just not familiar with those towns in New Mexico.

Q. Well, this franchise covers a period of the season of 1934–35, '35–36 and '36–37. When that contract culminated was it renewed?

A. For one year.

Q. I mean was the franchise renewed?

A. Oh, no, no, sir.

3416 Q. Did you seek any franchise from Paramount?

A. No, we did not.

Q. Since that time for each season to and including 1938–39—there has been offered in evidence here a memo contract between Griffith Amusement Company and Consolidated Theaters on the one part and Paramount on the other. Did you participate in the negotiations for each of those contracts?

A. Yes, sir.

Q. And during the negotiations in connection with the franchise and in connection with licensing or attempting to license pictures, during any of the years 1933–34 up to and including 1938–39, was there any discussion between you and Paramount representatives, or between R. E. Griffith and Paramount in your presence, in regard to the terms or conditions under which Paramount should or would license its pictures to any opposition theater?

A. No, sir.

Q. During any of those negotiations was there any discussion relative to Paramount licensing or not licensing

any product to your opposition houses which were not licensed to you?

A. No, sir, there was not.

Q. In the negotiations which led up to the execution of the franchise agreement in 1934, and in the negotia-
3417 tions which led up to the execution of the contract for each of the seasons of 1937–38 and 1938–39, was there any request made of you by the representatives of Paramount that any town or towns which were included in those contracts made with you and R. E. Griffith should be excluded from your contract?

Mr. WRIGHT. Same objection.

The COURT. Overruled and exception allowed.

A. No, sir, there was not.

Q. Going back just a moment to Columbia, isn't it a fact that during the years which are involved here that you never obtained Columbia pictures, season's product of Columbia picture first run, in the town of Sapulpa?

A. With the exception of their westerns. That is all we have had in Sapulpa. All of their product has always been sold to Mr. Moulder.

Q. During the season of 1933–34, up to and including the season of 1938–39, did you and R. E. Griffith conduct negotiations with representatives of United Artists Corporation in an effort to license pictures?

A. Mr. Griffith would not have participated in 1938–39. First let me call your attention to that.

Q. Well, in order to get the record straight, I believe your testimony is that as to each and every distributor from whom Griffith Amusement Company and Con-
3418 solidated Theaters, Incorporated, licensed pictures after the 1937–38 season, R. E. Griffith had no connection with the licensing of those pictures?

A. That is right.

Q. So I will reframe my question in regard to United Artists. During the season of 1933–34, up to and including 1938–39, did you have negotiations with representatives of United Artists in connection with licensing of pictures distributed by United Artists?

A. Yes, sir.

Q. Can you tell us whether there was generally a different method used by United Artists in the distribution of its pictures from that followed by other distributors during that period?

A. Yes, there was a decided difference in the method of selling and distributing product.

Q. Just explain the chief difference?

A. It was this way: United Artists has never been a producing company. It is strictly a distributing organization. They distributed for producers who in the trade are generally referred to as independent producers, one who makes his own pictures independent of any other affiliation, and then arranges to distribute his pictures through United Artists, so United Artists has never, as far back as I can recall, sold a full season's product all at one time
3419 like Fox distributed 50 pictures or Metro, but has sold each producer's pictures independent of any other producer whom it represented, the result being they would sell pretty much the way the consent decree today requires such distributors today to sell. Every so often they would have one or two pictures to license and then they would call on us and attempt to license those pictures.

Q. You mean by that then there were negotiations throughout the year in regard to pictures which they had to offer at that particular time?

A. That particular distributor, we would see them throughout the year, maybe 10 or maybe a dozen times a year.

Q. Were the pictures licensed before pictures were produced at that time?

A. Not generally. They would sometimes offer—the producer would schedule maybe three pictures for release during the year. They might have one of those pictures already produced which we could view, and then they would want to sell that plus the other two which had not yet been produced, but generally they did sell them individually after they were produced, and most always without the opportunity of looking at the pictures before buying, just as we have today under the consent decree.

Q. During that period was there any change from
3420 year to year in the producers whose pictures United Artists distributed?

A. Oh, yes. They never had the same producers all the time.

Q. Well, were there frequent changes?

A. Yes, sir, there were frequent changes.

Q. For instance, I notice from these contracts that have been introduced in evidence, in one here there probably would be Selznick and Wanger?

A. Yes, sir.

Q. And Korda?

A. Korda was a producer in England.

Q. Those names occur to me. Maybe the next year they would distribute a picture produced by Charlie Chaplin or somebody else?

A. Yes, sir, that happens. The same producer, Selznick, didn't always produce every year, while he continued releasing through United Artists. Maybe he wouldn't make a picture at all in some year and then come back and make two or three.

Q. The same is true with Chaplin?

A. Yes, sir, Douglas Fairbanks and Mary Pickford. Those are the three stars who originally formed United Artists, Chaplin, Pickford, Fairbanks.

3421 Q. During each of those years were you from time to time approached by representatives of United Artists in an effort to license their pictures to you?

A. Every year, just the same as any other distributor.

Q. Did you have any knowledge or information at the time you were approached in regard to these particular pictures, as to whether there had been any negotiations with any competitor of yours in regard to those pictures?

A. No, I didn't know anything about that.

Q. Did you in any of the years 1933–34 to and including 1938–'39, license United Artists pictures in all of the towns in which Griffith Amusement Company and Consolidated Theaters were operating?

A. No, I don't think that ever happened in a season with that company.

Q. Do you know whether in each of those seasons you licensed all of the product that was offered you?

A. I don't believe that ever happened either with United Artists.

Q. Just what was done when you were approached by these representatives of United Artists? What took place?

A. Well, they had some pictures to sell and made an appointment, and we met with them and sat down and discussed it, the usual negotiations, how much were they and what kind of play time and how many runs and what towns.

3422 Q. Then if you could agree on the terms you licensed pictures?

A. That is right. I would not say that always held true, particularly during the period you speak of. United Artists had a great many pictures that we were not interested in, and sometimes we didn't attempt to negotiate for certain of the pictures. We just didn't want them at all.

Q. Then if you could agree on terms you licensed such of the pictures as you needed for exhibition in your theaters?

A. Yes, sir.

3423 Q. In the negotiations which you had with the United Artists, was there ever any discussion by you or by R. E. Griffith in your presence as to the terms and conditions on which United Artists Pictures should be licensed to any of your competing theaters?

A. No, sir.

Q. Was there ever any discussion as to United Artists not licensing any of its pictures which were not licensed to you to other competing theaters?

A. No, sir, there was not.

Q. Mr. Falls, did you participate in the negotiations with RKO for the licensing of its products for the season of 1933–'34?

A. Yes, sir.

Q. Was there a contract entered into between Griffith Amusement Company and Consolidated Theaters with RKO for the season 1933–'34?

A. Yes, sir.

Q. In those negotiations which you had with the representatives of RKO, was there any discussion by you with the representatives of RKO, or was there any discussion by R. E. Griffith with representatives of RKO in your presence, relating to the terms and conditions on which RKO product should be licensed to any theaters which were operating in opposition to the theaters for which you were licensing product?

3424 A. No, sir.

Q. In those negotiations was there any discussion in regard to RKO licensing or not licensing to opposition theaters any product which was not licensed to Griffith Amusement Company and other companies for which you were licensing?

A. No, sir.

Q. In those negotiations was there any request by representatives of RKO that any town which was covered by that agreement and for which product was licensed for that season should be excluded from the contract?

Mr. WRIGHT. Same objection.

The COURT. Overruled. Exception allowed.

A. No, sir.

By Mr. COCHRAN:

Q. For the season of 1934–35, did the representatives of RKO negotiate with you and R. E. Griffith for licensing of any pictures?

A. Yes, sir, they did.

Q. Who was the representative of RKO with whom you had the first negotiations during that reason?

A. Well, you say "first"—Mr. Williams, the branch manager here may have talked to us but the actual negotiations were with Mr. Herb McIntire, who at that time was southern district manager for RKO.

Q. Were you able at that time to make a contract
3425 with RKO for any of your towns?

A. Not immediately, no. We are on the 1934–35 season, aren't we?

Q. 1934–35.

A. No, not at first. We had several meetings with him.

Q. Did you ever succeed in reaching an agreement for 1934–35 for RKO product in substantially all of your towns?

A. Yes, sir, we did.

Q. All of them?

A. You said "substantially all."

Q. Substantially all.

A. In all towns, now?

Q. Did you license the product in Stillwater in 1934–35?

A. I think so.

Q. Did you license it in Norman?

A. Yes, sir.

Q. RKO for 1934–35?

A. In my memory we did.

Q. I had better show you the contract. Do you recall when you made the franchise agreement with RKO?

A. I am sorry. I read my notes wrong. In 1934–35 we did not get together with RKO for the season's deal.

3426 Q. In all or substantially all of your towns?

A. Yes, sir.

Q. The franchise that was made with RKO was made in the early part of 1935, was it?

A. Yes, sir.

Q. So you know it was the season prior to—that it was the season of 1934–35 in which you did not make the season's deal?

A. We didn't make it for the season 1934–'35.

Q. Now, later on, in the season, did you make a deal or contract with RKO for the '34–35 product in some of your towns?

A. In some towns, yes, sir.

Q. At that time had RKO licensed its product in some of the towns in which you were operating, to the opposition houses?

A. They had.

Q. And in Stillwater and Norman, those were two of the towns in which you did not license the product for that season?

A. That's right.

Q. I hand you a document which has been introduced in evidence as RKO–43, B, C, D, E, F, and G, and ask you to state if that is the contract which you did finally make with

RKO for products for the 1934–'35 season?

3427 A. Yes, it is. That's for the commitment in the towns in which their product had not been sold, and we made the deal.

Q. In the negotiations which you had with RKO prior to the time when you entered into this contract which is reflected in RKO–43, just state to the Court what the discussion was as to the matters of difference between you and which resulted in no contract being made during these early negotiations?

A. Well, in that particular negotiation, we never arrived at the stumbling block of play time, preferred play time. We were informed by Mr. Cress Smith, Western Division Sales Manager of RKO, that we would either play his pictures on very high percentage terms that he quoted, or we would pay a 100 per cent increase flat rental, and that just about stopped everything right there; it resulted in our not trading with him.

3428 By Mr. COCHRAN:

Q. After you failed to reach an agreement with Mr. Cress Smith, were negotiations later resumed in the matter of licensing product?

A. Yes, sir, they were.

Q. By whom?

A. Between Mr. Griffith and myself and Herb McIntire, the southern district manager.

Q. Who sought that conference?

A. Mr. McIntire sought it and saw us several times.

Q. And in addition to this agreement which was entered into on March 18, 1935 for pictures for the 1934–35 season in certain towns, were there any negotiations relative to a contract for more than one year with RKO?

A. Yes, sir, we negotiated and closed a contract for a three year franchise which started with the 1934–36 season.

Q. Who started the negotiations about this franchise?

A. It was Mr. McIntire's idea again.

Q. That franchise has been introduced in evidence here as Plaintiff's Exhibit, RKO–44–A to S, inclusive, and in that contract and in the negotiations for that contract, was your theater or theaters in any town excluded from that contract for any part of the franchise period?

A. Well, I definitely remember one town in this territory, Hobart, Oklahoma, was excluded the first two

3429 years of the franchise.

Q. Was it included for the last year of the franchise?

A. Yes, sir, it was.

Q. At whose request was it included for the last year?

A. Well, I don't know that there was any request on anybody's part. During our negotiations, Mr. McIntire had information from his Oklahoma City office that they had a contract with Mr. Mahone for two years, so he informed us accordingly and said "We can include Hobart for the third year but we can't on the first two years."

Q. Was there any request made by him at that time it be excluded for the last year of the contract?

A. There was not.

Q. During those negotiations was there any discussion between you and the representatives of RKO or any discussion between R. E. Griffith and the representatives of RKO, in your presence, relative to the terms or conditions on which RKO could or might license the product to any theaters operating in opposition to you?

A. No.

3430 Q. Was there any discussion during that time relative to RKO not licensing its product which wasn't licensed to you to any other exhibitor or exhibitors?

A. No, sir.

Q. Well, during those negotiations, was there any request by any representative of RKO that any town should be excluded from this contract other than the town of Hobart for the two years which you have mentioned?

A. There was not.

Q. Now that franchise, three-year deal, covered the period '35-'36, '36-'37, and '37-'38. At the time of the negotiations for this franchise, did you have any information as to any negotiations or lack of negotiations between RKO and any competing exhibitor?

A. No, I didn't know anything about that.

Q. You didn't know what efforts they had made, if any, to license product to anybody else?

A. No, sir.

Q. For the season 1938-'39, did the representatives of RKO negotiate with you as to the licensing of product?

A. Yes, sir.

Q. What was the result of those negotiations?

A. We were unable to agree on a deal, so we didn't make one for all of the towns at that particular time.

Q. Later on did you make a contract for some of your towns?

3431 A. Yes, sir, later on in the season we made a contract for some towns in which they hadn't sold their product.

Q. Your testimony, of course, relates to Griffith Amusement Company and Consolidated Theaters for the season 1938-'39?

A. That's true, because the other companies in Texas were not participating in the buy starting at that time.

Q. What was the reason for your failure to get together with RKO in the early part of the season for the '38-'39 product?

A. We hadn't been too happy with the franchise; the product hadn't lived up to our expectations; we had a step-up, an increase in terms on the second and third year, that was in the contract, so we had paid, I think, a ten per cent increase the second year over the first, and a five per cent increase the third year over the second; so, for the 1938-'39 season RKO again wanted some increases, and their product hadn't been profitable to us, and we couldn't agree to an increase, so we couldn't agree on terms and make a contract.

Q. In connection with the United Artists' contracts, there is one question that I failed to ask you. In either of the years 1933-'34 up to and including 1938-'39, were any of the towns which were covered by the United Artists' contracts with Griffith Amusement Company and Consolidated, in which United Artists requested should be excluded from the contract or desired to have excluded from the contract?

3432

Mr. WRIGHT. We object.

The COURT. Overruled and exception allowed.

By Mr. COCHRAN:

Q. Did you have a contract on any towns?

A. I am just trying to think about the towns. There was one town.

Q. I said, which United Artists requested should be excluded that were covered by your contract?

A. Oh, covered by our contract? No, no. I was thinking of one town that they did sell, but we never had their product there.

Q. I believe you have already stated that in your various contracts in which you licensed product from United Artists, there were numerous towns which were not, in which you were not operating, which were not covered by the contract?

A. Yes, sir, that is right, but the particular town I had in mind, we never had United Artists' product.

Q. I see.

A. I was just a little confused on your question.

By the COURT:

Q. Did you at any time during this period make a contract for the entire product of United Artists?

3433 A. Not during that period, no, sir. In fact, not even up to now, including now, have we ever bought all of their product in any one season for all of our towns.

By Mr. COCHRAN:

Q. Did you participate with R. E. Griffith in the licensing, and negotiations for the licensing of pictures with Universal Film Exchanges, Inc. for the seasons 1933-'34 up to and including the season 1937-'38?

A. Yes, sir.

3434 Q. And then for the season of 1938-39, who negotiated for the Griffith Amusement Company and Consolidated Theaters for the licensing of Universal product?

A. I did.

Q. During the season of 1933-34 and 1934-35, did you succeed in negotiating a contract with Universal Film Exchanges?

A. Yes, sir.

Q. And the season 1933-34, the Griffith Amusement Company was not operating any theater in Hobart, was it?

A. I believe not that season.

Q. The testimony was they opened the Kiowa in November of 1934. For the season of 1934-35 and subsequent to that time had the Griffith Amusement Company ever licensed Universal pictures first run, in the town of Hobart?

A. No, we haven't had them in Hobart, Oklahoma.

Q. Mr. Mahone has played Universal?

A. He played Universal there, yes.

Q. First run. For the season 1933-34 and 1934-35, in your negotiations with Universal, was there any discussion between you and representatives of Universal or between R. E. Griffith and representatives of Universal in your presence, or to your knowledge, relative to the terms or conditions on which Universal would or might license its product to any competing exhibitor?

3435 A. No, sir.

Q. Was there any discussion as to whether Universal might or could or would license its product, which was not licensed to you, for use by any other exhibitor?

A. No, sir.

Q. And in those negotiations for 1933-34 and 1934-35 product, was there any request by the representatives of Universal made of you or of R. E. Griffith, to your knowledge, that any town or towns which were included in the contracts which were made with you, should be excluded from that contract?

Mr. WRIGHT. Same objection.

The COURT. Overruled. Exception allowed.

A. No, sir.

By Mr. COCHRAN:

Q. In the season of 1935-36, were there any negotiations between you and R. E. Griffith and representatives of Universal for the licensing of Universal product for the 1935-36 season?

A. Yes, sir, there was.

Q. Did you or not succeed in reaching a contract for that season?

A. No, sir, we couldn't agree on a contract for that season; we didn't buy it.

Q. Who represented Universal in those negotiations?

3436 A. I am not certain but I believe it would have been Harry Graham, southern district manager for Universal during the period, and probably Dutch, E. S. Oldsmith, branch manager in Dallas. They have changed managers so many times in Oklahoma City I don't know who it might have been.

Q. Mr. McCarthy?

A. I don't recall Mr. McCarthy was negotiating for that year. He could have for he has for many years.

Q. He has for many years?

A. Yes, sir, I wouldn't say he did that year.

Q. He was the division sales manager above the men you have named?

A. Yes, sir.

Q. What were the discussions and points of difference in your negotiations for the 1935-36 product of Universal?

A. Well, as I recall, it was about the usual thing. They thought a lot more of their product than we did. They just wanted more money for their product than we could place a value on and it resulted in our not being able to trade, but we could not meet that in between price there that would allow a deal to be written.

Q. Speaking about the in between price, during all the time you had been negotiating for the licensing of pictures, how were the rental terms arrived at between the distributor and the exhibitor?

3437 A. Well, days and nights of hard work and sweating mostly; negotiations, which have been referred to many times in our business as horse trading. The distributor at all times tries to get the last dollar he can for his pictures and the exhibitor tries to buy them just as cheaply as he possibly can, and somewhere down the line they will compromise and arrive at a price.

Q. Well, would you say the rental terms are reached as

a result of bargaining between the exhibitor and the distributor?

A. That is the only way they are arrived at.

Q. In negotiations with any and all distributors with whom you have negotiated over the years, when you are negotiating, do you have any knowledge or information as to what another exhibitor is paying for product from that particular distributor?

A. No, sir.

Q. Or what your competitor is paying?

A. No, sir, I am not even interested.

Q. You want to try to get the pictures as cheap as you can?

A. Yes, sir, at all times.

Q. Did those negotiations, as you have indicated, take considerable time?

A. Yes. I have known them to last several weeks
3438 sometimes with one distributor.

Q. You don't mean by that day in and day out all the hours of the day?

A. No, sir. I mean we have negotiated as long as four or five days with one distributor, and he would leave and maybe a couple of weeks later he would come back for three or four more days and we still couldn't agree, and he would make maybe three or four different trips.

Q. In other words, it is just a question of which one is going to yield?

A. That is it, yes, sir.

Q. Sometimes you don't reach an agreement at all?

A. Yes, sir, that is right.

Q. That was the case with Universal in 1935–36?

A. Yes, sir.

Q. Can you tell us whether after you failed to agree during these negotiations in 1935–36, you were able to make the contract with Universal for its pictures in any situation during that season?

A. I don't recall that we attempted to make a contract in any situation. I don't believe that we made any contract.

Q. Do you recall whether there were any subsequent negotiations with you by Universal—in an effort to reach a contract?

A. I am sure they talked to us. That always hap-
3439 pened. If you don't get together with a distributor for the year's product he goes out and sells the competitors where he can, and he is always seeing you sometime again during that season, attempting to sell you where he has not sold. He attempts all season at various times

to pick up whatever business he can from us. I don't recall dates or incidents but I am sure they did discuss it with us sometime during the season.

Q. You say you do not recall you licensed any product from them in 1934–35 season?

A. No, I don't recall that we did. If we did the record will show it.

3440 Q. Was your failure to make a contract on any towns for that season the result of Universal not getting together with you for a circuit licensing of pictures?

A. No; no, that had nothing to do with it.

Mr. WRIGHT. If the Court please, I suggest that that is a conclusion that can be drawn from the actual conversations and negotiations.

The COURT. I think that is leading and suggestive. The objection will be sustained, and exception allowed.

Mr. COCHRAN. That should have been '35–36, instead of '34–35.

By Mr. COCHRAN:

Q. Well, why, if you didn't license Universal, any Universal pictures for the '35–36, why didn't you do it in these subsequent visits that were made to you?

Mr. WRIGHT. Read the question.

(Question read by the reporter.)

Mr. WRIGHT. If the Court please, there again I think we ought to have what was said on these visits, and then Your Honor can draw the conclusion.

By the COURT:

Q. Well, did you license pictures for any town on subsequent visits?

A. From Universal?

Q. Yes.

A. Not that I recall. I would have refer to the

3441 record to be sure of that, but I don't believe that we did.

By Mr. COCHRAN:

Q. Why not?

A. When we found out that we couldn't have the Universal product we, naturally, bought additional product from some other distributors to take its place, and filled our requirements. Possibly, for that time, I just don't remember, as I say, any negotiations; we probably talked to them, but very likely if we couldn't get together early in the season, they were still in our opinion unreasonable in their requests for these remaining towns.

Q. Mr. Falls, you mentioned the fact that when product couldn't be licensed from a particular exhibitor for a particular season, for a town or towns, that it became necessary to license other pictures. Did you from year to year during this time license pictures from distributors or companies other than these so-called major companies to fill your programs when it was necessary?

A. Yes, sir.

Q. Now, in this case, reference has been made to independent pictures. Is that term frequently used in the industry, independent product?

A. Yes, sir, it is commonly used.

Q. Just what is referred to, just what is meant by that term as used in the industry?

3442 A. It is a trade term, meaning product that is being distributed in a territory, we will say the State of Oklahoma, by an individual who owns what is known as States Rights to those pictures. The producer of those pictures has no national distributing organization, no offices set up such as the majors have throughout the United States. So they seek a States Rights owner to buy their product or distribute it on a percentage arrangement of some kind in a given territory. They may have John Jones that owns the franchise for the distribution in Oklahoma, a Mr. Smith that owns it for Texas, and a Mr. somebody else in another state.

Q. All right.

A. That is commonly known as an independent product.

Q. Well, are there some companies that are operating, that are frequently referred to as independents, that do now have exchanges?

A. Yes, sir.

Q. I am referring particularly to Republic?

A. Yes, sir.

Q. In recent years, Republic has had its own exchanges, hasn't it?

A. Until just a few years, just recently, they owned their exchange in Oklahoma City. They had a franchise owner here for years and years.

3443 Q. You mean, don't you, that until recently they didn't have an exchange?

A. Yes, sir.

Q. Until recently they had no exchange here?

A. They bought their franchise owner out here.

Q. Who was known as the States Rights owner?

A. Yes, sir.

Q. And PRC, I believe, up until the last year had no exchange, is that right?

A. PRC still has franchise holders and not their own exchanges in some territories, and that applies here.

Q. Reference also has been made to an independent exhibitor. Are you familiar with the use of that term in the industry?

A. Yes, I hear it quite frequently.

Q. According to the use of that term in the industry, is Griffith Amusement Company and Consolidated Theaters independents?

A. Well, now, that is a matter of opinion. My version of an independent exhibitor, and everyone is entitled to their own version, and there are many, I think, is one who is not affiliated with a national producer or distributor, and Griffith is not. They own their theaters independent of anyone else.

Q. Is there a more restricted use of it? First, are there some who refer to an independent chain of theaters
3444 as distinguished from affiliated chains?

A. Yes, sir.

Q. Then, is there also the use of the word "independent" to refer to some exhibitors who operate only in say one town?

A. That is the more common version of an independent; it is a man who owns one or two theaters in one town.

By the COURT:

Q. Who doesn't have a chain?

A. Yes, sir.

By Mr. COCHRAN:

Q. And also in the industry do they sometimes refer to an independent distributor as one who doesn't operate theaters, exhibition houses?

A. That question is a little confusing to me.

Mr. COCHRAN: Read the question.

The WITNESS. Let's hear that again.

(Question read by the reporter.)

A. No, I don't think so. I never heard it.

The COURT. We will recess at this time, gentlemen, until 10:00 o'clock tomorrow morning.

(Whereupon, Court was recessed until 10:00 o'clock, a. m., on September 27th, 1945.)

3445 PROCEEDINGS

September 27, 1945, 10 o'clock a. m.

Mr. COCHRAN. If the Court pleases, we have now in court the corrected certified copy of the pleadings in the Lubbock case showing the date of the filing.

The COURT. I didn't get the statement.

Mr. COCHRAN. You will recall that Exhibit 132, which was a certified copy of certified pleadings filed in the district court at Lubbock, Texas, the document has now been returned with the notation as to the date of the filing. It shows that the original petition was filed January 23, 1939, and the answer was filed February 7, 1939.

There are certain corrections in the record I desire to call attention to. It is possible some of them have already been made by some of the parties but I want to be sure that the corrections are made.

On page 3073, Mr. McKenna is quoted as saying: "We had nothing to do with the operation of the El Campo Theater or the Liberty Theater. We just have an investment with J. G. Long in that town but he has nothing to do with the operation of the theater." The words "he has" should be "we have." It is agreed that the change may be made so that the words will read, instead of "he has", "we have."

At page 3088 the question by Mr. Wright reads:

3446 "The agreement that was here, which this exhibit you have just identified here, Plaintiff's Exhibit No. 386, modifies, was simply one by which in substance the control of the Griffith Amusement Company was roughly divided equally between the Universal Chain Theatrical Enterprises and the three Griffith brothers, was it not?" That Exhibit 386 is incorrect. It should be Exhibit 107.

Mr. WRIGHT. I think you misunderstood the question. If you will read it again, I think it is correct as it is.

Mr. COCHRAN. (Reading.) "The agreement that was here, which this exhibit you have just identified here, Plaintiff's Exhibit No. 386, modifies,"—386 refers to the supplemental agreement.

Mr. WRIGHT. Yes.

Mr. COCHRAN. Then no change should be made there.

3447 The COURT. Very well.

Mr. COCHRAN. On page 3091, Mr. McKenna was giving the names of the various partners, and the name of Mr. Zartaludes of Sapulpa was not given as one of the names.

Mr. WRIGHT. I think he covered it later by calling attention to all those names that appeared in the interrogatory answers.

Mr. COCHRAN. Well, that may be added, that name of Mr. Zartaludes.

Mr. WRIGHT. Yes, sir, sure.

Mr. COCHRAN. On Page 3114, Mr. Wright was inquiring about Midland as follows: "In Midland, you testified you

didn't have three theaters there in December, 1934, and as I recall your interrogatory answer stated three theaters were acquired in April, April 27th, 1930. Is that right?" Instead of 1934, that should be 1932.

Mr. WRIGHT. Right.

Mr. COCHRAN. On Page 314, there is an error which I am sure has been corrected in some of the transcripts. The question: "And the price on June 8th, 1935 was children 10 cents, matinee and evening, and adults 15 cents, matinee and evening." That should be January 8th, 1935.

Mr. WRIGHT. I think we have corrected that before.

3448 Mr. RICE. Your Honor, to clear up the relationship with the answers to the interrogatories on the stipulation which was filed on behalf of R. E. Griffith Theaters and Westex Theaters, I would like to make a statement in the record by way of stipulation: That at Plainview, Texas, though it doesn't appear in the stipulation, the Ritz Theater, a theater named the Ritz, was operated during a part of 1937 by C. Hamm. That theater was operated at the location of the Palace Theater, originally purchased from O. K. Theaters Corporation in June, 1935 by the defendant R. E. Griffith Theaters, Inc. This is by stipulation; you need not accept it as a stipulation, Mr. Wright, if you don't want to. That the Palace lease expired, it was leased by Mr. Hamm from the landlord, it ran for awhile, and it now appears from the stipulation that the Palace Theater was included in the houses in Plainview and carried as a closed house at the time of the stipulation. However, while it was leased for a time, I may state now that it has not been leased for some time past. It is now occupied by a store of some sort, is that right, Mr. Kallis?

Mr. KALLIS. That's correct.

Mr. RICE. One other thing, in the town of San Saba, Texas, the record doesn't show that the Rio Theater was closed during the years 1938 and '39, is that right?

Mr. KIME. You are talking about Lampasas.

3449 Mr. RICE. Lampasas, I said San Saba, but Lampasas Texas. The Rio Theater was closed in '38 and '39. I want to have these marked. These are lists of the officers and directors of R. E. Griffith Theaters, Inc., and Westex Theaters, Inc. as of this time, and the lists of the stockholders of those corporations, with the amount of stock which each now owns.

The COURT. What are the exhibits?

Mr. RICE. Defendants' Exhibit 163 is the list of the officers of each of these corporations; Defendants' Exhibit

164 is the list of the directors of each; Defendants' Exhibit 165 is the list of the stockholders with their holdings of R. E. Griffith Theaters, Inc., and Defendants' Exhibit 166 is the list of the stockholders of Westex Theaters, Inc. with their holdings.

The COURT. They will be admitted.

3450 The COURT. What changes were there in the stockholders and officers of these two corporations since April, 1939?

Mr. RICE. The major change, of course, was the death of R. E. Griffith and the substitution of H. J. Griffith as president of R. E. Griffith Theaters.

The COURT. That is the principal change?

Mr. RICE. Yes, sir, and R. I. Payne became president of Wes-Tex in lieu of R. E. Griffith. The change in stockholders would appear in a comparison with the interrogatories. I might direct the Court's attention to the fact that the principal change in the stockholders is due to the diminished interest of Mr. R. E. Griffith, as held now by the estate, which is less than control, whereas before his death he had a nominal control.

H. R. FALLS, was thereupon recalled, and further testified as follows:

Direct examination (cont'd) by Mr. COCHRAN:

Q. In the season of 1936–37, '37–38 and '38–39, the records show contracts which were entered into by the Griffith Amusement Company and Consolidated Theaters with Universal Film Exchanges. During the discussion in connection with the negotiations for the licensing of pictures by you from Universal during each of those seasons,

3451 was there any discussion by you or R. E. Griffith in your presence as to the terms and conditions on which Universal pictures could be licensed by any of your competing theaters?

A. No, sir.

Q. Was there during those negotiations for those contracts, any discussion as to Universal licensing any of its pictures not licensed to you or the companies represented by you to other competing theaters?

A. No, sir.

Q. During those negotiations was there any request by Universal or the representatives of Universal, either of you or of R. E. Griffith in your presence, that any of the towns which were included in your contracts be excluded from either of those contracts?

Mr. WRIGHT. Same objection.
The COURT. Overruled. Exception allowed.
A. No, sir.

By Mr. COCHRAN:

Q. Mr. Falls, in referring to towns in which the product of various distributors was not licensed to the Griffith Amusement Company or Consolidated Theaters, Incorporated, during the period of 1933–34 up to and including 1938–39, no mention was made of Oklahoma City except the record reflects the Griffith Amusement Company, I believe, during all of that period operated one theater in Oklahoma City and Consolidated Amusement Com-
3452 pany, for at least a part of that time, operated a theater in Oklahoma City. Did either Consolidated Theaters or the Griffith Amusement Company at any time have the first run pictures of any of the major distributors, for use in either of the theaters operated in Oklahoma City?

A. I don't believe so during that period of time. There was a time we opened the Rialto Theater with stage shows and we did play some first runs. However, they were the cheaper program class of pictures, but from 1933 on the Rialto has been a straight picture house but not first run.

Q. In that period when you say you did have some first run pictures, did you have any of the A pictures, first run, of the major distributors for use in either of those theaters?

A. No, sir, we did not.

Q. What run back in 1933–34 would you say you were able to obtain in the Rialto?

3453 Mr. WRIGHT. If the Court please, I think that all appears in the contract, doesn't it?

Mr. COCHRAN. I will withdraw the question. I think it does, except generally I wanted to show that at that time it had approximately certain runs, without going into detail about it, and since that time its position has decreased, in other words, it doesn't obtain as good a run today as it did back at that time. I will ask this question:

Q. In your theaters in Oklahoma City in 1938–'39, were you obtaining as good a position—kill that—were you obtaining pictures of the major distributors on as favorable run as you were in 1933–'34?

Mr. WRIGHT. If the Court please, that calls for a conclusion that can only be drawn from the examination of the contents.

The COURT. Are you talking about the Rialto?

Mr. COCHRAN. The Rialto and the Reno.

Mr. WRIGHT. I might add that Oklahoma City, as far as any charges of monopoly or restraint of trade, is expressly excluded from the Government's claim by the pleadings in the case. There is no charge anywhere.

Mr. COCHRAN. That is very true; they wouldn't want Oklahoma City in there where there is competition, but in the Crescent Case the City of Nashville was a big bone of contention.

3454 Mr. WRIGHT. I beg pardon, Nashville was also excluded in the Crescent Case.

Mr. COCHRAN. At any rate, it is a part of the contract.

The COURT. Just let him state what character of pictures were shown at the Rialto and the other theater.

By Mr. COCHRAN:

Q. In 1933–'34.

A. I can't quote from memory the exact runs we had during those various seasons, but we did have earlier runs in '33, '34 and '35, and those years, than we have today. There were more theaters built; Standard Theaters, operating in Oklahoma City, built several suburban theaters, and each time one was built we dropped back one more run behind Standard.

Q. Also was the State built?

A. And the State was built. That was a first run, however.

By the COURT:

Q. In classifying the theaters in Oklahoma City, where would you place the Rialto?

A. As to run?

Q. Well, the type of theater?

A. Well, the Rialto is an attractive theater, well equipped, good equipment throughout; but it is a subsequent run theater, operating at a low admission, 25 cents, I believe is our admission there. We don't expect first

3455 run pictures, we don't attempt to get them, but we did at one time have second run on major products in the Rialto Theater, and today we are playing sixth, seventh, eighth runs, depending on the product; some of them we may get sixth, and some as late as seventh.

Q. What is the other theater there?

A. Today we own the Rialto and the Reno, the Isis, the Gaiety; those last three named are on Reno Street; and the Rodeo in packing town and the Redskin in Capitol Hill.

By Mr. COCHRAN:

Q. Those are all subsequent run houses?

A. Yes, sir.

Q. You have stated that you don't expect to get first run in those houses. Why?

A. Well, our theaters don't justify it; we don't have the seating capacity to earn the returns on first run pictures; we couldn't afford to pay the terms the exhibitors expect out of first run in this town.

Q. Are those as nice theaters say as the Criterion and the Midwest, and the State and the Tower?

A. The Rialto is a small theater, and I think it would compare with some they have mentioned; and our Redskin Theater on Capitol Hill is as nice as any theater in town.

Q. But they are not as large and not what are considered as deluxe theaters, are they?

3456 A. No, sir, they are not; they are not considered first run, class "A" theaters for a city.

Q. And the product during that period of time was not offered first run?

A. No, it was never offered to us.

Mr. COCHRAN. Take the witness.

Cross-examination by Mr. WRIGHT:

Q. The Standard Theaters Corporation that you referred to, that is a corporation which is affiliated with the distributor Paramount and the distributor Warner, is it not?

A. That is my understanding.

Q. And it has been throughout this period?

A. Yes, sir.

The COURT. Read the question.

(The next to last question was read by the reporter.)

By the COURT:

Q. What do you mean by affiliated; do they have an interest in it?

A. That's what I understand, your Honor. I have no way of actually knowing, except what I have heard throughout the trade. I think it is acknowledged by the distributor and Mr. Cooper that they are partners with a pooling arrangement of some kind.

3457 The COURT. Proceed.

By the COURT:

Q. Now, as you sit there now, Mr. Falls, you don't have a very accurate recollection, do you, as to what the negotiations were with any one of these eight major distributors that you have been talking about in any particular year, do you?

A. Well, I think I have a memory of our negotiations; I couldn't, certainly couldn't quote what was said in the various conversations back in those years.

Q. As a matter of fact, you have had difficulty in remembering now what product in the towns you actually bought in any particular year from any of them, is that right?

A. At times it would be difficult to tell from memory; I would have to refer to the records.

Q. As I understood your testimony yesterday, it was necessary for you to prepare a memorandum there showing what companies you bought in particular seasons, and it was necessary for you to refer to the memorandum in order to testify as to those facts, was it not?

A. To be accurate. I thought it was advisable to refer to it, yes, sir.

Q. You didn't have an independent recollection as you sat there then as to exactly what season you had bought the product of these companies in, is that right?

3458 A. I would have some of them, and some of them I am sure I would miss.

Q. On Columbia, you, I think suggested yesterday that the season you left Columbia out was after 1938–'39. As a matter of fact, it was before the '33–'34 season, wasn't it, or '34–'35?

A. My memory, I thought of it later, I believe it was the '32–'33 season. I haven't referred to the record, which will show what it is.

Q. That is your best guess now?

A. Yes, sir.

Q. These negotiations, as I recall your testimony, were sometimes prolonged and covered quite a period of time?

A. Yes, sir, they did.

Q. And, of course, in your capacity of chief of the booking department there, I suppose you were in more or less constant contact with the distributor representatives throughout the years, is that correct?

A. Well, before the consent decree selling, we ordinarily would complete our negotiations with all of the companies in a period of about three months, and sometimes a little less time, sometimes a little more.

3459 Q. I understand with reference to your negotiations as to the memorandum deal there that you finally reduced to writing, but in the actual performance of the contracts you were in continuous and constant contact, were you not, with the local officials of the distributors?

A. Oh, yes. I saw the branch managers of each of them frequently.

Q. And it was necessary to maintain that contact with the branch managers and bookers in order to actually perform the contracts. Isn't that right?

A. No, I don't think so. Once a contract was made it was not necessary to see the manager to perform under it.

Q. During the time that the contract was in effect, in the course of your booking of pictures, I suppose the problems would arise as to the fixing of play dates and the availability of product and that sort of thing.

A. There were times that would come to my attention through my bookers and it would be necessary that I discuss it with the branch managers.

Q. Yes, in case of an argument or something that could not resolve itself?

A. Yes.

Q. And the general questions which arose in liquidating these contracts, I suppose the distributors were always asking you throughout the years through the local officers to get these Saturday and Sunday play dates, were they not?

3460 A. They wanted all they could get, each of them.

Q. In obtaining those play dates, that was a matter that went on throughout the year, wasn't it?

A. Yes, sir.

Q. And also in playing off so-called delinquencies, I suppose that was a matter of constant negotiation, was it not?

A. No, we didn't have a lot of trouble with delinquencies. We managed to stay up pretty well in playing off our contracts.

Q. I am not referring to whether you had a lot or a few, but the contract itself was not automatic in seeing that particular pictures were played at particular times?

A. If we became delinquent they certainly called it to our attention.

Q. And sometimes toward the end of the year before you were renewing your contract for the next season, I suppose you might have a substantial block of unplayed product that would be a source of discussion with the local officials?

A. We seldom had a substantial amount in an individual town. Adding all the towns together it would be a substantial amount of product.

Q. Of the circuit?

A. Yes, all the runs involved would amount to a

3461 substantial amount.

Q. Sometimes, after you negotiated the next season's deal, you would wash out unplayed product by some sort of an adjustment?

A. Yes, that has been done. It was part of our trading. If we had some pictures unplayed, that we considered of little box office value, we would attempt to get them cancelled in making a new deal.

Q. So your making of the new deal was always, at least to some extent, associated or connected with the liquidation of the current one, the old one?

A. If we had some we wanted washed out. That didn't always happen.

Q. I understood you to say that in the course of negotiations on these contracts, you didn't have any discussion with any distributor representatives about making films available to opposition theaters. Is that right?

A. That is right.

Q. Of course, you did have such discussions in the course of performance of the contracts, did you not?

A. Well, I couldn't recall any, no. We were given our availability notice of the product as it became available to us, and it was up to us to date the product they would set the dates on.

3462 Q. There were occasions, weren't there where you were asked to release certain unplayed product so they could sell it to some opposition theater or theaters?

A. No, not in that form; not requested in that form. We had been requested to either date certain product that was available or to take our elimination privilege which we would do. They had never told us, to my knowledge, what they intended to do with that product. I certainly was not interested.

Q. Would you say now that on no occasion did they tell you what the purpose of asking for the release of any particular dates was?

A. No, I won't say they never did tell us they might sell it to some competitor, but there might be——

Q. There might be different reasons for releasing any dates. You might be asked to release a date because the print was not available. Is that right?

A. That is right, yes.

Q. I suppose on other occasions there might be other reasons.

A. They might have had any number of reasons. I wouldn't know the reasons, of course.

Q. There was no hard and fast rule against discussing whatever the reasons were, was there?

A. Not that I know of.

3463 Q. On this question of the terms on which the product of these companies was made available to competitors, I suppose you as manager of your business, know and are generally familiar to the extent of what opposition theaters in your town were playing the product of the company you were playing. Is that right?

A. Playing the product?

Q. Yes.

A. You refer to "terms." The question is confusing. I knew nothing about the terms.

Q. Maybe you had better read the question.

(Hereupon the previous question is read.)

A. There are two questions in there referring to different things.

Q. Strike the question out.

A. Take it separately and I think I can answer it.

Q. Strike the question. Going back to the other matter, it was part of your job, was it not, for you to be generally familiar with what the opposition was playing in the towns where you were booking and buying films. Is that right?

A. Yes. We have a system of knowing what pictures the competitor is playing after it has played his theater.

Q. Of course, from previous seasons you have a pretty good idea what they have or haven't got?

A. We know it by today, daily.

3464 By the COURT:

Q. Do I understand that you know what they were playing or have played, or that you know what they will play?

A. I will explain it this way: We have a form that is filled out by our theater manager showing what the competitive theater is playing each week. It shows it by days. That form is sent in weekly. It shows not only what the competitor's theater may be playing but on that list is information of any other competition we may have had in the town against us, such as a carnival or circus having moved in or a rodeo. Also, he will list the weather conditions, if they have storms, or anything that might give us information as to why a picture did do business or did not do business. It is information compiled for all of who have anything to do with the buying and booking of pictures and the operation of theaters.

Q. Well, do you know, say a week or ten days ahead what any other theater is going to play?

A. No, sir, I don't know. Our theater manager would know a few days in advance because he would see the other man's advertising put out in the town, but he doesn't report that to us. We have no desire to know.

Q. The only report that is made to you then by your local manager is in connection with the showing that he had made in his own theater?

3465 A. No, he makes a report of the pictures his competitor showed the previous week. Next Monday

and Tuesday I will get reports in from our towns in which we have a competitor. That is a week behind his play dates, showing what pictures the competitor exhibited in his own theater during this current week.

Q. Well, the report of that information, is that in order to give you an idea of your own production for that week, whether it was good or bad?

A. We like to make the comparison of what picture was playing against what we were playing; how good the picture was in the other house, and how much it may have affected our gross. We also know from that report any give-aways a man may have had; especially the events that promote business. We try to analyze just what is taking place in the show business at that town.

Mr. COCHRAN. May I ask one question?

Mr. WRIGHT. I would rather proceed.

Mr. COCHRAN. Very well.

By Mr. WRIGHT:

Q. When it came to terms, I think you testified that you did not discuss the terms on which opposition was buying product. Is that right?

A. I testified that way, yes, sir.

Q. But as to the product that you were using, you of course, I take it, discussed the terms on which that
3466 product would be made available to the opposition, if at all?

A. No, sir.

Q. Never discussed that?

A. No, sir.

Q. Calling your attention specially to the admission price terms, did you have any discussion with any of the distributors as to the admission prices that competitors of yours were charging for product which had been played in that theater?

A. I have called to the distributor's attention a ten cent or less admission price some of our competitors were charging. I reported it to them because they had told us we could not show at those admission prices.

Q. You had had discussion with them before with respect to admission prices you were charging and the admission prices being charged by your competitors on their films. Is that right?

A. I wouldn't say there was any discussion about it. I merely reported it and called it to their attention. They had prohibited us from doing it and here was a man doing it on their product.

Q. I suppose they would give you some answer or explanation after you reported it, would they not?

A. They did. They said they would check into it.

3467 Q. And as far as the terms on which pictures you played were made available to your opposition theaters is concerned, those terms, in part, determine the value of those pictures to your theaters, do they not?

A. The terms under which they were sold to competitors?

Q. Yes.

A. I know nothing about what they sold to competitors; the terms they got from them.

3468 Q. That wasn't the question, whether or not you know anything about it. I asked you if it wasn't a fact that the terms with respect to the admission price and otherwise on which the distributors sold pictures and made the same product available to competitors, did have an effect on the value of pictures in your houses?

A. No, I don't think so.

Q. It had no effect at all?

A. I don't understand the question, I don't know just what you are leading up to. Could you make it a little more understandable?

Q. Maybe this will make it more understandable. Was it more to you or less to have the exclusive right of a picture in a town, or to have it run where the picture was subsequently being exhibited in an opposition house?

A. I think we would gross more money first run if there wasn't a second run playing of the picture.

Q. So that, of course, the amount of money you could gross determines in the last analysis what rental you can pay for the films, doesn't it?

A. Yes, sir.

Q. So that the amount of rental you pay would depend, at least in part, on whether or not the films you used first run were going to be made available for a subsequent run in the same town, is that right?

3469 A. The rentals we try to arrive at is based on our gross business and our expense of operating the theater, regardless of what theaters there are in the town. Other theaters might have affected our gross, but we still analyzed it from the standpoint of our gross business and our expense of operation.

Q. You don't have any doubt, do you, that the gross would be affected by what other opposition theaters in the town were permitted to do with the pictures that you played?

A. I testified that if there was a run following us, I think it would affect our first run gross.

By the COURT:

Q. Was there any discussion on that point now, between you and the distributor, at the time you made your contract?

A. No, sir, there wasn't.

Q. As to whether or not any of these pictures which you had first run would be used by your competitors for second or subsequent run?

A. No, sir, there wasn't, no discussion about that at the time we made our deals at all.

Q. Did you raise the question at any time when you were making your contract as to whether or not they would sell the second run or subsequent run to your competitor?

A. No, sir.

3470 Q. Did they mention it?

A. No, sir.

Q. Did you take that into consideration in making your contract?

A. No sir, we didn't.

By Mr. WRIGHT:

Q. Well, what were these discussions you had with the distributor?

A. They were in regard to the product that they had to offer us and the amount of money or percentage terms under which they wanted for the product and the play time under which it was to be exhibited, the advertising and exploitation that might be put behind certain pictures, that the distributor would put behind those nationally and locally. They would urge us, of course, to highly exploit and advertise certain attractions to get the most money out of them. I would say the most important and the main discussions at all times were the rental terms and the play time; that took up the major portion of our time.

Q. When you discussed rental terms, as I understand it, these people would have one idea as to the terms that they ought to get, and you would have another somewhat lower idea when you started out, is that right?

A. That's right.

Q. And in urging you to accept the terms that they proposed, what reasons would they give for paying

3471 those prices?

A. They painted pretty pictures about how big their attractions were, and how much they were going to gross, how much money they had invested in them. It was

based on opinions of theirs, of course. The picture hadn't been exhibited anywhere, usually; it had no performance experience on it; it was just a salesman's dream or idea of what we should pay.

Q. And what reasons would you advance for paying the lower price?

A. Every legitimate reason I could think of to combat their sales talks.

Q. When you got all through, the real haggle was always over price, is that the fact?

A. That was mostly it, the price and the play time.

Q. On this question of making films available to competitors that you didn't actually use, that, I take it, your testimony was that you had no discussion in that regard at the time you had these negotiations, is that right?

A. The pictures that we didn't contract for, you mean?

Q. Yes; the disposition, not of pictures that you didn't contract for, but pictures covered by your contract that you didn't use?

A. Those covered by the contract that we didn't use, the eliminations that were made, we didn't discuss what
3472 they were going to do with them, the pictures that may have been cancelled by us later in the season, they agreed to cancel sometimes outright. More often we had to pay 50 per cent of the rental to get them cancelled. There was no discussion with the distributor as to what disposition would be made of that product.

Q. Have you ever had any discussion with a distributor as to whether you were going to make unplayed product available for other exhibitors?

A. Nothing only to make our eliminations, as provided by the contract.

Q. You did talk about how and when the eliminations should be made, did you not, with the representatives of the distributors?

A. I think that was usually covered in the contract. We had to make them within a certain period of time.

Q. Well, there were a number of situations where you didn't make eliminations for quite a substantial period of time, were there not?

A. Those things happen; yes sir, they do.

Q. You had some information, had you not, as to complaints that had been made to the Department of Justice about the inability of competing exhibitors to negotiate for and license pictures that you didn't use in your theaters, is that right?

3473 Mr. COCHRAN. Do you mean by that eliminations or pictures which were not licensed?

Mr. WRIGHT. Eliminations.

A. No, I have never heard of any complaints of that nature.

Q. You never heard of any such a thing?

A. Not pictures that were to be eliminated and hadn't been.

Q. But you have discussed, however, with the distributors the question of the time or the promptness with which pictures that you were not going to use would be eliminated by you?

A. The only discussions I have had, if they really wanted a picture eliminated that we had overlooked giving them elimination notice on, they would call us by telephone, and call our attention to it, and say they wanted the elimination on the picture, and then we would give them to them.

Q. You don't recall any instance where they attempted to get you to eliminate repeatedly, and you refused to eliminate?

A. No, I don't recall that. If it happened, I didn't know anything about it.

Q. You didn't know anything about the time that you hadn't eliminated some RKO pictures for the '34-'35

3474 season as late as the succeeding season?

A. It might have happened. I don't remember it. That was a year that we didn't buy RKO, incidentally, for all our towns.

Q. I call your attention to 1937; do you recall that in the spring of 1937, RKO was still trying to get you to eliminate pictures that were released during the '35-'36 season that you hadn't played?

A. No, sir, I don't recall that.

Q. Well, I show you this exhibit, previously identified here as RKO-17, A to M, and ask you if that will refresh your recollection?

A. No, it doesn't refresh my memory, but the letter is addressed to me, and no doubt came to my attention at that time.

Q. You do recall receiving the letter?

A. No, I don't recall receiving the letter.

Q. But you don't have any doubt but what you did receive it, do you?

A. I know that Mr. Dowling was the office manager for RKO here, and the letter is addressed to me. It wouldn't necessarily reach me because I was out of town from time to time, and a letter of this kind would fall to one of the bookers.

Q. I show you a letter dated April 23rd, 1937, and ask you if you remember receiving that? That is RKO Exhibit 18.

3475 A. No, I don't recall it. I don't say that I didn't receive it, but I just don't remember it. I got a world of letters, and this is back in 1937.

Q. I show you this one, dated April 30th, 1937, marked as Exhibit RKO-19.

The COURT. Do I understand the question to read that this correspondence in 1937 related to pictures covered in the contract for '35-'36 which had not been played?

Mr. WRIGHT. That's correct, your Honor.

The COURT. What do you say to that, Mr. Falls?

A. It is a little difficult to even try to explain. I would say it was a very bad case of negligence on somebody in my department of not giving notice of the elimination of those pictures. If it dragged along that long, it is something that I don't recall happening. It must have, according to the correspondence. I know that from time to time the boys, I am referring to our bookers, have released pictures, eliminated them by telephone conversation, and failed to follow up the elimination with the form of writing.

Q. If you had pictures covered by a contract for '35-'36, and you didn't play them that year, what would happen to those pictures; would they be automatically released, or would you still hold them there?

A. There is a clause in the contract, I believe, your Honor, that would automatically release them. There is

3476 certainly a clause in there permitting the distributor to assign dates to us, if we don't date them, and that definitely does make them become available for the next run, if there is one sold. That availability clause is all in the world they need; these letters were unnecessary, because they could have exercised that clause.

Q. What isn't clear to me right now is this: How in 1937 a picture that should have been played in 1935 and '36 could be a subject of controversy between you and the distributor?

A. Well, frankly, I don't think it should be. They certainly had a way of getting the releases of those pictures, if we hadn't released them according to their letters.

The COURT. What is the substance of those letters; what do they say about it?

Mr. WRIGHT. I will offer them in evidence; then I will read them, if I may.

The COURT. Very well.

Mr. WRIGHT. RKO-17, dated April 13th, 1937.

The COURT. They haven't been introduced?

Mr. WRIGHT. They had been previously identified. I don't believe they had been offered in evidence before, your Honor. They may have been.

Mr. COCHRAN. My recollection is that Mr. Kallis identified them in connection with some other inter-office
3477 communications, and then when we said we had no objection to these, he inquired if Mr. Falls would be on the stand, and said he would wait and introduce them in connection with Mr. Falls' testimony. So they should be offered at this time.

Mr. WRIGHT. They are offered, and as I take it, they are received.

Mr. COCHRAN. Let's get the numbers.

Mr. WRIGHT. RKO-17, A to M.

Mr. COCHRAN. State what they are.

Mr. WRIGHT. RKO-17, A to M, inclusive, that is a letter dated April 13th, 1937, addressed to Mr. H. R. Falls, Griffith Amusement Company.

The COURT. RKO what?

Mr. WRIGHT. 17, A to M, inclusive. The letter is dated April 13th, 1937, addressed to Mr. H. R. Falls, Griffith Amusement Company, 11½ North Lee, Oklahoma City, Oklahoma. "Dear Mr. Falls: I am attaching hereto lists of first and second run pictures which remain unplayed on your '35-'36 commitments. Will thank you kindly to check these over and advise play dates for the pictures you wish to play, and rejections on the subjects which you definitely do not wish to use, as we desire to clear our records on the '35-'36 product. Your early attention will be appreciated.
Best wishes. Yours very truly, RKO Radio Pictures,
3478 Inc., M. J. Dowling, Office Manager."

17-B is a list of pictures in question, and lists them, first run, three films first run for the town of Ada, eleven second run for Ada, four for Altus, three first run for Ardmore, eight second run for Ardmore, with a notation "four to play"; five first run for Bartlesville; ten second run for Bartlesville, with a notation, "six to play"; two for Blackwell; five first run for Borger; twelve second run for Borger, with the notation, "five to play"; one for first run Chickasha; twelve for second run Chickasha, with a notation, "six to play"; two for Claremore, with the notation, "six to play"; two for Clinton; one for Cushing; four for Duncan; five for Elk City, with the notation "five to play"; three for Enid, first run; four for Fairfax, with the notation, "one to play"; seven for Guthrie; eight for Hugo, with the notation, "six to play"; five for Miami;

four in Norman, first run; one in Okmulgee, first run; eleven for Okmulgee, second run, with the notation, "eleven to play"; six for Pampa, first run; ten for Pampa, second run, with the notation, "ten to play"; three for Sapulpa; three for Sayre; three for Seminole, first run; ten for Seminole, second run, with the notation, "seven to play"; two for Shawnee, first run; two for Shawnee, second run, with the notation, "seven to play"; and the further notation, "All remaining pictures rejected"; Stillwater,
3479 two; Wellington, Texas, four pictures listed, with the notation "two to play". Those notations I have read are on 17-B through F.

The COURT. What is that exhibit?

Mr. WRIGHT. This is all a part of RKO-17. The letter is A, and B to F is attached, containing the list of pictures that I have just referred to.

The COURT. 17, what letters?

Mr. WRIGHT. 17-B through F. 17-G through M is a pencil notation containing similar picture lists. They are all attached to the letter of April 13th.

RKO-18 is a letter dated April 23rd, 1937, addressed to Mr. Falls, from Mr. Dowling, the RKO office manager saying, "Dear Falls: We wrote you under date of April 13th, regarding product which remains unplayed on your '35-'36 commitments. We will thank you kindly to advise us definitely whether or not this product will be played or rejected, so that we will be in a position to clear our records on the '35-'36 commitments. Will appreciate hearing from you by an early mail. Yours very truly."

RKO Exhibit 19, is a letter dated April 30th, 1937, from Mr. Dowling to Mr. Falls, saying: "We again wish to call your attention to the list of unplayed '35-'36 product which we submitted to you under date of April
3480 13th. As previously advised, we would like to clear our records on last year's product, and will appreciate receiving disposition of these pictures."

By the COURT:

Q. What explanation do you have, Mr. Falls, of the fact that these pictures for '35-'36 were unplayed in '37, and no release had been made at that time?

A. In my opinion, the distributor had been advised verbally.

Mr. WRIGHT. Now, if the Court please, that is entirely incompetent to give an opinion.

The COURT. I am asking him for an explanation; I just want his explanation. He can make it in any way he wants to. I don't know anything about it. It is rather a strange situation to me.

A. In my opinion, the distributor had been advised by one or more of our bookers sometime or other when they were booking film, either there at our offices or over at the exchange office, that these pictures, certain of them, would not be used. That was customary when they would be booking, the exchange booker will say, "What about this picture? Are you going to use it?" And our booker would either tell him, "Yes, but I can't do it now," or tell him, "No, we won't use it."

Q. Did you answer that letter of April 30th in which he called your attention to all these matters?

3481 A. I don't know, your Honor. We may have it in our files.

The COURT. Is there a letter in the files in answer to this?

Mr. COCHRAN. Yes, sir, there is a letter.

The COURT. Do you have a letter in answer to it?

Mr. WRIGHT. If there is, I don't know where it is.

Mr. COCHRAN. Get your RKO-20.

A. The dates of these letters indicate to me that the distributor had no urgent need for those pictures or he would have called them to our attention long before.

By the COURT:

Q. What is the provision in the contract? Take your 1935-'36 contract, what does it provide for the playing and the releasing of pictures under your commitments for that season?

A. I don't know that it provides—it gives a definite time under which they are to be released. I do know the contract does cover the availability clause where they have the right to assign us dates; any time we become delinquent, they can assign us play dates; then if we don't accept it, the picture is automatically released from the contract. That is all they had to do to get those pictures.

The COURT. Is that contract for '35-'36 in evidence?

3482 Mr. COCHRAN. Let's have that form. Yes, sir, I will say they are in evidence, but the memo contract is there, then the standard form of exhibition contract is attached, and does cover availability dates and the release of pictures, and so forth, and automatic elimination.

3483 The COURT. What is disturbing me is—I will be frank with you gentlemen—here is a contract for a year. Now these pictures, we will say, were not played within that year. He went ahead then for the 1936-37 season, the year following. He comes back with these letters and asks about releasing these pictures for the 1935-36 season.

Mr. COCHRAN. Your Honor, I think as the witness has at-

tempted to explain, this contract has sufficient provisions for the distributor to control this situation at any time.

The COURT. That is the point I am getting at. Does the contract give the distributor authority to automatically release these pictures if they were not played within the year?

Mr. WRIGHT. I would say we disagree with Judge Cochran in his interpretation of that. That is a matter of argument. All that they are trying to show here is what actually happened.

Mr. COCHRAN. There is another thing, your Honor. You must also bear in mind, so far as second runs are concerned, all of the second run pictures cannot be played in the year in which the pictures were released, first run. They just don't get around to them. It takes a period of time but it will not take to 1937–38.

3484 The COURT. The question disturbing me is this. Here is a contract covering, we will say, 50 pictures for the year 1935–36. They go ahead and include that year, and here are say thirty of these pictures that are not played. Now if they are not played does the distributor have the right under his contract to cancel those pictures or to use them for some other purpose without regard to the wishes of the distributor? The distributor may have just distributed them and had no use for the pictures and may have overlooked them himself, and in checking up his record he found these pictures were not played in that year. There ought to be some reason for it.

By the COURT:

Q. Do you remember the incident itself, independently of these letters?

By the WITNESS:

A. No, I don't believe I do, your Honor. You mentioned a reason why they were not played. In glancing over that list I can give you a great many of them which were not played because they were not desirable pictures. We had tested them in some towns and found they had no box office value. I am sure you will find that is why we passed them up. You will find in that list of towns competitive and non-competitive towns.

The COURT. Where is your answer?

Mr. COCHRAN. Where is that RKO letter?

Mr. WRIGHT. You have a copy of it.

3485 Mr. COCHRAN. Counsel for the plaintiff say they have this document which they have heretofore identified and they will have it brought up, but for our present discussion we will use my copy of RKO–20, the letter

signed "Griffith Amusement Company" by "Lester Gibbs" under date of May 4, 1937, to "Mr. M. J. Dowling, RKO-Radio Pictures, Inc., Oklahoma City. Re: 1935–1936 Product Cancelled. Dear Mr. Dowling: You may mark your records to show that the following product on your 1935–1936 schedule will not be used in the following situations:" And then follows the pictures. I think they are substantially the same as the ones mentioned in that correspondence and signed "Griffith Amusement Company" by Lester Gibbs, Booker.

The COURT. Has that been introduced?

Mr. WRIGHT. Yes. We will offer this RKO–20, A to F.

The COURT. Who signed that letter?

Mr. COCHRAN. Lester Gibbs, Booker.

The COURT. Where is Lester Gibbs?

By the WITNESS:

A. He is a booker in my department.

By the COURT:

Q. Now with that letter, do you recall the incident? Have you any recollection of that transaction?

A. No, I don't. It just doesn't come to my mem-
3486 ory. I am sure it happened. The correspondence bears it out. It is possible it didn't come to my attention. At times I am away two or three weeks on trips, sometimes longer than that. On trips back to New York in buying I have been away as much as ten weeks at one time, so the letter could have come in and been addressed to me and would have been handled by someone in the department, and as indicated by this correspondence was eventually handled by this Lester Gibbs.

The COURT. I would like for you to produce Mr. Gibbs. I would like to have an explanation of that, how it is that a list of pictures could remain for two years or at least a year after the expiration of the contract and still be held by the exhibitor.

By the WITNESS:

A. The time would have to be determined by the release dates on those various pictures; the actual release dates.

The COURT. I would like also to see that contract for 1935–36 covering B pictures, as to the provision in that contract for the release.

By the COURT:

Q. That would be an advantage to you as an exhibitor in holding a picture dated for the 1935–36 season over until 1937.

A. There would not be any only a picture that had not been played. If it had been a good picture we definitely would have been anxious to play it early. One that
3487 had run that long certainly would have very little value in our opinion. We certainly could not expect to benefit any from that kind of a picture.

The COURT. You may proceed.

Mr. WRIGHT. Your Honor asked for the agreement. That is the franchise that is already in evidence.

Mr. COCHRAN. Let the Court have the standard form of contract too.

Mr. WRIGHT. I think it appears from the contract that such agreements are to be made on such standard forms as the company shall require. I don't know whether it appears actual standard forms were subsequently executed or not.

Mr. KIME. Let's understand the contract before we have the form.

Mr. COCHRAN. The Court should have it to consider in connection with this memo.

Mr. KIME. If it is available.

The COURT. Now some of these pictures were carried forward from 1934 to '35. This is dated March 18, 1935. "You are to have the privilege of paying the '34-35 product in these situations on the following terms."

Mr. COCHRAN. They have given you the wrong contract.

Mr. WRIGHT. That is right. Here is the correct
3488 one. That was our error. This is the so-called clean up of the 1934-35 season. That caption, the cover of it is inaccurate.

The COURT. Well, this contract then would cover three years?

Mr. WRIGHT. Yes. That is the three year deal for '35-36, '36-37, and '37-38 seasons.

The COURT. Then they would have the right under this contract to play 1935-36, 1936-37, and 1937-38.

Mr. COCHRAN. That is not correct.

Mr. WRIGHT. I think your Honor perhaps is misreading it. The season's coverage refers to features released during those three seasons. Those are the subject matter of the contract.

By the COURT:

Q. Do you know, Mr. Witness, whether or not the pictures set forth in this letter of April, 1937, were made available for exhibition during the 1935–36 season?

A. Made available to us?

Q. Yes.

A. Oh, they were made available I am sure. May I ask something—all of them for the second runs would not have been available necessarily in 1935-36. Some of them may have been released very late in that season, and it would necessitate us playing them sometime in the 1936-37
3489 season because we would not play our second run immediately following the first run.

Q. You may examine this exhibit and state how many of those are second run.

A. Well, they are listed on this tabulation here, they are headed "First Run" and then by titles and then "Second Run."

Mr. WRIGHT. I read that into the record.

The COURT. That is in the record. That is right.

Mr. COCHRAN. I called your attention to this franchise agreement which reads:

"It is agreed all the terms and conditions of the distributor's standard license agreement, and copies attached thereto and all modifications made from time to time showing the terms of this agreement shall apply to this agreement as if such and conditions were included herein except when certain terms and conditions are inconsistent therewith, in which event the terms and provisions of this agreement shall prevail."

I think the Court should have before him the standard form of contract. It is considered in by stipulation and I think the Court should have that.

Mr. WRIGHT. We have no objection. If you have a copy of it why don't you give it to him.

3490 Mr. KIME. I don't think it is in evidence.

The COURT. If it is in evidence the Court will have an opportunity to examine it, but the situation here is so unusual, such an exception to the ordinary run, I just wanted to know why it occurred.

By the WITNESS:

A. It appears from this that there are more second runs on here than first runs.

Mr. COCHRAN. That 1935–36 standard form of contract is RKO 6720.

The COURT. That is in evidence here.

Mr. COCHRAN. It is supposed to be in evidence.

The COURT. What is that provision?

Mr. KIME. No. 20 is in evidence, but whether or not that is applicable to this contract, I don't know.

The COURT. What is the provision of that contract with reference to release?

Mr. COCHRAN. The contract has several clauses. One provides (reading):

"In the event that the Exhibitor shall (a) fail or refuse to exhibit or pay the license fee in respect of any picture, (b) fail or refuse to select or designate a date for the exhibition thereof as in Article Seventh hereof provided, (c) refuse to permit the Distributor or its authorized representative access to the theater and its box office for the
3491 purpose specified in Article Third hereof, or (d) otherwise default in its obligations hereunder, the Distributor, at its election, may consider any such action or failure to act (hereinafter referred to as a default) as a material breach hereof by the Exhibitor and may, at its election, terminate this agreement with respect to pictures not theretofore delivered or withhold the delivery of additional pictures until such default shall be remedied."

3492 The COURT. I think I interrupted you, Judge Cochran, in the reading.

Mr. COCHRAN. I was reading from Clause 21st, "Cancellation in event of default," and the substance of it is that on default in any particular, which would include the matter of booking, the distributor does have the privilege of cancelling the contract.

And then in Paragraph 7th it provides,

"Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the distributor out of which the exhibitor is served, and provided the exhibitor is not in default hereunder, the distributor shall mail to the exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the exhibitor at least 15 days before the available date therein specified.

3493 2. Within 14 days after the mailing of such notice, the exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty days thereafter and give to the distributor written notice of the date or dates so selected.

3. Upon the failure of the exhibitor to so select such

date or dates, the distributor shall designate such date or dates by mailing written notice thereof to the exhibitor."

Then on second run exhibition, Paragraph 5th, I believe it is, Section B, it provides:

"If the exhibitor is granted a first run of the said motion pictures, the exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph E of this clause within the period beginning with the date scheduled and announced by the distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the distributor and out of which the exhibitor is served and ending 120 days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than 90 days after its scheduled and announced general release date, then the period of clearance of such motion pic-
3494 ture shall be reduced so as to expire 120 days after said scheduled date of its general release. If the exhibitor is granted a first run of the said motion pictures and the exhibitor fails to exhibit any feature motion picture within said period of 120 days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the distributor, with the right to the exhibitor to exhibit such feature motion picture as hereinafter in Paragraph F of this clause provided.

"If the exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph E of this clause within the said period of 120 days specified in Paragraph B of this clause, the exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said 120 days period and ending 14 days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the exhibitor is granted a second run of the said motion pictures and the exhibitor fails to exhibit any feature motion picture within said
3495 14 days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the distributor with the right to the exhibitor to exhibit such feature motion picture as hereinafter in Paragraph F of this clause provided.

"If the exhibitor is granted a run subsequent to a second run of the said motion pictures and any other exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph E of this clause within the said period of 14 days specified in Paragraph C of this clause the exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said 14 day period and ending seven days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the exhibitor is granted a run subsequent to a second run of the said motion pictures and the exhibitor fails to exhibit any feature motion picture within said seven day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the distributor."

3496 The COURT. I think that covers the features I have in mind. That is in evidence.

Mr. COCHRAN. Yes, sir, your Honor, this is in evidence. I think you will find that the standard form of contract covers everything that the Court has in mind.

The COURT. You may proceed.

By Mr. WRIGHT:

Q. Mr. Falls, in negotiating these second run deals, or negotiating on these deals you have referred to with the major distributors, you did, of course, have discussions as to what, if any, towns you were going to play second run in, is that right?

A. We had discussions, if we had a second run operation in a town we discussed buying of second run at the same time we discussed buying the first run.

Q. Of course, with some distributors, even though you had a second run operation, you wouldn't buy a second run from all distributors, is that right?

A. Yes, there were certain towns where the distributors' product wasn't available for our second run.

Q. Whether it was available or not, there might be, I suppose, situations in which for your second run operation you wouldn't want the product of all eight, you might only use that of five or six, is that right?

A. I don't recall such a situation. Of course, we didn't buy all of their product second run; we bought a shorter commitment second run that we bought first run.

3497 Q. The question of whether there was to be any second run commitment at all in the towns that were covered is one of the things you discussed, wasn't it?

A. Naturally, we discussed second run, if we were buying and playing second run in a given situation. If we had no second run operation, the second run wasn't discussed.

Q. Regardless of whether or not you had a second run operation in any particular town, you would have at some time sat down and discussed and determined whether or not in each town covered by the agreement there was going to be only one run or two runs sold to you, is that right?

A. No, we didn't have to discuss it. They had their records showing what runs we had bought the previous season, and they would ask us if it was the same runs; we would have to compare our list of towns and runs with what we anticipated buying for the coming season against the preceding season. If there were some additions to be added, either first or second run, they were discussed; if there were some runs to be dropped, they, naturally, had to be discussed. If it was the same runs as the previous contract called for, it wasn't necessary to have any discussion.

Q. Now, as to those situations where you did have a discussion as to whether or not you were going to permit your companies to play second run, there would, of course, I suppose, be a discussion of the extent of the commit-
3498 ment, is that right?

A. How many pictures we would play and the terms, yes, sir.

Q. And in those discussions, was anything said with reference to what disposition, if any, would be made of the product for second run in those towns in the event that you didn't buy the second run?

A. No, sir.

Q. It was never mentioned?

A. No, sir.

Q. The companies, I suppose, were, of course, anxious to pick up additional revenue from you for the additional run wherever they could?

A. Yes, they would like to sell as many runs as they could, I presume; they wanted the most money they could get; if it took runs to get it, they would try that.

Q. Of course, in order to induce you to license a particular additional run, it was never suggested if you didn't license it, the run might be sold to the opposition theater?

A. No, that wasn't suggested to us.

Q. What was the name of this company that you say refused you a second run in Sapulpa?

A. Fox and Paramount, Twentieth Century Fox and Paramount.

3499 Q. Fox was the one you testified to yesterday? When was that?

A. I think they were both mentioned, but if they weren't, both of them had refused to sell second run.

Q. That was in Sapulpa, is that right?

A. Yes, sir.

3500 Q. And when was that?

A. I don't recall what season. We may have requested it more than one season.

Q. Do you have any independent recollection at all of the particular negotiations or conversations?

A. Nothing only when we put in our second run theater I advised numerous distributors that this second run operation would begin in the near future, and we would be in the market for second run product.

Q. Whom did you have the conversation with, with Fox?

A. I don't remember. It could have been Mr. Cooper. It might have been the branch manager at that time, some representative of Twentieth Century Fox.

Q. You don't have any idea?

A. No, I don't have any idea who it was.

Q. Do you remember what was said?

A. I don't remember the exact words but they told me they would not sell me second run, and they didn't.

The COURT. We will recess at this time until 2 o'clock.

(Hereupon court adjourned until 2 o'clock p. m. this day.)

3501 PROCEEDINGS

September 27th, 1945, 2:00 o'clock p. m.

Mr. WRIGHT. We have no further cross examination.

The COURT. Anything further?

H. R. FALLS, a witness on behalf of the defendants, having been previously duly sworn, was recalled and was examined and testified as follows:

Re-direct examination by Mr. COCHRAN:

Q. Some questions were asked you about the information which you had as to the product which competitive theaters were playing in your towns, and my recollection of your testimony was that on occasion you might be advised two or three days in advance of the playing of a picture that it was advertised for playing, and that was when there was an advertisement of the picture and the notice was received from the advertisement. Did you so testify?

A. No, sir, I don't believe I said that. I said our local manager would know in advance a few days because he would see the advertising in the town.

Q. Did you have any way of knowing, or did your manager have any way of knowing what pictures were going to be played before the information was published by advertisement?

3502 A. No, except the advertisements which were posted on billboards, or in heralds, and so forth, which might be done in advance of the showing.

Mr. COCHRAN. That's all.

Mr. WRIGHT. That's all.

(Witness excused.)

3503 H. J. GRIFFITH, was hereupon called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. GRIFFING:

Q. State your name.
A. H. J. Griffith.
Q. What is your age?
A. 45.
Q. Where were you born?
A. Hallettsville, Texas.
Q. Are you a brother of L. C. Griffith and R. E. Griffith?
A. Yes, sir.
Q. When did you first start in the theater business?
A. 1919.
Q. Where?
A. Yale, Oklahoma.
Q. With whom were you associated in this theater?
A. My brother, R. E. Griffith.
Q. How long did you stay in Yale, Oklahoma?
A. Eight months.
Q. Where next did you go in the theater business?
A. Mart, Texas.
Q. How long did you stay in the theater business there?
A. Four years.

3504 Q. Were you operating theaters while in Mart, Texas?

A. Yes, sir.
Q. Who owned the theaters?
A. My two brothers and myself.
Q. How old were you at that time?
A. Twenty.
Q. What was your next position in the theater business after Mart, Texas?

A. I went to work for a film company selling films.
Q. Where?
A. In Oklahoma, out of Dallas, Texas.
Q. How long were you so employed?
A. About a year.
Q. Then what was your next venture in the theater business?
A. I worked as manager of the Rialto Theater in Oklahoma City for my two brothers.
3505 Q. Did you work for your two brothers at that time?
A. Yes, sir.
Q. They were the owners of the Rialto Theater?
A. They were.
Q. What was your next position in the theater business?
A. I went to work in the office as booker.
Q. How long did you manage the Rialto Theater?
A. Eight or nine months, about a year, I think.
Q. Then you went to work in the office?
A. As a booker.
Q. By whom were you employed then?
A. My brothers.
Q. Were you so employed when the Griffith Amusement Company was organized?
A. Yes, sir.
Q. You say you were a booker for about a month?
A. About two months, I would say.
Q. Then what was your next position?
A. Well, it developed that they needed someone to handle equipment in remodeling theaters, installation of equipment, and so forth, and I, apparently, knew more about it than anyone else, so I took that job.
Q. How long were you employed by the Griffith Amusement Company?
3506 A. Since the organization of the company until April 1st, 1939.
Q. Were you a stockholder in Griffith Amusement Company?
A. Yes, sir.
Q. What other position did you hold with the Griffith Amusement Company?
A. Why, I don't——
Q. (Interrupting.) Well, were you a director?
A. Yes, sir.
Q. And an officer?
A. Secretary.
Q. After you terminated your employment with Griffith Amusement Company, what did you then do?

A. I went to Kansas City and bought 50 per cent of the stock of Glenn W. Dickinson Theaters, Inc.

Q. What was the home office of that concern?

A. Kansas City.

Q. Kansas City?

A. Yes, sir.

Q. Did you move to Kansas City?

A. Yes, sir.

Q. And commenced operations?

A. Yes, sir.

Q. Did those theaters, Glenn W. Dickinson, at the time you acquired them and after you acquired your interest, were they owned in part by any of the other defend-

3507 ants in this case?

A. No, sir.

Q. Are you still operating theaters in Kansas City?

A. Yes, sir.

Q. Does Glenn W. Dickinson still own an interest in them?

A. No; a year later I purchased the other 50 per cent interest.

Q. Are you now an officer or director of Griffith Amusement Company?

A. No. I might explain that when I say I purchased, I mean that I purchased it with——

Q. (Interrupting.) Well, Glenn W. Dickinson is no longer connected with it?

A. No.

Q. And none of the defendants here purchased the other interest?

A. No, sir.

Q. Do you personally at the present time own any stock in Griffith Amusement Company?

A. No.

Q. Are you a stockholder at the present time in Griffith Consolidated Theaters, Inc.?

A. No, sir.

Q. What is your connection at the present time

3508 with R. E. Griffith Theaters, Inc.?

A. President of the company.

3509 Q. How long have you been president of the company?

A. Since a short time after my brother's death in 1943; November.

Q. Are you a stockholder in R. E. Griffith, Incorporated?

A. Yes, sir, I have a small amount of stock.

Q. Does the amount of stock represent a substantial block of stock in the company?

A. No, sir.

Q. How many shares do you own?

A. 125.

Q. Do you know how many shares are issued and outstanding?

A. 5,083.

Q. Are you a stockholder in Wes-Tex Theaters, Inc.?

A. I have one share.

Q. Do you know how many shares are issued and outstanding in Wes-Tex Theaters, Inc.?

A. 24,877, I believe.

Q. Do you personally own any other theaters besides those in Kansas and Missouri?

A. I have six per cent interest in the operation at Ardmore, Oklahoma, and I recently purchased a one-fourth interest in five theaters in California and a half interest in one other.

3510 Q. When your brother R. E. Griffith died, who was named executor of his will?

A. Myself, R. I. Payne and F. L. Stocker.

Q. And in fulfilling the duties was that when you assumed the office of president of the R. E. Griffith Theaters?

A. Yes.

Q. While you were employed by the Griffith Amusement Company, did you at any time act as film buyer for that company?

A. No. I sat in as an observer two years thinking I might be called upon to do that work, and I wanted to become familiar with it.

Q. Do you know Fred G. Vincent, former theater owner in Hominy, Oklahoma?

A. Yes, sir.

Q. Do you recall the conversation with Mr. Vincent—well, do you recall any conversation with Mr. Vincent in about 1937?

A. I recall the year that I had a conversation with Mr. Vincent, yes.

Q. Can you fix the time of that conversation?

A. It was in the early fall, I judge. It was cool weather, I know. It wasn't cold.

Q. Where did it take place?

3511 A. In Mr. Vincent's office at the Pettit Theater.

Q. What was the occasion for your calling on Mr. Vincent?

A. He had told Mr. Moore he would like to see some member of the Griffith organization the first time they were in the territory, and Mr. Moore and I drove over there from Fairfax to see him.

Q. Who else was present at the time you talked to Mr. Vincent?

A. Mr. Moore.
Q. Anyone else?
A. No, sir.
Q. Will you state the conversation you had with Mr. Vincent on that visit?
A. Mr. Vincent told me he had formerly been in the automobile business, and that on the death of his father-in-law, Mr. Pettit, he had come to Hominy to look after the family's affairs and he felt he was wasting his time; that if he could sell the theater equipment and lease the building he would like to go back in the automobile business.
Q. Was anything else said?
A. No, other than he quoted a price, the amount of which I do not recall, but I told him I thought it was more than it was worth and that the rent he wanted also was too high.
Q. What did he want to sell you on that occasion?
3512 A. The equipment in the Pettit Theater in Hominy.
Q. Did he want to sell you the real estate.
A. No. He leased the real estate.
Q. Who owned the building, if you know?
A. The family, the estate, I assume.
Q. The estate of Mr. Pettit?
A. Yes, sir.
Q. The transaction was to make you an offer to lease the building and buy the equipment?
A. Yes, sir.
Q. Do you recall the amount of rental they wanted for the lease?
A. I wouldn't be positive. I think it was $250.00.
Q. Do you recall the amount they asked for the equipment?
A. No, I don't.
Q. Did you make a deal with him on that occasion?
A. No.
Q. Why didn't you?
A. I just told Mr. Vincent I thought it was more than it was worth, and the rent was too high also, and I didn't think the company would be interested in that figure.
Q. Did you later have a conversation with Mr. Vincent on the same subject?
A. Yes.
3513 Q. When was that?
A. It was during the Theater Owners Convention here, and I met him in the lobby of the Biltmore Hotel and he asked me——
Q. Can you fix the year?
A. 1938, I believe.

Q. Where did the conversation take place?

A. In the lobby of the Biltmore Hotel.

3514 Q. Can you state the conversation?

A. He asked if I had thought anything further about purchasing the equipment and selling the building. I told him I hadn't, but if he wanted to discuss it further I would be glad to see him down at the office. The lobby was full of people, and I didn't care to discuss the matter there.

Q. Did you see Mr. Vincent again in your office?

A. Yes, sir.

Q. When was that?

A. Either the next day or the following day.

Q. Was anyone present in this conversation or meeting with Mr. Vincent?

A. I think Mr. McKenna was there.

Q. Can you state the conversation that took place in your office between you and Mr. Vincent?

A. Well, he told me that he had been considering it further and he would like to dispose of the property if he could, and he quoted a lower figure on the equipment, which was more or less in line, but he still wanted the same rent, and I told him that the rental was too high for that size town.

Q. Did you make a deal on that occasion?

A. No, sir.

Q. Was anything said on that visit by Mr. Vincent with reference to his fear of having insufficient product

3515 for the next season?

A. Yes, sir, he said he had been wondering what product he would have.

Q. Well, can you state the conversation with reference to that subject?

A. I told him that I didn't know what product he would have, and I didn't know what product we would have, or anything about product. I told him, however, that there was plenty of product for his operation and ours too, and I didn't think he should have any fear; that the only policy of our company was to buy what we needed.

Q. Did you on that occasion suggest that you would release any of the product to Mr. Vincent or that you would talk to Mr. Falls to see that Mr. Vincent would have plenty of product?

A. No, sir.

Q. Did you at any time offer him the product of any particular company?

A. No, sir.

Q. When was the next conversation you had with Mr. Vincent?

A. I don't recall having any more.

Q. While you were still with Griffith Amusement Company and Griffith Consolidated Theaters, Inc., did they purchase the Pettit Theater from Mr. Vincent?

3516 A. No, sir.

Q. Was the purchase made after you left the company?

A. Yes, sir.

Q. Did you have anything to do with those negotiations?

A. Nothing at all.

Q. Do you know Alexander Moulder, commonly known as Speedy Moulder, the owner and operator of the Criterion Theater in Sapulpa, Oklahoma?

A. Yes, sir.

Q. Did you have occasion in 1938 to visit Mr. Moulder in Sapulpa, Oklahoma?

A. Yes, sir.

Q. What was the occasion of that visit?

A. The occasion of that visit was merely to visit with him. We were friendly with Speedy and his wife, and I was in Sapulpa, and I just went around to say hello to him.

Q. Were you alone?

A. No.

Q. Who was with you?

A. Mr. McKenna.

Q. Where did this conversation take place with Mr. Moulder?

A. In Mr. Moulder's office in the theater.

Q. Can you state the conversation that took place there?

A. Well, the biggest part of it was just visiting.

3517 However, while there I asked Speedy if he would be interested in selling his theater. He said, "Yes," if he could get enough money for it. I asked him what that was, and he said he would sell it for $75,000. I told him that was considerably out of line; that I thought it was worth twenty-five, that the equipment was worth probably fifteen thousand, and that ten thousand dollars should be enough bonus for the theater.

Q. Did he seem interested in that price?

A. No, he wasn't interested.

Q. What else was said?

A. Nothing that I recall of any importance.

Q. Was anything said with reference to a partnership between you and Mr. Moulder on that occasion?

A. No.

Q. Later in the same year, did you have a conversation with Mr. Moulder in his office about that?

A. Yes, sir. I don't know whether it was the same year or not, but later, a few months later, I don't know how many.

Q. Where did that conversation take place?

A. In Mr. Moulder's office.

Q. Who was present on that occasion?

A. Mr. Slocum.

Q. What was the occasion of your visit at that time?

3518 A. Just to again drop by.

Q. Can you state the conversation that took place then?

A. I asked Mr. Moulder if he had given any further consideration to selling his theater, if he had changed his mind on the price, and he said he hadn't. Then he asked if we would be interested in a partnership arrangement. I told him I thought we would be. I asked him, no, he asked me on what basis, because he asked me about the partnership, and I told him a third each.

Q. What do you mean, Mr. Griffith, by a third each?

A. Well, we had a partnership there, and the idea of a partnership here was a surprise, and I just meant a third for our company, a third for Mr. Zartaludes, and a third for Speedy Moulder.

By the COURT:

Q. Was that in both theaters?

A. In all, the operation of the town, your Honor.

By Mr. GRIFFING:

Q. Did you make a deal with Mr. Moulder?

A. No, sir.

Q. Was he interested in that discussion, that partnership of a third each?

A. Well, he didn't dwell on it very much, and as I said, it was a surprise to me, I hadn't thought about it since we already had a partnership, and it wasn't discussed any further. I don't suppose he was interested.

3519 Q. On that visit did you tell Mr. Moulder he didn't have a good lease on the Criterion Theater?

A. No, sir. I knew nothing about his lease.

Q. On that visit, did you say to Mr. Moulder, "Well, Speedy, we will lower the admission price on the Yale Theater and build another theater in the town, and buy your pictures out from under you, and where will you be then?"

A. No, sir, I never made such a statement to anyone.

Q. Do you know Pat Duffy?

A. Yes, sir.

Q. What theater in Mangum, Oklahoma does Pat Duffy operate, or theaters?

A. The Temple and Rialto.

Q. Did you have any meeting or discussion with Pat Duffy in regard to the purchasing of his theaters in Mangum?

A. In Mangum?

Q. Yes.

A. No.

Q. Did you have any discussion with him regarding the purchasing of any theaters?

A. Yes, sir. Mr. Slocum brought him up to the office in January, '37, at which time Mr. Slocum told me that he had a deal figured out to purchase Mr. Duffy's theaters, and after discussing the minor items such as taxes and insurance, we went to Mr. Johnston's office, our attorney at that time, and drew up an option.

3520 Q. Was that option signed up?

A. Yes, sir.

Q. You remember the amount of purchase price in that option?

A. $22,000.00.

Q. Can you fix the date of that meeting?

A. The 7th of January.

Q. 1937?

A. 1937.

Q. Was that option ever exercised?

A. No.

Q. Can you tell why it was not exercised?

A. Yes, it was contingent on Pat Duffy getting a lease on the Capital Theater for 10 years at the same rental he had been paying, which was $175.00 a month. Mr. Duffy was unsuccessful in getting the lease so we did not exercise the option.

Q. Did you attempt to obtain the lease before abandoning the option?

A. I did.

Q. At whose request did you attempt to obtain the lease?

A. Mr. Duffy advised us he had been unsuccessful and suggested that if we were interested that we work on it.

Q. Did you go to Mangum?

3521 A. Yes, sir.

Q. What did you do when you were in Mangum?

A. We went to the Executive Committee of the Masonic Lodge and discussed a lease with them.

Q. Were you successful in obtaining a lease?

A. No.

Q. Did Mr. Duffy ever deliver the lease?
A. No.
Q. Prior to that meeting was Pat Duffy in your office in Oklahoma City at the obtaining of the option, had you ever had a meeting with Pat Duffy with regard to purchasing part of his theaters or all of his theaters?
A. No, we had not.
Q. Did you at any time have a meeting with Pat Duffy and discuss the purchase of 25 per cent and 51 per cent of the theater?
A. No.
Q. Did you ever at any time consider a partnership interest and subsequent partnership operation with Pat Duffy?
A. No.
Q. Did you ever discuss a partnership arrangement with Pat Duffy?
A. No, sir, I did not.
Q. Did you have a meeting with Pat Duffy prior
3522 to obtaining this option where L. C. Griffith was present and you or he sought to obtain an interest in Duffy's theater?
A. No, I had not discussed the theater operations with Duffy prior to that meeting.
Q. Did you later erect a theater in Mangum, Oklahoma?
A. Yes, sir.
Q. Which company erected it?
A. Griffith Consolidated.
Q. Why did you erect a theater in Mangum?
A. We thought it would be a good business venture and we could make a little money.
Q. At the time you negotiated the option to purchase that from Mr. Duffy, did you or your company, the Griffith Consolidated Theaters, contemplate opening another theater in Mangum?
A. No, sir.
Mr. WRIGHT. That is quite a conclusion, I think, for this witness to draw as to what they were contemplating at that time. He can state what was done.

By the COURT:

Q. Did you do anything or plan anything with reference to a theater in Mangum?
A. No, sir.

By Mr. GRIFFING:

Q. Do you know Mr. Jake Jones, the theater owner in Shawnee, Oklahoma?
A. Yes.

3523 Q. Do you recall a concern known as the Seminole Amusement Company?

A. Yes.

Q. What was the Seminole Amusement Company?

A. It was a company organized by Jake Jones and a man by the name of Bocher and their associates.

Q. Do you know what business they had?

A. They owned the Criterion Theater building in Shawnee, Oklahoma.

Q. What was your connection with the Criterion Theater building in Shawnee, or your company's connection?

A. The Griffith Amusement Company and Adam Hornbeck were the leasees.

Q. And the Seminole Amusement Company was the landlord?

A. Yes, sir.

Q. Do you remember when the Griffith Amusement Company and Hornbeck first entered into a lease with the Seminole Amusement Company for the Criterion Building, the date of it?

A. I don't recall the month. I didn't handle it.

Q. Do you recall the year?

A. It was 1929.

Q. Do you recall the amount of rent the Griffith Amusement Company and Hornbeck had to pay under that lease?

A. I would not except I recall the testimony here.

3524 Q. Well, does it refresh your memory?

A. Yes, sir.

Q. Do you remember the amount of rent?

A. Yes.

Q. What was it?

A. $566.60, I think.

Q. A month.

A. A month, plus the taxes and insurance.

Q. Do you remember under that lease you obtained a reduction in rent from Mr. Jones?

A. Yes.

Q. Do you remember how much that reduction was and the period of time it lasted?

A. He reduced it to $400.

Q. Have you seen that modification agreement since you have been in court?

A. No.

Q. Do you remember the date of the expiration of the modification agreement?

A. I remember the expiration. It was June 30, 1934.

Q. And it had been made for a period of how long?

A. Two years.

Q. Prior to the expiration of this modification agreement, did you attend a meeting with Mr. Jake Jones?

A. Yes.

Q. Where was this meeting?

3525 A. At the Aldridge Hotel, Shawnee, Oklahoma.

Q. Who attended?

A. Mr. McKenna, R. M. Clark, Jake Jones and Mr. Bocher and myself.

Q. Will you state what happened and what was said in that meeting?

A. Yes. We three representing the company were there in a room when Mr. Bocher and Mr. Jones came in, and after the usual friendly greetings and passing of the time of day, so to speak, I told Mr. Jones we had come there to discuss a renewal of the modification and we would like to continue in the building at the reduced figure of $400 a month. He said if that is what we had come for we were just wasting our time and he stood up and left the room.

Q. Was that the last time you saw him on that occasion?

A. Yes.

Q. Can you fix the time of that meeting with reference to the expiration date of the modification agreement?

A. If I recall, it was just before the expiration because we became concerned over the fact it was expiring, I would say a week or ten days before the expiration date.

Q. And at that meeting was R. E. Griffith present?

A. No.

Q. Was R. E. Griffith in 1934 active with the Griffith Amusement Company or Griffith Consolidated Theaters?

3526 A. No.

Mr. WRIGHT. That calls for a conclusion. He can state what he did. We know he negotiated some deals from the prior testimony.

By Mr. GRIFFING:

Q. Was R. E. Griffith in Oklahoma in 1934 engaged in the theater business?

A. No.

Q. Did he reside in Oklahoma at that time?

A. No, he had some stock in the company but he lived in Dallas and was operating his own company down there.

Q. At the time of this meeting with Mr. Jones, were you operating the Rex Theater in Shawnee?

A. Yes.

Q. Do you remember what policy you were operating that Rex Theater on at that time?

A. Second run policy.

Q. At this meeting with Jake Jones did you tell Mr. Jones, or did any one person at that meeting tell Mr. Jones that if he did not agree to a reduction in rent you would open a second run theater and take second run product away from him?

A. No, I only made one statement with reference to business and Mr. Jones left the room.

Q. Was Mr. Jones operating a theater in Shawnee at that time?

3527 A. Yes.

Q. What was the name of the theater?

A. The Ritz.

Q. Was there another theater, other than your theater and Mr. Jones' theater operating in Shawnee, Oklahoma, at that time?

A. Yes, Mr. A. B. Momand had the Odeon Theater.

Q. After Mr. Jones left the room, did Mr. Bocher stay there?

A. A short time only.

Q. Did you have any conversation with him?

A. Not pertaining to business. He seemed surprised Jones left us so abruptly and tried to apologize in a way for it, trying to explain it.

Q. You didn't discuss a reduction in rent with him?

A. No, sir.

Q. After the expiration of the modification agreement of June 30, 1934, what rent did you pay?

A. $500.

Q. And continued to pay the rent the original lease called for?

A. I don't know. There must have been some adjustment prior to that because we started paying $500, and I don't know what became of the $66 and odd cents.

Q. To refresh your memory, wasn't that additional amount insurance and taxes?

3528 A. I don't recall. I didn't make the original deal.

Q. Mr. Griffith, did you personally, or on behalf of any defendant ever ask any film distributor or its representatives not to license its product to any competitor of any defendant in this case?

A. No.

Q. Did you personally or on behalf of any of the defendants ever have a discussion with a representative of any film distributor regarding the licensing of their product to any competitor of yours or of the defendants?

A. No, I did not.

Q. Did you personally or on behalf of any defendant ever enter into any agreement, understanding or commit-

ment with any distributor of film regarding the licensing or the restriction of licensing of a film to any competitor of any defendant in this case?

A. No, sir.

Q. Did you ever have any knowledge of any discussion, agreement or commitment between any defendant in this case and a distributor film corporation in regard to preventing the licensing of films to any competitor of any defendant in this case?

A. No.

3529 Q. Mr. Griffith, do you know Tom Benedum?

A. I know of him.

Q. When was the first time—have you ever met Tom Benedum?

A. No, sir.

Q. When was the first time you ever saw him?

A. On the witness stand.

Q. In this court?

A. In this courtroom.

Q. Have you ever had any conversation with him?

A. No, sir.

Mr. GRIFFING. That is all.

Cross-examination by Mr. WRIGHT:

Q. Now, Mr. Griffith, you say you no longer have any stock in either the Griffith Amusement Company or Griffith Consolidated, and hold no office in either one of those companies?

A. That's right.

Q. When was it you sold your stock?

A. I sold the Griffith Amusement Company two years ago, and the Consolidated stock last year.

Q. Who was it that you disposed of the stock to?

A. I sold my Griffith Amusement stock to my children, through a trust fund, and the Consolidated stock

3530 was sold to the treasurer of Consolidated.

Q. The treasurer of Consolidated?

A. The treasurer of Consolidated, yes.

Q. And the other stock is still held for the benefit of your children, is it?

A. Yes, sir.

Q. When was it you resigned your position as an officer or director of those companies?

A. I don't recall, but just a reasonable time, whatever it took to do it.

Q. Do you mean——

A. Immediately after the sale.

Q. About the time you sold——

A. Immediately after the sale, yes, sir.
Q. ——your stock to your children?
A. Sometime after that.
Q. Before that sale, what was it you were doing for those two companies, what was your general capacity or work?
A. I wasn't doing any work for them at all. I did remain as one of the directors and oh, I think I was an assistant secretary instead of secretary.
Mr. COCHRAN. Mr. Wright, I think you are overlooking the fact that this transfer was made after he left Oklahoma City, it was after he left Oklahoma City and before he sold his stock.

3531 By Mr. WRIGHT:

Q. When was it that you left Oklahoma City and went to Kansas City?
A. April 1st, 1939.
Q. April 1st, 1939. Then you resided there continuously, did you?
A. Yes, sir.
Q. When was it that you became president of R. E. Griffith Amusement, with reference to these transfers of the Griffith Consolidated and Griffith Amusement Company stock that you have been talking about?
A. The R. E. Griffith and Consolidated?
Q. Was that at the same time, or before or after you made these transfers of stock interest in the Consolidated and Griffith Amusement Company?
A. I sold the stock after that time.
Q. You had become president of R. E. Griffith Theaters, Inc. before that occurred then, is that right?
A. Yes, sir.
Q. How long before, do you know?
A. Oh, the early part of December of '43, I became president of R. E. Griffith Theaters.
Q. You continued, however, to live in Kansas City, is that right?
A. Wait a minute. I believe I sold the Griffith Amusement Company stock prior to becoming president
3532 of R. E. Griffith Theaters, I believe it was prior to that that I sold the Griffith Amusement Company stock.
Q. How long prior, do you know?
A. Three or four months.
Q. Do you know what the dates were on any of these transactions?
A. Not the positive date; I didn't pay any attention to the date, but I would say the Griffith Amusement Company stock was sold in July.

Q. What year?
A. '43.
Q. And when was it that you became president of R. E. Griffith Theaters?
A. December, '43.
Q. December, '43?
A. Yes, sir.
Q. When was the Griffith Consolidated stock transferred?
A. Last year.
Q. That was last year what time?
A. The latter part of November.
Q. Now, prior to the time you moved to Kansas City, who were the general managers of Griffith Consolidated and Griffith Amusement Company?
A. Well, we were never conscious of titles to speak of. I have been referred to as general manager, but the
3533 first I knew of it was when it was printed in a bulletin where we had a convention; and I never did sign my name or consider myself general manager. I just worked at whatever was to be done.
Q. What was it that you worked at most of the time?
A. Anything and everything that came up, because I started handling the equipment and from that supervised half of the theaters until Mr. Clark's death, then supervised the operation of all of them for a short time, until someone else took charge, and the construction of theaters, and working with the architect and contractors; just anything.
Q. Did you have anything to do with acquiring theaters other than those conversations that you mentioned on your direct examination?
A. Yes sir, if it fell convenient or in my path; there wasn't any specific duty.
Mr. WRIGHT. I didn't hear the answer. Will you read the question and answer.
(The last question and answer read by the reporter.)
Q. When you had these conversations with people about acquiring theaters, did you ever give the owner or operator you were talking to any reason why it might be desirable or advisable to sell to Griffith?
3534 A. No.
Q. You never discussed that?
A. Just on the basis of what he would be willing to sell for, if he wanted to sell at all.
Q. Now, did you have anything to do with negotiating the Criterion lease there when it was first made in '29?
A. No.

Q. Do you know who did?

A. No, I don't know that even.

Q. I understand that both Mr. Hornbeck and Griffith Amusement Company were on the lease; is that your recollection?

A. I don't recall. I don't know that I ever saw it even.

Q. How about the reduction to $400, did you have anything to do with negotiating that?

A. No.

Q. Do you know who did?

A. No sir, I don't

Q. What was this conversation, now, that you said you had with Mr. Jones when he wanted into the Aldridge Hotel?

A. After we had all greeted one another and settled down, I merely made the statement, "Jake, we have come over to talk to you with reference to continuing under this modified rental arrangement we have. We would like to continue in your building at $400."

3535 Q. You did mention the figure $400, did you?

A. As I recall, I did, yes, sir.

Q. But you were not seeking a further reduction?

A. No, sir.

Q. Had you had any prior conversations with Mr. Jones——

A. (Interrupting) I had not.

Q. ——at all about the rental on that theater?

A. I hadn't had, no sir.

Q. That was the first and only time, so far as you were concerned, is that right?

A. That's right.

Q. Now, you say Mr. R. E. Griffith wasn't in Oklahoma City at all during the year 1934?

A. No, I wouldn't say that at all; he came by every so often and visited my mother.

Q. I have evidently misunderstood you. I thought you said on direct examination that he wasn't in Oklahoma in 1934. Do you mean he wasn't living in Oklahoma at that time?

A. He wasn't living in Oklahoma at that time.

Q. But he did make regular trips into the state, did he?

A. Yes sir, he came by every so often to visit the family.

Q. Was that true during the year 1933?

A. It was true until his death.

Q. Did you ever go to Shawnee with him?

3536 A. No, sir.

Q. Were you ever in Shawnee at the same time that he was there?

A. Not after he left here in '31.
Q. When was that?
A. Not after '31.
Q. Not after '31?
A. No.
Q. You were in Shawnee with him before that, were you?
A. Oh, yes.
Q. In what connection?
A. Well, we installed sound equipment in the Ritz Theater, and I recall we all went over to the opening of the theater after the installation of sound. I think the entire office force were practically over there.
Q. Have you ever had any negotiations with Jake Jones in which he was present?
A. No.
Q. I understand you yourself had had no negotiations, you were not present in any negotiations with Jake Jones, is that right, only this one time in 1934?
A. Oh, I wouldn't say that, because I am sure I did have.
Q. Well, when?
A. At the time we gave up the lease on the Ritz
3537 Theater and sold Mr. Jones the equipment in the theater.
Q. You saw him then where?
A. In Shawnee.
Q. At the theater, the Ritz Theater?
A. Yes, sir.
Q. Who else was present then?
A. Mr. Clark was present; I don't recall anyone else.
Q. Do you know if Mr. R. E. Griffith and Mr. L. C. Griffith were present then?
A. They were not.
Q. You know they were not?
A. Yes.
Q. You are quite sure, are you, that this conversation that you had with Mr. Jones, that you have referred to, occurred in 1934?
A. Yes, sir.
Q. And how do you fix that date?
A. It was just a very short time, a week or ten days, not to exceed two weeks, prior to the expiration of that modified agreement.
Q. How do you know that?
A. Because we were concerned that the rent went up within two weeks, so to speak, and we wanted to do something about it immediately.

Q. You hadn't been concerned about that prior to
3538 a week or ten days before the agreement expired, is that right?

A. At least not as concerned; as the time got shorter, we became more concerned, naturally.

Q. Do you know when you first became concerned about it?

A. Mr. Wright, I didn't become concerned at all until that time. There was a lot of work to do, and I didn't attempt to look after all of it.

Q. How did you happen to go down there rather than somebody else?

Q. Mr. McKenna requested that I go along. He had been working with Jake Jones from time to time.

Q. That is what you understood from him?

A. That's what he told me; that's all I know.

Q. Did he tell you who had made the arrangements with Mr. Jones for that meeting?

A. Yes, sir. He stated Mr. Hornbeck had.

Q. Mr. Hornbeck was the one who had arranged the meeting?

A. Right.

Q. As I understood it, Mr. Hornbeck wasn't present at the meeting, though, is that right?

A. No. We met at the Aldridge Hotel and had dinner and Mr. Hornbeck stated that he would go on back to the theater.

Q. Now, did you have to rent a room at this Ald-
3539 ridge Hotel for this purpose?

A. Some place to meet without being disturbed.

Q. Was there any other place to meet in Shawnee?

A. Probably, but I don't know of any easier or convenient manner to get a place.

Q. You hadn't hired a hotel the last time you and Mr. McKenna had gone to Shawnee, had you?

A. No, that is the only time that I recall getting a room.

Mr. WRIGHT. Your Honor please, there is an exhibit I would like to get hold of before continuing with Mr. Griffith. Maybe we could have a recess while we get that exhibit.

The COURT. Very well. We will take a few minutes recess.

3540 AFTER RECESS

By Mr. WRIGHT:

Q. Mr. Griffith, I hand you this Defendants' Exhibit 62, and ask you to notice the date on that, January 5, 1937, and

ask you if that refreshes your recollection as to just when it was you had the conversation with Pat Duffy about getting the lease on the Capital?

A. Yes, it was the 5th.

Q. That day?

A. Yes, I think I said it was the 7th. That was in error.

Q. In any event you had a conversation with Duffy and then after you had the conversation with him you went to your attorney's office and you had this agreement drawn up here?

A. That is right.

Q. This Defendants' Exhibit 62, and Defendants' Exhibit 62 then is the written option that represents the agreement that you and Duffy reached after you had that conversation, is that right?

A. It represents the agreement as far as the price is concerned.

Q. What is left out of the agreement?

A. The understanding that Mr. Duffy would get a lease.

Q. Did you tell your attorney at the time the agreement was drawn that there was an agreement with Mr.
3541 Duffy in addition to what was set forth; that he was to procure the lease?

A. I don't recall that we did.

Q. Well, you told him what the result of the conversation was, didn't you, when you had him prepare this agreement?

A. As I recall there was no reason for putting the rental agreement in here.

Q. Why?

A. Because we were not forced to exercise the option. If he got the lease all right, and if he didn't that was the end of it.

Q. I understood your direct examination and your testimony to me just now, that you had a conversation with Mr. Duffy and you reached an agreement. Is that right?

A. I merely said that Mr. Slocum brought him up there and after discussing minor items, such as taxes and insurance, we went to the attorney's office.

Q. You told the attorney what?

A. Told him to draw a contract such as this.

Q. You told him to draw a contract option. That, as I understand it, was to be contingent upon Duffy securing a lease on the Temple, is that right?

A. I didn't specifically request he put that in the contract because it didn't matter.

3542 Q. Just answer the question. Let's see what you did tell him.

A. I can't tell you what I told him now except from this contract.

By the COURT:

Q. Is that just an option?

A. Yes, sir.

Mr. WRIGHT. The contract says nothing about any agreement to procure a lease and it has no provision which makes the option contingent upon the procurement of a lease in any way.

The COURT. It is merely a 30 day option?

Mr. WRIGHT. Merely an option to purchase his equipment.

By the WITNESS:

A. A 30 day option.

By Mr. WRIGHT:

Q. You operate theaters in what states now?

A. Kansas, Missouri, two towns in Nebraska and California.

Q. You have some towns in Nebraska?

A. Two towns.

Q. Do you have any connection with the town of Lincoln there?

A. No, sir.

Q. What is the name of the company that operates that, do you remember?

3543 A. I don't know.

Q. Is it the company that Mr. Crites works for, the Lincoln Amusement Company?

A. I don't know a thing about Lincoln except by hearsay. I understand there are two companies there.

Q. It is a Fox affiliate he works for, isn't it?

A. I don't know. Joe Cooper is not with Fox. He is with Paramount. He is a partner of Paramount.

Q. Cooper is the one that Crites works for?

A. Yes, sir.

Q. And he is the fellow that runs the Consolidated Theaters here in Oklahoma City?

A. Standard Theaters.

Q. Standard I mean, the same Joe Cooper?

A. The same Joe Cooper.

3544 Re-direct examination by Mr. RICE:

Q. Mr. Griffith, the record shows, I believe, that your brother, R. E. Griffith, went to New Mexico in 1931, but that he thereafter engaged in negotiating film contracts for Griffith Amusement Company, and Consolidated Thea-

ters. At whose suggestion did he undertake that job after he left here?

A. Primarily at my request, after discussing it with my brother L. C.

Q. Why did you request him to do that?

Mr. WRIGHT. If the Court please, I don't see the competency of this witness to state why that was done. He can say what was done in that connection. There was an infinite number of reasons, I suppose.

By the COURT:

Q. What was your reason for wanting him to do that?

A. Because your Honor, I was concerned in the welfare of the company, and Mr. Falls had only had an experience of two years in buying film, and I knew it to be a big job and felt that Mr. Falls needed some help.

Q. You just wanted his assistance?

A. I wanted his assistance.

Mr. RICE. That's all.

Re-direct examination by Mr. GRIFFING:

3545 Q. Will you state the date of Mr. R. E. Griffith's death?

A. November 24th, 1943.

Q. You spoke of the operation of the Rex Theater in Shawnee, Oklahoma. The testimony yesterday was that 10 cent admissions at times had been charged in that theater. Do you recall that?

A. Yes, sir.

Q. Was there any objection made to that admission by anyone?

A. Many objections.

Q. Who made those objections?

A. I wouldn't say specifically, but I rather imagine all of the major companies, film companies.

Q. As a result of that, did you stop that practice?

A. It was stopped when they refused the shipment of film; we stopped it a short time until it was more or less forgotten, and then repeated it.

Q. Do you remember what admissions the Odeon Theater was charging at that time?

A. 5 cents for children, and 10 cents for adults, two for one adult tickets, at 10 cents.

Q. Do you remember during that time what admissions the Ritz Theater was charging?

A. The Ritz was charging both 10 and 15, as I recall. Some days 10 cents, and some days 15.

3546 Mr. GRIFFING. That's all.

Re-cross-examination by Mr. WRIGHT:

Q. Can you recall any specific instance now where a distributor withheld a picture that had been booked into the Rex because of the admission price you were charging?

A. I couldn't name you the picture, but I could state very specifically and emphatically that on several instances Metro particularly, and Fox called us and said they wouldn't make any shipments until we raised the admissions.

Q. There is no question about the fact that they protested, a large number of times, that's right, isn't it?

A. The rest of the companies, as I recall, protested, but Fox and Metro specifically refused shipments.

Q. There is no question either about the fact that you repeatedly ignored those protests, isn't that right?

A. That's right; I don't know how many times, but several.

Q. You did maintain the 10 cent price on the product of all of those major companies for a period of about two years, isn't that right?

A. It was for a time 10 cents, and then for a time 15.

Q. When was it 15?

A. Just long enough, Mr. Wright, for the smoke to clear away, and for everybody to forget about the 10 cents.

3547 Q. How long was that?

A. Oh, I wouldn't know; in some instances maybe three or four weeks, and in some instances two months.

Q. As a matter of fact, you maintained a virtually 10 cent, straight 10 cent price for the two years from 1933 into January, 1935, isn't that correct?

A. I wouldn't know as to the two years, but for a time the admissions, largely speaking, were 10 cents.

Q. Your impression is that within that two years there were how many periods when you let the smoke clear away?

A. That, I don't know, and I don't know about the two years.

Q. You don't know as you sit there what was done at all during that period, do you, other than the fact that you had a 10 cent policy in effect there for a long time, is that right?

A. For a time; how long I don't know. If it is two years, then it is two years. The reason I remember the whole thing so specifically is that some companies would call Mr. Falls and advise him they were not going to ship any film, and I would get another film until we could raise the admission and change the signs and start it at 15 cents.

Q. When did you do that?

A. When?

Q. Yes.

3548 A. I don't recall specifically when.

Q. Can you give me any particular times?

A. Two or three occasions.

Q. Or year?

A. Probably three occasions.

Q. Probably three occasions; over what period of time?

A. I wouldn't know, a year or two, maybe two years.

Q. What years?

A. I would say '33 and four; I am not positive about that.

Q. And that is your best recollection now as to what happened there?

A. Yes, sir.

Mr. WRIGHT. That's all.

Re-direct examination by Mr. GRIFFING:

Q. Mr. Griffith, you made the statement that film companies, as I understood it, you said the film companies protested and you ignored that. Do you mean that?

A. I beg pardon?

Mr. WRIGHT. If the Court please, there is no occasion for that kind of examination.

Mr. GRIFFING. Strike the question.

By Mr. GRIFFING:

3549 Q. When you received protests from the film companies over your admission price and they refused or threatened to refuse or threatened to discontinue your service, did you ignore that?

A. No, I just then stated that I would get another film from some other company until I had a chance to change the signs and raise the admission, had time to do that.

Mr. GRIFFING. That's all.

3550 Re-cross-examination by Mr. WRIGHT:

Q. As a matter of fact, you were not handling the booking anyway, were you?

A. No, sir.

Q. Horace Falls did that. Is that right?

A. Yes, sir.

Q. All you are talking about here, as far as you are concerned, is hearsay, isn't it, as to what was done on actual booking?

A. No, if I told him to book another picture it was booked.

Q. Whatever was done as to the booking, was done by him and not by you?

A. That is right, but if they wound up with another picture after my request I would know it was done.

(Witness excused.)

L. C. GRIFFITH, was thereupon called on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?

A. L. C. Griffith.

Q. What connection do you have with the Griffith Amusement Company?

3551 A. I am president.

Q. And what connection do you have with Griffith Consolidated Theaters?

A. I am also president.

Q. This corporation to which I now refer, Griffith Consolidated Theaters, is that the same corporation which was originally incorporated as Consolidated Theaters, Inc.?

A. Yes, it is.

Q. You changed the name to Griffith Consolidated Theaters?

A. That is right.

Q. When did you first become connected with the motion picture industry?

A. In January, 1915.

Q. In what way?

A. My brother, R. E. Griffith and myself leased an old building in San Marcus, Texas, called the Grand Opera House.

Q. Did you operate a theater there for a time?

A. Yes.

Q. Then what was your next theater venture?

A. In 1917, my brother, R. E. Griffith and a man by the name of Slothower from Vinita, Oklahoma, bought a theater in Fairfax called the Rex, I believe it was.

Q. Were you then or did you later become inter-

3552 ested in that theater?

A. Well, we had quite a number of discussions about that. I furnished the money. He bought the theater. We had quite a few discussions about it. I don't know whether I had any interest in it or not, but I remember lending him the money to put in it.

Q. What was the next theater venture you had?

A. The next theater, my brothers R. E. Griffith and H. J. Griffith bought a theater in Yale, Oklahoma, sometime in the year 1918, I believe it was, or '19; possibly '19.

Q. What was your connection with that theater?

A. I had no particular connection with it. I just knew about it.

Q. Then what was the next theater you became connected with?

A. Sometime later, in 1919 we bought a theater at Mart, Texas, my two brothers and myself, and H. J. Griffith then moved to Mart, Texas, and began the management of that theater.

Q. During this period from 1915 to 1919, were you actually operating, personally operating any of these theaters?

A. No.

Q. What were you doing?

A. I was selling pictures; traveling on the road
3553 selling films.

Q. How long did you continue to travel on the road selling films?

A. From December, 1918, until sometime about April of 1926.

Q. In 1915, 1916 and 1917 what were you doing?

A. I was working for a concern out of Memphis, Tennessee, selling extract, tea and spices.

Q. After your connection with the theater in Mart, Texas, what was the next theater you had any connection with?

A. Mr. F. L. Stocker and my brothers, R. E. Griffith and myself and Mr. R. J. Killough and Mrs. R. J. Killough, who are now partners in Ada, Oklahoma, acquired a theater in Honeygrove, Texas, named the Strand.

Q. Who actually operated that theater?

A. Mr. and Mrs. Killough.

Q. You say they later became connected with you in a theater?

A. They have been connected ever since.

Q. At that time were you in the army?

A. In 1919?

Q. Prior, in 1918.

A. Yes, I was in the Army during the last war for a while; about a year.

3554 Q. How long did you continue to have an interest in the theater in Honeygrove?

A. From 1919 until sometime in 1923.

Q. What became of that theater?

A. We traded the theater in Honeygrove to a man in Hugo by the name of O. Gill for a theater he had in Hugo, Oklahoma.

Q. That was your first acquisition, Hugo?

A. That is right.

Q. Then what became of Mr. and Mrs. Killough?

A. Mr. and Mrs. Killough remained there until sometime, I believe it was 1929, '28 or '29 after the Griffith Amusement Company was organized, and the Griffith Amusement Company bought two theaters in Ada, Oklahoma, from Foster McSwain, and they then became our partners in Ada, Oklahoma. We bought them out in Hugo in 1926 at the time we made our deal with Universal Theatrical Chain Enterprises and when we bought Ada they became our partners in Ada.

Q. Mr. and Mrs. Killough had been partners in your theater operation practically all the time since your original connection with them in Honeygrove?

A. Yes, sir.

Q. What was your next theater acquisition in which you were interested?

A. We acquired a theater in Gatesville, Texas—

3555 you mean prior to that or since that?

Q. Since your connection in Honeygrove.

A. At Hugo. We then bought, I think it was a couple of years later, we bought theaters in Elk City, R. E. Griffith and myself.

Q. We started to say something about Gatesville. Was your acquisition at Elk City before Gatesville?

A. The acquisition in Gatesville was in 1919, before we came to Oklahoma.

Q. That is what I want.

A. Mr. Stocker and myself and R. E. Griffith bought a theater in Gatesville called the Regal.

Q. Who operated the theater in Gatesville at that time?

A. A man by the name of Ray Avery, Sr.

Q. Did he continue to operate it after you acquired your interest?

A. No, sir. He was working for us. I don't remember the man's name who had the theater.

Q. After you acquired the theater in Gatesville, did Avery operate it for you?

A. Avery operated it. He was our manager.

Q. Then when did you and R. E. Griffith come to Oklahoma?

A. In December 1919, I believe.

3556 Q. At that time were you still on the road selling motion pictures?

A. Yes, sir.

Q. And what was R. E. Griffith doing?

A. He was doing the same thing.

Q. Where were the finances coming from you and he had been putting into these theater operations?

A. From what we could save out of our salaries.

Q. Was that your only source of income?

A. That and a small income from the theaters. As we would make a little money on the theaters we would find someone that would sell us a theater and we would pay part cash and make a note for the balance.

Q. At the time you and R. E. Griffith came to Oklahoma City, did either of you have any interest in any other theater in Oklahoma, other than Fairfax?

A. No.

Q. Hugo had not been obtained at that time?

A. No, we acquired that later, in 1923.

Q. Where was H. J. Griffith, your brother H. J. Griffith, at the time you and R. E. Griffith came to Oklahoma in 1919?

A. Mart, Texas.

Q. Then after you and R. E. Griffith came to Oklahoma City, what was the first theater acquisition that you made?

3557 A. Hugo, I believe, in 1923.

Q. 1923?

A. Yes, sir.

Q. That is the theater you acquired by trading your interest in Honeygrove, Texas?

A. Yes, sir.

Q. At that time did you still have an interest in Mart, Texas?

A. Yes, sir.

Q. When was that disposed of?

A. 1924.

Q. And after that date you had no interest in Mart?

A. No, sir.

Q. When was your interest in Gatesville, Texas, disposed of?

A. I don't recall. I don't remember the date we disposed of Gatesville; sometime around about that time.

Q. What became of it?

A. We sold it.

Q. Then after acquiring Hugo, what was the next acquisition you made?

A. I don't know that I can give you the exact dates or the sequence in which these theaters were acquired.

Q. Give them approximately.

Mr. Wright. I was going to suggest why not
3558 have him just submit a statement and it will save a lot of time.

Mr. Kmr. It is in the interrogatories anyhow.

The Court. I don't know what the purpose of it is. I suppose just giving the background.

Mr. Cochran. The purpose is to give the history of this development. Mr. McKenna has given it since 1928 and we expect to show the development by this witness up to 1928.

The Court. Go ahead.

A. We acquired the theater in Elk City from a man by the name of Story in 1925.

By the Court:

Q. '25 or '21?

A. '25.

Q. Had you bought one in Elk City in '21?

A. No, sir.

By Mr. Cochran:

Q. After you came to Oklahoma City the first acquisition was in 1923 in Hugo. You came to Oklahoma in 1919.

A. In that same year we acquired the Rialto, a lease on the Rialto Theater. No, I will take that back—1924 it was —'24 or '25 we acquired the Rialto Theater and H. J. Griffith came up from Mart, Texas—it was 1925 because he traveled on the road selling films——

Q. You say the Rialto Theater. That doesn't mean anything to us.

3559 A. The Rialto Theater in Oklahoma City. H. J., after traveling on the road for about a year decided he wanted to be home awhile so we bought the Rialto Theater and he managed that awhile; managed that until 1926, and that same year we entered into a partnership agreement with Mr. Fred Morley and acquired a couple of little theaters in a town named Cromwell, Oklahoma.

Q. How long did you operate theaters in Cromwell?

A. Two or three years, I don't remember; until the business began to fall off.

Q. That was an oil boom town, wasn't it?

A. Yes.

Q. What became of your theaters there?

A. We sold them back to Mr. Hagen, the man we bought them from; the man that owned the buildings.

Q. What was your next acquisition?

A. I think it was either in December, 1925, or early in January, we bought an interest in two theaters in Enid, Oklahoma, from a man by the name of E. L. (Jack) Johnston, and sometime in April of 1926 we bought an interest in Guthrie, Oklahoma, a partnership with Alvin Powell in the Highland Theater, and about that same time Alvin Powell and Griffith Brothers—this is Griffith Brothers you are speaking of, isn't it?

Q. Yes.

3560 A. Griffith Brothers and Alvin Powell bought the Pollard Theater, I think it was called.

3561 Q. Those are theaters in Guthrie?

A. Yes, sir; and then that same spring or early summer we made a partnership arrangement in Stillwater with Claude and Ralph Leachman.

By the COURT:

Q. In '26?

A. Yes, sir, I believe it was '26; I know it was before the company, before Griffith Amusement Company was incorporated.

By Mr. COCHRAN:

Q. All right?

A. And that same spring, early spring, we bought two lots in Borger, Texas, in partnership with a Mr. Fred Morley and started construction of a theater in that town, the Rex Theater, and built the theater, and I remember definitely it was destroyed by fire the following day.

Q. Now, up to the time the Griffith Amusement Company was organized, had you acquired any interest in the town of Tonkawa?

A. Yes, sir, I had forgotten Tonkawa. Tonkawa was acquired I believe in '25.

Q. How long did you continue to operate in Tonkawa?

A. I think until 1934, I am not sure, '33 or four.

Q. What became of your operation there?

A. We sold it to a man by the name of Williams.

Q. And you haven't operated there since?

A. No, sir.

3562 Q. Now, up to the time that Griffith Amusement Company was organized were there any outside funds of any kind or character, borrowed money, or otherwise, used in the acquisition of these theaters; had you borrowed any money?

A. I don't recall or remember of borrowing any money until the company was organized.

Q. I believe you said awhile ago that most of these theaters were bought part down and the remainder on time?

A. Yes, sir.

Q. In other words, the money you owed was owed to the people you bought from?

A. That's right.

Q. What were you and R. E. Griffith doing just prior to the time Griffith Amusement Company was organized?

A. We were operating a film exchange here in Oklahoma City.

Q. When did you commence to operate that exchange?
A. In December, 1919.
Q. Were you handling what is known as State Rights pictures?
A. Yes, sir,
Q. What was the name of your exchange?
A. Oklahoma Specialty Film Exchange.
Q. With whom were you interested?
A. Mr. W. G. Underwood from Dallas.
3563 Q. Is that the same Underwood who was brought here as a witness for the plaintiff?
A. Yes, sir.
Q. And who testified in regard to the Enid situation?
A. Yes, sir.
Q. You say he was interested with you in this enterprise?
A. Yes, sir; he furnished the money.
Q. What were you and R. E. doing?
A. We were doing the work, selling the pictures, and managing the business.
Q. In selling those pictures, what territory did you cover?
A. Oklahoma.
Q. And what opportunity did you have during that period of time to observe theater conditions in the State of Oklahoma and the type of theater operations in the various places?
A. Well, we had considerable opportunity. We were acquainted with practically all the theaters in the state, we knew all the exhibitors in the state, or practically all of them; there might have been a few that we didn't know.
Q. Now, what was H. J. Griffith doing immediately before Griffith Amusement Company was organized?
A. Well, immediately before, he was running the
3564 Rialto Theater, from 1925 until the company was organized in 1926.
Q. As manager of the Rialto Theater?
A. In Oklahoma City, yes, sir.
Q. Now, do you now recall how many towns in which you were operating theaters at the time Griffith Amusement Company was organized?
A. The number of towns?
Q. Yes.
A. No; I just gave them to you briefly; I would say about 14 theaters, 14 storeroom theaters.
Q. About 14 theaters?
A. Yes, sir.

Q. Who was licensing the pictures for exhibition in those theaters at that time?

A. R. E. Griffith.

Q. In all of the theaters in which you and he and H. J. Griffith were interested?

A. Yes, sir.

Q. Did you participate then in the licensing of any of the pictures?

A. No, sir.

Q. Tell us then the circumstances under which Griffith Amusement Company was organized?

A. Do you mean the reason for it?

Q. Yes; the circumstances.

3565 A. Well, we, as I have stated, were familiar with theaters in the state, and the owners of the theaters in the state, and most of the theaters in Oklahoma were, in our opinion, more or less inadequate, and we had formerly lived in Texas where they had better theaters, and we thought and felt there was a wonderful opportunity in Oklahoma for better theaters.

Q. What do you mean by "inadequate"?

A. Just that they were not modern, they were ordinary storeroom theaters, most of them.

Q. You speak of storeroom theaters; that question has been asked heretofore as to what you refer to by storeroom theaters. Explain that.

A. A storeroom theater, as spoken of generally in show vernacular or theater circles, is a building that formerly has been used as a store and just been remodeled, and a motion picture theater, which isn't really a theater, has been placed in there.

Q. In other words, the building hasn't been equipped for the purpose of theater operations in the sense of having conveniences, such as restrooms and modern seats and facilities?

A. In those early days, they had no restrooms. There are a few restrooms now in some of the storeroom theaters.

3566 Q. But at the time you are talking about, along in 1926, a storeroom theater was never built originally for a theater?

A. No, sir; it was remodeled, just like they remodel a grocery store, put in a grocery store, or barber shop, or anything at all, just the same as they would a theater. The only thing, in putting in a storeroom theater, you had usually to raise the floor, you had to climb up steps, or an old wooden ramp, to get your proper elevation in the theater.

Q. What was the condition of the theaters in the small towns in Oklahoma in that period, immediately before 1926?

A. Most of them, as I said, were storeroom theaters.

Q. Go ahead.

A. Well, we were having difficulty in financing ourselves and acquiring theaters; we had no credit to speak of; the banks wouldn't lend us any money, if at all not very much, so we were desirous of finding sufficient finances to go out and acquire and build theaters.

Q. Now, you say the banks wouldn't loan you any money. At that time, from the banking standpoint, were motion picture operations in small towns considered bad loans from the banking standpoint?

A. I don't know how the bankers felt, how they felt; all I know is that we couldn't get any money.

Q. All right. Then along in 1926, with that condition prevailing, what took place?

3567 A. I remember coming into Oklahoma City from Borger, Texas where we were building this theater, and that evening my brother, R. E. Griffith, told me that he had been in touch with a man by the name of Fair, A. E. Fair, and that Mr. Fair wanted to make a deal with us to buy an interest in our theaters.

Q. Did you later get in contact with Mr. Fair?

A. Yes, sir, we did.

Q. Where?

A. At the Huckins Hotel, here in Oklahoma City.

Q. What was the result of that negotiation?

A. My brother and myself and our attorney at that time, Mr. D. I. Johnston, went to New York City and discussed the matter with Mr. Fair and other officials of the Universal Chain Theatrical Enterprises.

Q. And as a result of those negotiations, was this contract between Griffith Brothers and Universal Chain Theatrical Enterprises, which has been introduced in evidence here, entered into?

A. Not at that particular time. We were not successful in closing our deal there, while there. We came on back, and they sent someone down here, some attorney I believe it was, and he was here several months drawing up a contract and working out the details of the contract, but later on the contract was signed and executed.

3568 By the Court:

Q. Is that the organization, of what corporation was that the organization?

A. Griffith Amusement Company.

Q. Griffith Amusement Company?
A. Yes, sir.
Q. In 1926?
A. In 1926, your Honor.

By Mr. COCHRAN:

Q. In that agreement it is provided for the organization of the corporation?
A. Yes, sir.
Q. And Griffith Amusement Company was organized as a result of that?
A. Yes, sir.
Q. Now, that was in 1926, was it?
A. Yes, sir.
Q. Were these various theaters in which Griffith Brothers were interested transferred to Griffith Amusement Company pursuant to that agreement?
A. Yes, sir.
Q. Who then operated the Griffith Amusement Company; I mean had the actual management of Griffith Amusement Company?
A. Griffith Brothers.
Q. By Griffith Brothers you mean whom?
A. R. E. Griffith, H. J. Griffith, and myself.
3569 Q. Did you become president immediately?
A. Yes, sir.
Q. And have remained as president ever since?
A. Yes, sir.
Q. In your capacity as president, were you active in the management of the affairs of the corporation?
A. Yes, sir.
Q. And have continued so ever since?
A. Yes, sir.
Q. Who passed on the matter of acquisitions of additional theaters beginning with the organization of the corporation?
A. I did.
Q. Were those acquisitions also under the contract subject to the approval of Universal Chain Theatrical Enterprises?
A. Yes, sir, they were.
Q. Now, who had charge of the matter of obtaining leases and titles to real estate, the remodeling of theaters, and things of that kind?
A. Why, I handled it for a long time, I personally made most of the negotiations in the acquiring of theaters, leases and things of that nature. My brother, H. J. Griffith, shortly after the company was organized, had charge

of equipping the theaters and keeping them re-
3570 modeled and furnishing the theaters and things of that nature.

Q. Well, after the organization of the corporation, Griffith Amusement Company, what was the first additional town in which a theater or theaters was acquired?

A. I wouldn't remember the first town.

Q. Well, approximately?

A. Oh, I don't know. We bought theaters in Shawnee in '26. Jake Jones—Adam Hornbeck came up to see us and said he had a deal.

Q. Never mind what happened; you did acquire them?

A. In Shawnee in 1926.

Q. Wait just a minute. In Shawnee, from whom did you acquire the first theater?

A. Jake Jones.

Q. At that time that was known as the Cozy, and you renamed it the Ritz, is that right?

A. Yes, sir.

Q. And that is the theater that Jake Jones today is operating as the Ritz?

A. Yes, sir.

Q. After the Ritz was leased from Jake Jones, and the building and equipment purchased, what was the next theater that you opened in the town of Shawnee?

A. The Bison.

Q. When was that opened, approximately?

3571 A. I believe it was sometime in 1927.

Q. You think that was about a year, during the first year?

A. I think it was in the fall of '27. I know it was cold, I remember it was cold; we all went over there for the opening and wore overcoats.

Q. Explain to the Court what kind of theater that was?

A. The Bison Theater is a very fine modern theater; it is today.

Q. At that time how did it compare with theaters in similar towns throughout this section?

A. It was an outstanding theater, the most outstanding theater in that section of the state; it still is.

Q. Did Griffith Amusement Company own the realty on that site?

A. Yes, sir; we bought the lots and built the building there.

Q. Do you recall how much investment you made in that building at the time it was originally constructed?

A. The building?

Q. The building, the lot, and the equipment?

A. The building cost us about $40,000, the lot cost us about $16,000, and I would say we had about fifteen or twenty thousand dollars in the equipment.

Q. The total investment of something like $75,000 or $76,000?

3572 A. Somewhere in that neighborhood.

Q. Now, at that time, sound pictures or talking pictures hadn't yet come in, had they?

A. No, they hadn't, they hadn't.

Q. Then later was that theater equipped with sound?

A. Oh, yes; all our theaters are equipped with sound now.

Q. Do you recall about what during those early days of sound, about what sound equipment cost?

A. About $14,000.

Q. About $14,000?

A. Yes, sir.

Mr. WRIGHT. If the Court please, I don't understand what all these figures have to do with the issues here.

Mr. COCHRAN. I will state the purpose of it. I am not going into every situation, but counsel has cross examined some in regard to the money which was obtained from Universal, a large amount of money, and spoke of using that for expansion purposes. I want to show in addition to the actual acquiring of theaters, that a large part of this money was used in the building and remodeling of theaters, and giving an approximate idea from several of these situations, the amount of money that is involved in even a small town in fixing up a deluxe theater, just to give a picture of the situation in general. As I say,

3573 I don't expect to follow that through with every theater.

The COURT. Let's get along. I think you can limit some of it.

By the COURT:

Q. In this connection, after you built the Bison, what theaters did Jones operate in Shawnee?

A. Jones was building a theater in Shawnee, or started building a theater in Shawnee shortly after we started construction of the Bison Theater, the Criterion Theater, your Honor.

Q. After you bought the Ritz and built the Bison, were there any other theaters in the town?

A. Yes, sir, your Honor, the Odeon; a Mr. A. B. Momand had the Odeon Theater and the Savoy Theater.

Q. But Jones wasn't operating any theater at that time?

A. No, sir: he wasn't operating a theater at that time.

Then there was another theater there called the Victory Theater, owned by a Mr. Roy Weldman.

3574 By Mr. COCHRAN:

Q. Now, after selling the Cozy Theater to you in Shawnee, did Jones then go somewhere else and start building a theater?

A. Yes, sir.

Q. Where was that?

A. Seminole.

Q. And did you acquire that theater from him in Seminole?

A. Yes, sir.

Q. Was that your initial operation in Seminole?

A. Yes, sir.

Q. That was acquired before he had completed the building?

A. Yes, sir.

By the COURT:

Q. What was the name of that theater?

A. The Ritz Theater.

By Mr. COCHRAN:

Q. You stated that the Bison was built in 1928, and at that time A. B. Momand was operating two theaters, and later, as I understand it, you say Mr. Jones commenced his building and did build the Criterion Theater?

A. Yes, sir.

Q. Now this theater was, according to his testimony, acquired by the Griffith Amusement Company sometime after he had started operating. Is that correct?

A. He operated for some time; a couple of years would be my guess.

3575 Q. At the time you acquired that theater from him, what was the purpose of that acquisition?

A. We needed it for our B product.

Q. At that time was it equipped with sound?

A. Yes, sir, it was.

Q. At the time he sold it?

A. I don't remember that. I don't remember on all these theaters, when they were equipped with sound.

Q. The Criterion Theater?

A. I wouldn't remember whether it had sound or not.

Q. At that time was Mr. Momand still operating the two theaters there in Shawnee?

A. Yes, sir.

Q. You told us that prior to the organization of the Griffith Amusement Company, you acquired some interest

in Borger and started a building. Did you complete the building in Borger?

A. Yes, sir.

Q. What kind of a town was that?

A. It was an oil boom town.

Q. Have you continued to operate theaters in Borger since that time?

A. Yes, sir.

By the COURT:

Q. What year did you build your theater in Borger?

3576 A. 1926.

Q. What is the name of that theater?

A. We built two theaters there that year. We built the Rex Theater, which was destroyed by fire the following day, and then we built the theater down in the next block because we wanted to get in a restricted block and we built and opened that theater, and it had been opened about six months and it was destroyed by fire.

Q. What was the name of that?

A. It was called the Rig.

By Mr. COCHRAN:

Q. Was this first theater that you erected in Borger one of the first buildings located in the town?

A. It was the first tile and brick building erected in Borger, Texas.

Q. And then sometime during the year 1926 can you tell us another town where you acquired theaters?

A. What year is that?

Q. 1926 or '27. You have already mentioned Seminole, haven't you?

A. Yes. We bought a lot and built a theater at Pampa, Texas, in 1926.

Q. How about Panhandle, Texas?

A. Yes, we built a theater in Panhandle, Texas.

Q. What kind of a town was Panhandle?

3577 A. Panhandle had quite a boom there for a while but the boom was the overflow from the Borger oil field. They had no roads or highways to Borger or railroads to Borger and I believe the workers that were working in the oil field and around the fields of Borger, most of them were living in Panhandle.

Q. How long did you continue to operate at Panhandle?

A. We operated there until it began to lose money and we sold it; two or three years.

Q. Several years?

A. Yes, sir.

Q. You haven't operated there since then?

A. No, sir.

Q. You spoke of operating until you commenced losing money. Has it been your general policy that unless you believed you could operate a theater profitably for a reasonable period of time you would not operate it?

A. No, sir. Naturally we would not like to build a theater unless we thought it would be successful.

Q. Or continue to operate?

A. Not any longer than we had to if it was losing money.

Q. In addition to the towns you have already mentioned, had you, during the operation of your company disposed of theaters in various towns?

3578 A. Yes, sir.

Q. Now can you tell us the theaters which you acquired and the towns in which you acquired theaters, additional towns in the year 1927?

A. We acquired Duncan, Oklahoma. We acquired a half interest in Duncan, Oklahoma.

Q. With whom?

A. You mean who was our partner?

Q. Yes.

A. Mr. R. F. (Jack) Wilburn.

Q. Is he still a partner with you?

A. Yes, sir.

Mr. WRIGHT. All that information is in the interrogatories.

Mr. COCHRAN. I have about two more towns.

The COURT. Very well.

By Mr. COCHRAN:

Q. Henryetta, did you acquire Henryetta?

A. Henryetta and Okmulgee, I believe, in 1927.

Q. Mr. McKenna came with the company on what date, in the fall of 1928, is that right?

A. I believe it was December, 1928. I am not positive.

Q. In 1928 what theaters did you acquire? Theaters in what additional towns?

A. I don't believe I can give the names of the

3579 towns without referring to a list or something. We were acquiring theaters from time to time and have ever since.

The COURT. I suggest during the recess you get that list and submit it so the record will be complete. We will recess at this time until 10 o'clock tomorrow morning.

(Hereupon, court adjourned until 10 o'clock a. m. September 28, 1945.)

3580 PROCEEDINGS

September 28, 1945, 10 o'clock a. m.

L. C. GRIFFITH, was thereupon recalled, and further testified as follows:

Direct examination [cont'd] by Mr. COCHRAN:

Q. About adjournment time yesterday I asked you for the additional towns which the Griffith Amusement Company commenced to operate theaters in, during the year 1928. Can you tell us what those towns were?

A. Yes.

Q. Give them to us.

A. Bartlesville, Oklahoma, and Wellington, Texas.

Q. When you went into a new town and acquired a theater or theaters which were being operated at that time, will you tell us what the practice of your company was as to those theaters in regard to the matter of betterments?

A. Well, in acquiring a new town or theater or one or more theaters, we made a survey of the theaters to determine in our opinion whether they were the type of theaters that were suitable for the town. If a new theater was needed, as soon as it was convenient, or possible, we built a new theater, and if not, well, we remodeled the theaters that were there to bring them up to our
3581 standard type of operation.

Q. Did you in each and every town provide for at least one first class theater with modern conveniences?

A. Yes.

Q. I believe you have already stated that, generally speaking in the smaller towns of Oklahoma, and in the towns in which you commenced to operate theaters during the period 1926 through the period 1934, there were no modern theaters with modern facilities, generally speaking.

A. There were a few but not many.

3582 Q. During that period in 1926, the time Griffith Amusement Company commenced to do business until 1934 when the stock which had been owned by Universal Chain Theatrical Enterprises was asquired, tell us in what towns Griffith Amusement Company either constructed or had built for them new theater buildings?

Mr. WRIGHT. If the Court please, I think we have already covered that when we had Mr. McKenna last May to go over the towns and tell us in each one whether the theater was acquired from someone else or built new. I don't see the point of repetition.

Mr. COCHRAN. The matter is not entirely covered in the way that I wanted to cover it here.

The COURT. Read the question.

(Question read by the reporter.)

The COURT. You may answer. Let's get along with it. I think it is repetitious in a sense.

A. Would you like the names of the towns?

By Mr. COCHRAN:

Q. Yes, give us the names of the towns.

A. Bartlesville, Oklahoma, two; Borger, Texas, two; Elk City, Oklahoma, one; Fairfax, Oklahoma, one; Hobart, Oklahoma, one; Kermit, Texas, two; Stillwater, Oklahoma, one; Stinnett, Texas, one; Wellington, Texas, one; Norman, Oklahoma, two; Pampa, Texas, two; Panhandle,
3583 Texas, one; Seminole, Oklahoma, two; and Earlsboro, Oklahoma, one.

Q. How about Enid?

A. Enid, Oklahoma, three.

By the COURT:

Q. Do you have that list?

A. Yes, sir.

Q. Would you let me have it, please?

A. Yes, sir.

By Mr. COCHRAN:

Q. In Borger, Texas, you said there were two constructed, but I believe you have already testified that there was one of those theaters that burned the next day after it was opened?

A. Yes, sir, it did.

Q. And that was rebuilt, was it?

A. That was rebuilt, and we built another one down in the next block, and it burned in about six months, and it was rebuilt. And the Rex is down now, and being rebuilt at this time.

Q. I am talking about in this period of 1934?

A. Yes, sir, that's right.

Q. So there were two theaters built, and both of those theaters during that period burned and both were rebuilt?

A. That's right.

By the COURT:

Q. The Rex, and what was the other name in Borger?

A. The Rig.

3584 By Mr. COCHRAN:

Q. Were each of those theaters which were constructed during that period fully equipped?

A. Yes sir, they were.

Q. For theater operation?

A. They were.

Q. In addition, during that period of time, were there a number of theaters that were not rebuilt but which were completely remodeled?

A. Yes sir, there were.

By the COURT:

Q. Just in that connection, is these towns which you have mentioned where you constructed new theaters during the period from '26 to '34, were there any what you would call first class theaters, other than yours?

A. You mean where we built theaters?

Q. Yes, sir.

A. Already built in the town?

Q. Yes, sir.

A. Well, that's more or less a controversial subject, your Honor. Every exhibitor thinks he has a fine theater, irrespective of what it may be like.

3585 Mr. COCHRAN. Go ahead and take each one of these towns.

A. In Bartlesville there was none; Borger there was none; Elk City, none; Enid, none; Fairfax, none. In Hobart there was one pretty nice theater; Kermit, Texas, none; Stillwater none; Stinnett, none; Wellington, Texas, none; Norman, none; Pampa, none; Panhandle, none; Seminole, none and Earlsboro, none.

Q. When you say "none", what do you mean by that?

A. I mean there were no modern theaters in those towns at that time.

By the COURT:

Q. I believe you said there was none in Bartlesville.

A. No, sir, there was not a modern theater in Bartlesville. We tore the theater down and rebuilt it. There was only one theater there.

Q. There was one in Enid?

A. There were two in Enid. We rebuilt it. I would say Hobart one, Shawnee one. Shawnee is not on this list. Shawnee was left off for some reason. I just observed that.

Q. How many did you build in Shawnee?

A. We built one.

By Mr. COCHRAN:

Q. During the period of 1926 through 1934, you built one in Shawnee?

3586 A. Yes, sir.

Q. The Bison?

A. Yes, sir.

Q. In Kermit, Texas, you say you built two?
A. Yes, sir.
Q. What were their names?
A. The Kermit and Texan; Texan or Texas.
Q. You just have one now down there?
A. The Kermit I left off. There is another theater by the name of Kermit.

By Mr. COCHRAN:

Q. I believe you are mistaken about the Kermit being built in that period because I think on reflection you will find that was constructed about 1936. Isn't that right?
A. I don't know as to the dates. I just know we built a theater there. It may have been later.
Q. The testimony is that Kermit was built in 1936 so that should come off of there. After the period 1934 you did continue to construct and remodel theaters?
A. Yes.

By the COURT:

Q. Now in that connection, in Sapulpa—you didn't go into Sapulpa until after 1934?
A. No, sir. Sapulpa is owned by the Griffith Consolidated and our partner was a man by the name of Jimmie Zartaludes. Those are Griffith Amusement Company towns.

3587 By Mr. COCHRAN:

Q. How about Wink?
A. Yes, we had two theaters in Wink. I left that off also.
Q. Did you build those or have them built for you?
A. We built them, two theaters.

By the COURT:

Q. What are their names?
A. I believe one was called the Rig and one the Rex. We usually call theaters in those oil field towns the Rig and the Rex, in most instances in those years.

By Mr. COCHRAN:

Q. There has been some testimony here about a man by the name of Dembow and another man by the name of Depinet having some stock interest in the Texas-Oklahoma Enterprises, Incorporated. In that connection, I will ask you if at the time you entered into the agreement which has been introduced in evidence here with Underwood and Ezell, you had any knowledge of any connection whatever on the part Dembow and Depinet, or either of them, with that corporation?
A. No, I did not.

Q. Whom did you think at that time were the only persons interested in that corporation?

A. Mr. Underwood told me that he——

3588 Q. Never mind what he told you.

A. W. G. Underwood and Claude Ezell, C. T. Ezell from Dallas, Texas.

Q. After you had entered into the original agreement with Universal Chain Theatrical Enterprises, Inc. for the operation, for the organization and operation of Griffith Amusement Company, who were the persons who were actively in charge of the management and operation of Griffith Amusement Company?

A. My two brothers and myself.

Q. And did Universal Chain Theatrical Enterprises, Inc. loan some money to Griffith Amusement Company for a time?

A. Yes, they did.

Q. About when was it that it discontinued making the loans to the extent covered by the agreement, the original agreement?

A. We began having difficulty in getting Universal to approve loans or to approve the acquisitions of theaters some time during the year 1928.

Q. And was it after that time that Consolidated Theaters, Inc. was organized?

A. Yes, it was.

Q. What was the purpose of organizing Consolidated Theaters, Inc.?

A. The purpose was for us to continue to acquire

3589 theaters. build theaters.

Q. Who do you speak of by "we"?

A. Griffith Brothers.

Q. Was there a supplemental, this supplemental agreement which has been introduced in evidence here, drawn up between Universal Chain Theatrical Enterprises and Griffith Brothers covering that matter?

A. Yes, sir, there was.

Q. When was it that the stock which had been owned by Universal Chain Theatrical Enterprises was acquired by local interests?

A. In 1934.

Q. There has been some testimony here that that stock was so acquired, and part of it was issued to Griffith Brothers, the class "B" stock, and the remainder of it was at the time issued either to the treasury of some corporation or to some corporation. Will you explain just how that financing was done, how it happened that the stock was handled in that manner?

A. Well, we had a number of partners throughout this particular territory at that time, and separate and aside from that, we found it difficult to borrow a sufficient amount of money from the banks to make the deal; we needed the partners to help us finance the deal, and in addition
3590 to that, well, we thought it advisable to have them have some interest in the company.

Q. Was the stock which was held through Western States, was that stock which was held for those people you refer to as partners?

A. Yes, sir, it was.

Q. After that transaction, was the stock in Griffith Amusement Company locally owned?

A. Yes, it has been locally owned ever since.

Q. It appears that after that time Griffith Amusement Company didn't go into any new town, except the entry into the town of Kermit in 1936. Will you explain why it was that expansion on behalf of Griffith Amusement Company was discontinued?

A. These various partners, when we approached them in helping us to finance and buy out Universal, explained that they wanted to make an investment, and it wasn't their desire to expand; they preferred to have dividends.

Q. And has that corporation been handled on that basis since then?

A. Yes, sir, it has.

Q. Speaking of expansion, it has continued to acquire properties or build and remodel properties in towns in which it was already doing business, has it?

A. That's right.

3591 Q. For what purpose?

A. To keep the theaters modern and up-to-date, abreast of the times, keep abreast of the times, give the people in those communities modern, up-to-date, adequate theaters.

Q. Of various types?

A. Yes, sir.

Q. When Griffith Brothers were operating theaters, the theaters which have been described by you, and which were in operation at the time Griffith Amusement Company was organized, what type of service did it maintain, did Griffith Brothers maintain in the management and supervision of the theaters in which it had an interest?

A. Are you speaking of Griffith Brothers now?

Q. Yes, sir.

A. My brother, R. E. Griffith, rendered a service of booking and buying of pictures, and then we supervised the management of the theaters.

Q. Well, up to the time the Griffith Amusement Company was organized, what were you and R. E. Griffith doing in addition to looking after your interest in those theaters?

A. We were managing a film exchange here in Oklahoma City.

Q. That was that Oklahoma Specialty Company?

A. Yes, that's right.

Q. Did Griffith Brothers in its theater operations
3592 maintain any office separate and distinct from the offices in the Oklahoma Specialty Company?

A. No, we had, we kept our office at the same place, in the film exchange.

Q. After Griffith Amusement Company was organized, did you continue to give any of your time to the film exchange?

A. No, we did not; we devoted all of our time after that to the theater business.

Q. Did you open up offices for home office operations?

A. Yes, sir.

Q. For those various theaters?

A. Yes, sir, we did.

Q. Where did you open offices?

A. On Reno Street.

3593 Q. And from the time of the beginning of the Griffith Amusement Company did it attempt to develop and maintain an organization to furnish to the various theaters in which it was interested certain services?

A. Yes, it did.

Q. What were those services?

A. May I refer to the list I prepared here?

Q. Yes.

A. The licensing and booking of pictures; booking and auditing service; tax service; insurance service; legal services; repair services of all kinds, advertising department and exchange of posters of all kinds; shipping service, including shipping of film and all accessories to our theaters directly from our offices, and supervision of the operation of theaters, including the exploitation of pictures.

Q. What do you mean by the exploitation of pictures?

A. Why, furnishing different ideas we could think of or others think up and exchange those ideas.

Q. That is in regard to what?

A. To the selling of the pictures, any picture and all pictures.

By the COURT:

Q. Is that part of your advertising?

A. No, sir. The advertising, generally speaking, is standard advertising such as posters. That is in
3594 addition. We have a department where we exchange the paper from one town to another.

By Mr. COCHRAN:

Q. Just as an illustration, Mr. Griffith, in regard to the exploitation of pictures, can you explain the difference in operation that was instituted after you started theaters in regard to matinees, the time that houses would be opened to the public, and so forth?

A. Yes, that is true. In most of the towns in Oklahoma when we acquired them they were not operating matinees.

Q. Just explain, in most of the small towns in which you opened theaters at the time you started operating, when were those theaters opened for the exhibition of pictures to the general public?

A. As to the time?

Q. Yes.

A. That varies.

Q. I said when you went into the town.

A. Oh, they would open at 6:00 or 6:30, 7:00 or 7:30 in the evening and run one show, many of them.

Q. Frequently did they close the shows for dinner?

A. Those that had matinees did and frequently didn't open up until after dinner.

Q. What policy did you put into effect?

A. I think in the majority of theaters, our theaters opened at the matinee and ran until closing time that
3595 night.

Q. At what time do the matinees open?

A. At various times. Some of them open at 10 o'clock in the morning, in the oil field towns, and others open at 1:30, some of them at two o'clock in the afternoon.

Q. The point is this: Did you in the supervision of the operation of these theaters attempt to develop ideas of that kind?

A. Yes, we did.

Q. Which have been illustrated by this matinee business, so as to develop the greatest box office attractions which you thought could be developed in that particular town?

A. That was a part of our exploitation proposition, yes. We ran trailers. We ran advertising of coming attractions. In addition to that, we had advertising in front of the theaters, advertising coming attractions, on the marquees.

Q. Did you find ideas of that kind of others that were continually being brought to your attention and which

could be utilized throughout the towns in which you are serving the public?

A. Yes, we run across ideas right along.

Q. Ideas of that kind are what you refer to as exploitation as distinguished from advertising?

3596 A. That is right.

Q. Why were those services which you have mention and listed furnished by the Griffith Amusement Company instead of being furnished by the manager of each theater by having that manager perform those services for his individual theater or theaters?

A. Well, in setting up a home office it made it possible for us to develop an organization, and to develop men in their respective fields or departments to more efficiently and economically handle the business, which left all the managers time free to manage the theater and look after local affairs in his community.

Q. When you say "manager of the theater" you are referring to the physical operation of the theaters in the respective towns?

A. That is correct.

Q. When Consolidated Theaters was organized, did it establish for itself any home office organization?

A. No, it did not.

Q. Did it have any salaried officers?

A. No, it did not.

Q. You were president of Consolidated in the beginning, were you not?

A. Yes, I was.

Q. Did you draw any salary?

3597 A. No, sir, I never have.

Q. None of the other officers drew any salaries from Consolidated?

A. Not that I know of.

Q. What did Consolidated Theaters do for home office services such as you have mentioned as having been previously performed for the Griffith Amusement Company?

A. Well, the home office services were rendered by the Griffith Amusement Company by an agreement with Consolidated.

Q. Why was that done?

A. Because Griffith Amusement Company we felt had a fine home office set up. We didn't need two home offices, two different setups.

Q. Had the organization that you had developed had an experience of several years prior to that time?

A. Yes, it had.

Q. Had you developed and trained men in various fields of service which you have outlined here?

A. Yes, sir, we have.

Q. What did you find as to the matter of the economy of the operations by reason of maintaining only one home office.

A. We found that it was more economical to handle it in that way, naturally.

3598 Q. From the organization of the Griffith Amusement Company for a period of several years was R. E. Griffith on a salary?

A. No, he was not.

Q. Was the Griffith Amusement Company?

A. No, he was not.

Q. I said from the time of the organization.

A. Oh, from the time of the organization, yes, until he left here in 1931.

Q. Where did he go in 1931?

A. He went to New Mexico.

Q. At that time was his employment by the Griffith Amusement Company terminated entirely for a time?

A. Yes, sir, it was.

Q. And he was not employed in any manner by the Consolidated Theaters?

A. No, he was not.

Q. I believe it appears that at that time he disposed of his stock in Consolidated Theaters?

A. Yes.

Q. And retained his stock in the Griffith Amusement Company?

A. Yes, sir, that is correct.

Q. From that time on did he participate in any way in the management or operation of Griffith Amusement

3599 Company other than possible attendance at meetings of the board of directors?

A. No, he did not.

Q. Was he in Oklahoma City frequently or infrequently after that time?

A. I would say infrequently. He came here occasionally My mother lived here.

Q. Your mother has lived here, lived here then and has continuously up until this time?

A. Yes.

3600 Q. After he left Oklahoma City and left the employment of Griffith Amusement Company, did he later perform any services for the Griffith Amusement Company?

A. Yes, sir.

Q. What was the occasion of the resumption of those services?

A. Well, when he decided to leave in '31, the spring of '31, we were very much, my brother and myself, H. J. Griffith, were very much concerned about his leaving because he had always done the buying and he was an excellent buyer, we thought.

Q. Had you individually had——

A. I had never.

Q. —any experience——

A. —Had any experience in buying, neither had my other brother, H. J. Griffith, and Mr. Falls, while he had been accompanying him and assisting him in the buying, and had been in charge of the booking, we didn't feel at that time that Mr. Falls had sufficient experience to handle the buy at that time. We thought if we could——

Q. (Interrupting) What arrangement then was made with R. E. Griffith?

A. I got in touch with him and discussed the matter with him and prevailed upon him to do the buying for us, if he would.

3601 Q. Did he assist anyone?

A. Yes, sir, he did.

Q. Who?

A. Mr. Falls.

Q. Well, when he came back, did he then or at any time subsequent to the time he began, again commenced to buy pictures, draw a full time salary from Griffith Amusement Company?

A. He drew a salary during the film buying season.

Q. My question was whether he had a full time job?

A. No, sir, he never had a full time job. He never did anything except assist in the buy, supervise the buying during fall of the year during the buying season.

Q. And during that time he received compensation for that?

A. Yes, sir, he did.

Q. I said when he came back. He still retained his home away from here, did he not?

A. Yes, sir.

Q. Where was the buying or licensing of pictures during that period carried on mostly, that is, the buying of the season's product?

A. Well, most of it was done in New York; some of it was done here, but most of it was done in New York in those years.

3602 Q. As time went on, was there any objection on your part to having the licensing of these pictures carried on in New York.

A. Yes, there was. I never did agree with the idea myself.

Q. And in the season of 1938-'39, what happened so far as a change insofar as the buying was concerned, in the change of buying so far as your companies were concerned?

A. We decided to handle our own buy at that time, and R. E. Griffith to handle his.

Q. What about the place of licensing, so far as the licensing for your company was concerned?

A. What about what?

Q. The place where the pictures would be licensed?

A. Oh, they were bought here at home, in Oklahoma City.

Q. Well, what brought about that change?

A. That is principally the reason, that discussion that we had, between my brother and myself. He thought the buying should be done in New York, and it was costing us an awful, quite a bit of money and expense, and took a longer time to do it. They would go up there and spend two or three months every fall of the year to buy the pictures. Sometimes it would take them two or three weeks or a month to make the first deal.

3603 Q. So from that time on was there any connection between the R. E. Griffith Theaters, that is, those theaters which were operated by R. E. Griffith Theaters, Inc., or of which R. E. Griffith had the management, and the theaters for which Griffith Amusement Company was licensing the pictures?

A. Do you mean did he do any buying then?

Q. Was there any connection between those?

A. None whatever.

Mr. WRIGHT. If the Court please, the record is perfectly clear as to the extent of the connection that continued, and I don't see that it adds anything to have the witness make a statement that is a conclusion.

The COURT. I didn't get your first statement.

Mr. WRIGHT. I say the record shows the extent of the connection between Mr. Griffith and the Griffith companies, and I don't see that it is proper for the witness to give his conclusion.

Mr. COCHRAN.. The contracts themselves might show execution by Mr. Falls, but they don't show that Mr. R. E. Griffith had no participation whatever in licensing the pictures.

Mr. WRIGHT. I am referring to the relationship of the various corporations. I say this is all in the record, and for Mr. Griffith to characterize the relationship as being one

where R. E. Griffith had no relation with these corporations, is improper.

3604 Mr. COCHRAN. I didn't say relation to the corporation; I said the licensing of the pictures.

Mr. WRIGHT. Perhaps I misunderstood the question. Read the question.

(Question read by the reporter.)

Mr. COCHRAN. Strike that question, and strike the rest of it. I see Mr. Wright's viewpoint. I was trying to ask something entirely different than is covered by the question.

By Mr. COCHRAN:

Q. Beginning with the season 1938-'39, did R. E. Griffith have anything to do with the licensing of pictures for the theaters which were being serviced by the Griffith Amusement Company?

A. Not to my knowledge.

The COURT. I am not sure that I understand, before you leave this other point.

By the COURT:

Q. Now, when your brother, R. E. Griffith, assisted you or your Mr. Falls in licensing these pictures, were the contracts for Griffith Amusement Company and Consolidated separate contracts from the Westex and R. E. Griffith corporations?

A. That's my understanding, yes, sir. As I said, I never had anything to do with the buying, and I wasn't in on any of the conferences.

Mr. COCHRAN. The memo contracts, your Honor

3605 please, which were entered into, show that up to 1938-'39, as a whole, there may be some exceptions, but by and large the contracts were signed by Griffith Amusement Compnay, signed by or for Griffith Amusement Company, Consolidated Theaters, Inc., R. E. Griffith Theaters, Inc., prior to the time Westex was organized, and after Westex was organized, Westex was also added.

The COURT. That is what you call the master contract, was signed by all those parties?

Mr. COCHRAN. The master contract, according to the Government, and we refer to it as the memo contract. It is all just a rose by another name.

The COURT. The preliminary contract.

Mr. COCHRAN. Have I correctly stated the situation, Mr. Wright

Mr. WRIGHT. Yes, sir, with the addition that they were signed by R. E. Griffith on behalf of those corporations.

Mr. COCHRAN. Sometimes it is R. E. Griffith, and sometimes the names of each one of the corporations is signed,

but I think it can be understood that, as I say, by and large, that with possibly some exceptions, the memo contracts were signed by or for each one of the corporations which were then organized, until the season 1938-'39

3606 By Mr. COCHRAN:

Q. Do you know Ray H. Russ at Stillwater?

A. Yes, sir.

Q. Do you recall the period during which you had partnership operations in Stillwater, Oklahoma?

A. Yes, sir.

Q. Mr. Russ, at page 1364 of the record testified as follows:

"Q. Did you have a conversation with Mr. L. C. Griffith about that product?" (Referring to Paramount)

"A. Yes, I had several conversations with Mr. Griffith. That is while we were in partnership.

"Q. When was that?

"A. Well, that was, I imagine we had been in partnership almost a year, and I asked Mr. Griffith if I couldn't go down and buy Paramount pictures.

"Q. What did he say?

"A. He said , 'No.' He said, 'I forbid you to buy Paramount.' He said, 'We are having a big battle with Paramount and we are going to show them we can operate in this territory without their pictures and we are going to make them come to us.' He says, 'I forbid you to buy their pictures.' "

Did you have any such conversation with Mr. Russ?

A. No, I did not.

3607 Q. He further testified, record page 1365, as follows:

"Q. Did he say anything else?

"A. Yes, there was other conversation.

"Q. With reference to the Paramount product?

"A. Later I asked him again if I couldn't buy those pictures. I said, 'L. C., I am losing money at the Camera and there is no reason why I should lose money; all I need is some good product.' I said, 'If I could get these Paramount pictures, I can get them at a good price.' I said, 'Roy Hefner is a good friend of mine and I could get a good deal, and I can show them at the Camera and pay you off what I owe you.' He said, 'I forbid you to buy those pictures. If you buy them it means the breaking up of this partnership.' "

Did you have any such conversation as that?

A. I did not.

Q. Did you have any knowledge of the fact that he had licensed any Paramount pictures prior to the time your partnership connection was terminated?

A. No, that was the first I knew of it, after he had terminated the contract.

Q. Did you personally on behalf of any defendant ever ask any film distributor or its representative not to license its product to any competitor of any company with which you were connected?

3608 A. No, sir.

Q. Did you, or anyone in your presence, or to your knowledge ever have any discussion with the representative of any film distributor regarding the licensing of product of that distributor to any competitor of any company in which you were interested?

A. No.

Q. Did you personally or did anyone to your knowledge connected with any company in which you were interested ever enter into any agreement or understanding with any distributor of films regarding the licensing or restriction of licensing of films to any competitor of any company in which you were interested?

A. No.

3609 Mr. WRIGHT. Will you read the previous question?

(Previous question read.)

Mr. WRIGHT. We have the same objection we had before to similar questions. That is a conclusion.

The COURT. As to the agreement it is a conclusion. I think it would be better to have him state what was said.

Mr. COCHRAN. I will put it this way.

By Mr. COCHRAN:

Q. Did you personally, or in behalf of any of the defendants, ever enter into any agreement or any understanding with any distributor of motion picture films regarding the licensing or restricting of licensing of films to any competitors of any defendants in this case?

Mr. WRIGHT. That does not cure the objection. It is still as much a conclusion as before.

The COURT. Yes, I think as to the agreement——

Mr. COCHRAN. I submit any witness knows whether he made an agreement or had an understanding, and I don't know of any better evidence than to simply state that as a fact. I don't know how you are going to prove the absence of an agreement. Of course, the Government is entitled to prove all the circumstances it desires in an attempt to prove an absolute agreement. I am fully aware of the fact that the law is in a conspiracy case you do not have to have an

3610 agreement established by the word of some particular person that there was an agreement. Nevertheless, I submit the person who is charged, it has always been the rule that a person who is charged with an agreement is permitted to deny that agreement, and then if the circumstances convince the Court in spite of the fact there was no formal agreement, that notwithstanding an agreement did exist, that is a fact for conclusion, but it is certainly material for whatever weight it is entitled to have, to prove this witness did not make any agreement or have any understanding.

The COURT. Let me ask you this question. I think we can reach the same conclusion. Did you, or any one representing your companies, in your presence ever discuss or consider with any of the distributors any restrictions on your competitors, as to the sale of any product of these distributors to your competitors?

A. No. The only thing we have ever been concerned about is the buying of sufficient product for the theaters that we owned and operated ourselves. We at no time have ever been concerned with what the other fellow had or might have.

By the COURT:

Q. Now in a case where you have a contract for, say 50 first run pictures, did you have any discussion or did you consider with the distributors whether or not they

3611 could sell the second run or subsequent runs to your competitors?

A. Not to my knowledge.

Q. Were you interested in that?

A. No, sir, we were not interested in what became of the product after we used it or if we needed it and used it. If we didn't need it we didn't care what became of it.

Q. Did you ever, in negotiating a contract, negotiate for a larger number of pictures than you considered you reasonably needed in the operation of your business?

A. No, we did not.

Q. You may inquire.

Mr. COCHRAN. That is all.

Cross-examination by Mr. WRIGHT:

Q. Mr. Griffith, as I understand your testimony, you went into the film business in 1918?

A. Yes, sir, December, 1918.

Q. You were a film salesman?

A. Yes, sir.

Q. Employed by whom?

A. Mr. Earl Hulsey of Dallas, Texas.

Q. Was he distributing films?

A. Hulsey was States Rights representative handling Metro and First National Pictures at that time.

Q. For how long did you work for Hulsey?

3612 A. About a year.

Q. Then where did you go?

A. Then I went with Selznick for about seven months.

Q. Louis Selznick?

A. David Selznick, I believe it was.

Q. That is the son's name, isn't it?

A. I have forgotten the names, but it was Selznick pictures.

Q. How long were you with him?

A. About seven months. Then I went with Robinson-Coe Distributing Corporation for about a year.

Q. They were distributing feature pictures?

A. Yes, sir.

Q. Then whom were you with?

A. Then I came up here in business for myself, with my brother and Mr. Underwood and we organized the Oklahoma Specialty Film Company in December of 1920.

Q. In these other cases you were selling out of Dallas?

A. Yes, sir.

Q. During that same period your brother, R. E. Griffith, was also selling films?

A. Yes, sir.

Q. Who was he selling for?

A. He was with Metro at the same time I was with them. Then he went with a company called Real Art, and

3613 then when I went with Robinson-Coe, we went over there together. We both quit at the same time and came up here.

Q. You both came up to Oklahoma City at the same time when you opened this Specialty Films Company?

A. Yes, sir.

Q. What kind of films did that company distribute?

A. States Rights films.

Q. Features?

A. Features, comedies, westerns, serials, and various and sundry pictures.

Q. After you organized that company, was that the only connection either one of you had with the distribution of films? A. Yes, sir, it was. You mean from that time on?

3614 Q. Yes, from that time on?

A. Subsequently; that's correct.

Q. That was beginning what year?

A. December of 1920, as I recall.

Q. 1920?

A. Yes, or maybe 1919. I may have the date wrong. I believe we came up here in December, 1919 instead of '20.

Q. Then you continued to run that Specialty Film Company yourselves until what year?

A. 1926.

Q. And during that period you had no connection with any other film distributor?

A. No, we did not.

Q. Then it was in 1926 that you say you encountered this Mr. Fair up in Universal Chain Theatrical Enterprises?

A. Yes, sir, that's right.

Q. At that time the Universal Film Corporation was also one of the principal distributors of film, wasn't it?

A. Yes, sir, Universal had an office here in Oklahoma City.

Q. Do you know what, if any, interest the Universal Film Company, the distributor, had in the Universal Chain Theatrical Enterprises?

A. No, I don't know. If they had an interest in it, I never did know it.

3615 Q. It was never brought to your attention?

A. It was never brought to my attention.

Q. You don't know, though, whether it did or not?

A. I still don't know.

Q. When you acquired the interest that you had with Mr. Underwood and Mr. Ezell in Texas-Oklahoma Enterprises Corporation, operating the Enid Theaters, I understood you to say that you didn't know that Mr. Dembo and Mr. Depinet were also interested in that enterprise?

A. That's correct.

Q. When did you find out they were?

A. I never have known positively that they were. I have heard that they were, but I have never seen any proof of it. All of our contracts have been with Mr. Underwood.

Q. When did you first hear that they were?

A. We had a discussion with Mr. Underwood in regard to the prices that we were paying for pictures in Enid, and that was the first time that I knew that they had any connection.

Q. That was when?

A. I don't recall the year or the date at all.

Q. Was it shortly after you——

A. (Interrupting) No, it wasn't shortly after, three or four years later.

By the COURT:

Q. Can you approximate the date?

3616 A. No, sir, I couldn't. I just remember there was some controversy after, several years after we were running theaters.

By Mr. WRIGHT:

Q. Would that be before or after 1930?

A. After 1930.

Q. I say before or after; can you fix the date with any degree of accuracy?

A. I would say about 1936; my guess would be 1936.

Q. Was when you say you——

A. (Interrupting.) We learned that Mr. Dembo and Mr. Depinet had an interest in the set-up.

Q. And you didn't know that before that, eh?

A. I didn't.

Q. Now, as a matter of fact, Mr. Dembo had been buying or making the Paramount deal for the theaters there for some time, hadn't he?

A. Not that I know of.

Q. It was never brought to your attention?

A. It was never brought to my attention, if he was buying the pictures. Mr. Underwood bought a franchise, or he was supposed to have bought a franchise from Paramount, as I recall, at the time we made the deal. There was no occasion for Mr. Dembo to buy Paramount pictures after that until the franchise expired. In fact, that was one of the requirements that we made of them
3617 in making the sale to them, so Mr. Underwood told me.

Q. Well, regardless of what Mr. Underwood told you, it was brought to your attention that it was a fact that Paramount, in making your film buys with Paramount for the Griffith Circuit, that Enid was excluded?

A. Paramount was excluded?

Q. Enid was excluded?

A. In making our buy, yes, sir, we had a franchise with Paramount.

Q. When you say "we", you refer to Texas-Oklahoma Enterprises?

A. No, I am talking about Griffith Amusement Company, Bill Underwood and Claude Ezell, after we made the deal. The Oklahoma Enterprises, or whatever it was called, was dissolved at that time, as I recall.

Q. Dissolved when?

A. At the time we made the deal with Underwood and Ezell.

Q. When was that?

A. I believe it was in 1932; I am not positive as to the date.

Q. If the Texas-Oklahoma Enterprises was dissolved at the time you made this deal with Underwood and Ezell, what were the respective interests of Underwood and Ezell with Griffith Amusement Company after that time?

3618 Mr. COCHRAN. If the Court please, we object that for the reason that the documentary evidence that the Government has introduced shows that Oklahoma Enterprises was dissolved a number of years later. They have the document in here, certified by the Secretary of State of Texas.

The COURT. I think it is proper cross examination, if he wants to ask him about it.

A. What was the question?

(Question read by the reporter.)

A. I was——

Mr. COCHRAN (interrupting.) We submit that when the record shows that it wasn't dissolved, it isn't proper to say if it was dissolved, what were the interests in '32.

Mr. WRIGHT. Strike out the "if" and just answer the last part of the question, as to what the respective interests were after the dissolution.

A. Do you mean what was my opinion as to what the interests were?

By Mr. WRIGHT:

Q. Yes, sir.

A. Well, I was of the opinion that Mr. Underwood owned 25 per cent, and Ezell 25 per cent of the theaters in Enid.

The COURT. Wasn't the question what their interests was with Griffith Amusement Company?

Mr. WRIGHT. Well, the Griffith Amusement Company owned the other half.

3619 The WITNESS. The other 50 per cent, yes, Your Honor.

By Mr. WRIGHT:

Q. Underwood and Ezell, I take it they were film distributors too?

A. Yes, sir, they were; they had a film exchange in Dallas.

Q. They had the Columbia rights in Dallas?

A. No, I think it was Republic at that time.

Q. Republic?

A. The Republic rights, the Republic franchise.

Q. Now, in connection with these services that you were referring to that Griffith Amusement Company rendered to the people with whom it has administration contracts, I think you mentioned shipping films?

A. Yes, that's right.

Q. That is, the distributors at Oklahoma City turn the prints that are served the circuit over to you here, and then you ship them to the theaters in the circuit to pick them up, do you?

A. Yes, we pick up the film and ship it, not only the film, but everything else the theater uses, paper cups, carbons, lobby tables, repaired motors, compensares, generators, and everything and anything a theater uses.

Q. I was referring particularly to the prints?

A. Yes, we pick the prints up, just the same as
3620 Mistletoe Express or American Railway Express. We have our own trucks and pick them up and ship them to the theaters. In fact, everything is put right in the stall that goes to each town; the trucks leave here at 7:00 o'clock at night, each night, and return at 7:00 o'clock the next morning.

Q. Of course, the shipment of prints is ordinarily a service that is performed by the distributor, is that right?

A. Yes, sir, but we take them in and handle them ourselves because we are more certain that we are going to get the pictures.

By Mr. COCHRAN:

Q. Just a minute right there. Do you mean that the distributor conveys, runs trucks and conveys the pictures?

A. No, sir, we run our own trucks.

Q. I am talking about for other people. He said that was a service ordinarily performed by the distributor.

A. No, they don't do that; they furnish the film, and the films are handled by Mistletoe Express and American Railway Express or some transportation company that handles film for the other theaters of the state.

3621 By Mr. WRIGHT:

Q. The point is that the ordinary exhibitor, any account that is being served, does not have to come into the exchange and pick up his print. It is issued out to him by the distributor?

A. No, but he doesn't have it delivered and put right inside his door at night, where he doesn't have to touch it.

Q. It is delivered to the town by the distributor?

A. No, it is delivered by some public carrier; not the distributor.

Q. This print distribution that you handle, in that connection you are given a certain number of prints to serve the circuit with?

A. That is handled by the booking department. I don't know anything about that particularly. I don't know how it is handled, whether we are allotted a certain number or not. I think the time is all worked in.

Q. You are not familiar with the mechanics of that?

A. No.

Q. All you know is that you do handle the print delivery from all the theaters in your circuit?

A. That is right.

Q. Do you recall the season that Universal films were left out of the Griffith circuit?

3622 A. No, I don't recall the season when any pictures were left out of the circuit. That is, when we were unable to buy the pictures. Some years we would buy from certain companies and other years it would be other companies.

Q. You have no knowledge as to whether the fact that Universal was out of the circuit in the 1935–36 season had anything to do with your termination of the relationship beteen the Griffith Amusement Company and Universal Exchange Theatrical Corporation in the fall of 1934?

A. No, I don't know anything about why we didn't buy the pictures. I imagine the reason we didn't buy them is because the prices were not right——

Mr. WRIGHT. Never mind what you imagine, if you don't know.

Mr. COCHRAN. The question has never been answered. (Question and answer read.)

Mr. WRIGHT. When he says he doesn't know anything about why they didn't buy the pictures there should be a period and the rest should be stricken.

Mr. COCHRAN. We submit the explanation shows he was answering that double jointed question in regard to the licensing of pictures and not answering the question as to whether the failure to license pictures had anything to do with the termination of the contract with Universal. In other words, the question is misleading.

By the COURT:

3623 Q. Mr. Witness, the point is this: Did the fact that you did not buy Universal pictures for the year 1935–36 have anything to do with you terminating your contract with the Universal Film Company?

A. Not that I know anything about.

Mr. COCHRAN. Universal Chain Theatrical Enterprises?

The COURT. Yes, whatever it is.

A. No, sir, we bought Universal pictures for years and we are still buying them.

By the Court:

Q. What was the reason you terminated your connection with that company?

A. Universal Chain Theatrical Enterprises?

Q. Yes.

A. We bought them out; bought their stock. They wanted to sell. They were in receivership. That had nothing to do, as far as I know, with the buying of Universal pictures.

By Mr. Wright:

Q. Mr. Griffith, at the time you and other people bought the stock from the receiver, there was no agreement made, was there, between you and any of these other partners that any picture theaters would or would not be acquired in the future?

A. No.

Q. And since you and these other people have owned their stock there hasn't been any agreement or any
3624 question between you and those people, or between the corporation and those people which would prevent the Griffith Amusement Company from acquiring such theaters as it might wish to acquire. Isn't that right?

A. No, there has been no agreement.

Q. I think you have testified that you were not concerned with what the other people are playing. By that I assume you mean theaters in opposition to your theaters.

A. That is what I mean, competitors. I didn't know what the competitors needed or wanted.

Q. You didn't quite mean that literally, did you, that you were not really interested in the character and extent of the opposite attractions?

A. I believe I said we were only concerned about product for our theaters, and even until this day our only concern is about the product we need and can use in our theaters.

Q. Do you think the product you need for your theaters has anything to do with what is available to the theaters that are playing against you?

A. I don't know as I understand the question.

The Court. Read the question.

(Question read.)

A. What do you mean by that? I will have to ask
3625 you to explain the question to understand it.

By Mr. Wright:

Q. You have different types or situations in your towns, do you not?

A. Yes, sir.

Q. Such as in some towns you do not have any competition for the public's money except as such as comes from other forms of entertainment. Is that right? In the towns where you have all the motion pictures?

A. No, we don't have all the theaters in all the towns at all.

Q. I say that is one place you do have. You have all the theaters in a town?

A. That is right.

Q. There your problem in scheduling entertainment is simply to schedule such entertainment as will meet such opposition as you may have in the way of skating rinks, or other forms of entertainment in the town. Isn't that right?

A. We try to procure the very best of entertainment we can find for our theaters.

By the COURT:

Q. Do you do that in the towns where you have no opposition to the same extent as in the towns where you have opposition?

A. Yes, sir. We try to buy the best product we can for all theaters at all times.

Q. Getting back to the question I asked, it is a
3626 fact in a number of situations you don't have any motion picture theater opposition?

A. That is true.

Q. And in other situations you do have opposition from theaters, from people who are showing motion pictures. Isn't that right?

A. Naturally.

Q. Now in determining what the requirements of those theaters in those opposition towns are, you want to be understood as saying that it doesn't make any difference—that the presence of those opposition theaters makes no difference at all as to what is required on the screens of your theaters to attract patronage?

A. That is right. We buy the same pictures in the towns where we have no opposition as in the towns where we do.

Q. You want to be understood as saying it doesn't make any difference what films the opposition is playing, that a certain film in your theater will still attract the same number of people?

A. I didn't say that.

The COURT. Read the question.

(Question read.)

A. I didn't say that. I don't think I said that.

Q. It is a fact that your gross receipts at your
3627 theaters will in those towns where there is competition depend, not only on the character of the film that you play but on what the opposition is able to play too. Isn't that right?

A. I suppose competition has its effect, as far as that is concerned, not only in theaters but all kinds of competition. We have a lot of competition in the theater business other than just competing theaters.

3628 Q. I understand that. But in view of the fact that what the opposition plays it does affect your gross receipts, as well as what you play, you don't want to be understood, do you, as saying that you are not vitally concerned with what plays in opposition houses as well as in your own houses?

A. The answer that I gave to the question originally was this, that we are not concerned with what happens to product that we are not able to use. Now, as to whether or not the product might affect the gross receipts of our theaters, I suppose that competition does affect our receipts, the same as our receipts probably affects theirs, I don't know, I don't know anything about it.

By the COURT:

Q. When you are buying films for your theater in a town where there is competition, do you buy the films you want regardless of what films the other theaters might buy?

A. We buy whatever we can buy, your Honor. We don't know sometimes, sometimes the other fellow has the product, and we can't get it. If we can't get it, we don't try to get it; we just buy whatever is available for our theaters; we do the best we can for our theaters.

Q. When you say you are not concerned, you mean——

A. (Interrupting.) I mean I don't care, we are not particularly concerned if they get it, if they want it, and
3629 it is available, they are welcome to it. That is the impression I meant to have left.

By Mr. WRIGHT:

Q. Throughout this period from the '33-'34 season through the 1938-'39 season, each year, your organization would have a pretty good idea of what film product there was going to be available, isn't that right?

A. Do you mean each year?

Q. Yes.

A. All we know, the only way we knew what was available is what the film companies would tell us they thought was going to be available each year.

Q. You knew the companies——

A. (Interrupting.) Our buyers and bookers knew pretty well of the product.

Q. About how many films, and so forth?

A. We know how many they thought they were going to have, yes.

Q. And you would have a pretty good idea when you made any buy what was going to be left for the opposition, isn't that right?

A. We didn't stop to consider what the other fellow was going to buy; we were not running those theaters, we were just running our own theaters, and having a pretty tough time at times doing it.

3630 Q. Whether you stopped to consider it or not, your people did the buying and you would know what was going to be left after you got through with it, wouldn't you?

A. I don't know what they knew. I didn't do the buying, as I said; I don't know what the buyers and bookers knew.

Q. Among these services that I think you said were rendered by the home office of the circuit to the various theaters, you said something about legal services?

A. Yes, sir.

Q. What kind of legal services?

A. Any services at all. If lawsuits come up, we have attorneys paid to handle that; the drawing up of contracts and leases; any and all services that an attorney might render, services that we might need.

Q. As I understood it from your description of the services that were rendered, about all that was left for the local manager to do would be to just account for the receipts, is that right?

A. No, I didn't say that. I said all he had to do was to manage the local theater and employ the help, manage the theater, keep the theater clean, help sell the pictures, help do anything that was to be done in the community in the way of campaigns, community affairs, such as the Red Cross. A theater manager does many things other than just put the money in the bank, if that is what you mean.

3631 Q. I was trying to get at what there was for them to do.

A. There is plenty for them to do. He has to work about 18 hours a day if he does a very good job.

Q. You handle, as I understand it, as far as the booking and the exploiting of the pictures, you handled all that?

A. We simply, so far as the exploitation is concerned, we simply conveyed the different ideas that came to us, by

letter or telephone or through one of our representatives in traveling the territory, we passed those on, and he had to carry them out.

The COURT. We will recess at this time gentlemen, until 2:00 o'clock.

(Whereupon, a recess was taken until the hour of 2:00 o'clock p. m., this date.

3632 PROCEEDINGS

September 28th, 1945, 2:00 o'clock p. m.

L. C. GRIFFITH, one of the defendants, called as a witness by and on behalf of the defendants, and being previously duly sworn, was examined and testified further as follows:

Cross-examination (resumed) by Mr. WRIGHT:

Q. Mr. Griffith, in looking over this transcript, I see that you, in listing the names of the towns in which you said that you either built or had built for you new theater buildings, you listed the town of Seminole, Oklahoma, and two theaters. What two theaters were you referring to there?

A. That we had built since 1926 for us?

By the COURT:

Q. No, that is between 1926 and 1934.

A. The Ritz and the——

By Mr. WRIGHT:

Q. I will read you the question and answer so as to bring it back. The question was, "During that period in 1926, the time Griffith Amusement Company commenced to do business until 1934 when the stock which had been owned by Universal Chain Theatrical Enterprises was acquired, tell us in what towns Griffith Amusement Company either constructed or had built for them new theater buildings."

Then the answer listed a series of towns and
3633 numbers, and the number I suppose referred to the theaters, and then you have Seminole, Oklahoma, two. I wondered what theaters those two referred to.

A. The original theaters we had built there were the Ritz and the Rex.

Q. Which one first?

A. The Ritz.

Q. Now, that Ritz, as a matter of fact, was built by the Seminole Amusement Company, wasn't it?

A. That's right. Built for us, was the question, either built, we either built or had built for us.

Q. Well, the Seminole Amusement Company didn't build that for you, did they?

A. Well, we opened it; they never did operate it.

Q. I understand that. You bought it from them?

A. That's right.

Q. But it was built by them without any, I mean financed by them without agreement with you, wasn't it?

A. Yes, sir, they built it and during the course of construction we were negotiating with them and we opened the theater, we were the owners when the theater was opened.

3634 Q. Yes, you bought it——

A. That is right.

Q. But they built it and financed it. I suppose the same thing would apply in your answer as to any situation where somebody else financed or built the theater, and you took it over and opened it. You included those situations in your answer?

A. No. That is the only situation I recall where someone built the theater with the thought in mind of operating it themselves. All the other theaters were built for us or we built them ourselves.

Q. I notice further on there you were asked to list the towns with the question "No town you have mentioned where you have constructed two theaters during the period from 1926 to 1936, were there any first class theaters other than yours already built in the town" and you answered listing the towns in which there was none, and you said "In Seminole, none."

A. There were no theaters in Seminole at that time.

Q. There were no theaters at a time prior to the Ritz?

A. There are no modern theaters there today, other than our theaters.

Q. You were referring to the fact there were no first class theaters prior to the Ritz that the Seminole Amusement Company built?

3635 A. That is right.

Q. You didn't mean to suggest the Ritz was not a first class theater, did you?

A. No, it was a new theater.

Q. You, yourself, I suppose, in the course of acquiring those theaters, have carried on some of the negotiations?

A. Yes, I have.

Q. In closing up acquisitions.

A. Yes.

Q. And in the course of those negotiations did you ever attempt to persuade any of these people of the advisability of either selling you all of the theater or an interest in it, a participation?

A. Persuade them?

Q. Yes.

A. Not that I know of.

Q. Have you ever made any such attempt?

A. Well, negotiations were carried on but I can't recall persuading them to sell. They either wanted to sell or they didn't want to sell.

Q. Would you say you never at any time made any attempt to persuade them to either consolidate their operations with yours or to sell the proposition outright?

A. We made negotiations in trading. I wouldn't
3636 say I persuaded them, no.

Q. I said attempted to.

A. Not that I know of, no.

Q. When you went to New York to close——

The COURT. Before you leave that part, Mr. Wright——

By the COURT:

Q. Now, Mr. Griffith, in these negotiations did you ever in attempting to buy a theater or lease it, or buy an interest in it, make any statement to the seller, that he would not be able to secure product to run the theater?

A. No, sir, I never made any such statement.

Q. Did you ever make any statement to the effect that you controlled the production for that town and you would see to it they didn't get product if they didn't sell?

A. No, sir, I did not. As a matter of fact, we do not control the product in any town.

Q. Did you ever make the statement to them if they didn't sell you were going to build one anyhow?

A. No, sir.

Q. Proceed.

By Mr. WRIGHT:

Q. You did, however, in the course of the negotiations, point out the advantages of making the deal with your company, did you not?

A. Oh, I am sure that in the course of negotiations we brought out the advantages, and I recall in the early
3637 days in making deals with many of our partners we pointed out the services that we might be able to render, yes.

Q. And such advantages as might result from having two theaters in one town in a unified control instead of an opposition. Isn't that right?

A. No, I don't recall having said anything about having control of films.

Q. I didn't limit it to the control of films. I said you have in the past pointed out, have you not, to these people you were dealing with the advantages they might have by having the theaters in a town under a single management.

Mr. COCHRAN. We object to the form of the question. That is too indefinite and uncertain.

The COURT. I think it is proper cross examination. You may answer.

A. We tried to explain to them our system of doing business, the kind of services that we thought we could render, and that is about the extent of any conversation I ever had with any theater owner whom we anticipated might become our partner.

By Mr. WRIGHT:

Q. Would you say that you never discussed or pointed out to them the advantages of unified or consolidated operations in the town?

A. No, nothing other than the saving of the man-
3638 agement is all, in having one manager instead of two, and one general overhead.

Q. You are quite sure about that?

A. I am quite sure.

Q. Now when you went to New York originally on the Universal Chain Theatrical Corporation deal, as I understood your testimony, you were not able to make the agreement there at first. Is that right?

A. That is right.

Q. Who was it you saw in New York the first time whom you were negotiating with?

A. Mr. A. E. Fair.

Q. Anyone else?

A. Yes, sir. The Universal Chain Theatrical Company's attorney, Mr. McKay.

Q. Willard McKay?

A. Yes.

3639 Q. Anyone other than that?

A. That was the only two that I recall I ever met.

Q. Then, when you finally made the deal, who did you negotiate with up there?

A. The deal was made here, closed here.

Q. When you closed the deal here, who?

A. I believe the man's name was Wallace, an attorney by the name of Wallace.

Q. A New York attorney?

A. Yes, sir, he was from New York.

Q. Who from the company, anyone else?

A. That's the only one I saw.

Q. Did you ever discuss the deal with Mr. Laemmle at any time?

A. No, sir, I never did.

Q. You do know him, do you?

A. Yes, sir, I know Mr. Laemmle.

Q. He was head of the Universal Pictures Corporation, was he not?

A. Yes, sir, he was.

Q. During the time of this relationship, did you ever have any communications with Mr. Laemmle about the business in this area?

A. We never discussed the business in this area with Mr. Laemmle at any time.

3640 Q. Any correspondence with him at all?

A. No, sir.

Q. I will hand you this letter that has been previously identified as Exhibit No. 362, and ask you to read that, and particularly the sentence at the bottom of the page.

The COURT. Has that been introduced in evidence?

Mr. WRIGHT. No, sir; it was merely an identified letter from the witness to Mr. Mahone that Mr. Mahone testified he received, your Honor, about the date it bears.

A. I never saw the letter before.

Q. Do you say you hadn't written that letter?

A. I will say that.

Q. That is not your signature at the bottom of it?

A. That is not my signature.

Q. Have you any idea who put the signature on there?

A. No, I haven't.

Q. I will ask you to look at this one, marked Exhibit No. 363 for identification, and ask you to read that and tell us whether you remember having written that?

A. The same is true of this letter.

Q. That is not your signature on there either?

A. That is not my signature.

Q. Do you recognize this stationery that the letter is written on?

A. Yes, sir.

3641 Q. As that used by Griffith-Consolidated Amusement Company at that time?

A. It appears to be.

Q. You don't have any doubt about that, do you?

A. No.

Q. And the same is true with reference to this?

A. The same is true of that.

Q. Exhibit 362, that is the regular Griffith Amusement Company stationery that was being used at that time, is it?

A. That's true, but this is the first time I have ever seen the letter, to the best of my knowledge.

Q. Do you recognize those initials, H. H., after the initials L. C. G., at the end of the letter?

A. I see the initials H. H.

Q. Do you have any idea who——

A. No, sir.

Q. —who those stand for? I suppose that was the typist or stenographer who wrote the letters, wasn't it?

A. I don't know.

Q. If your ordinary practice was followed, wouldn't that be the case?

A. My ordinary practice is to sign my own letters.

Q. Would you indicate the initials of the author?

A. I do not.

Q. And then the initials——

3642 A. (Interrupting.) I don't know who the author is.

Q. —of the person who writes it up? You didn't at that time ordinarily have any practice of having the author's initials at the bottom, together with the initials of whoever typed it?

A. Yes, sir, my secretary always, as a rule, used her initials, but I don't know who H. H. is. That is what you are referring to, isn't it?

Q. Yes, I am referring to the L. C. G.—H. H. at the end of the letter there. Did you sign all your mail personally?

A. I tried to.

Q. I suppose whatever you didn't sign personally, you might have had——

A. (Interrupting) I seldom, a letter seldom ever goes out of my office without me signing it myself, especially a letter of that nature.

Q. But your testimony is now that this one did go out with somebody else——

A. (Interrupting) I didn't say it did go out; I say that is not my signature, and I don't recall having written those letters, that is what I said.

Q. Who do you think might have written and signed that letter?

A. I don't have the least idea.

3643 Mr. WRIGHT. We will offer these two letters in evidence. It has already been established that they were received.

Mr. COCHRAN. I think the letters have not been properly identified.

Mr. KIME. The man received them, the recipient, the addressee.

3644 The COURT. Objection will be sustained. The witness said he didn't sign it; didn't write it.

Mr. WRIGHT. It came out of the Griffith Company's office and the man received them. It is certainly competent for the

purpose of showing what was done by this company with regard to whether or not this particular witness signed it.

The COURT. Suppose someone had gotten the stationery and written the letter and signed his name to it, would that make it competent? This man is a defendant in this case. This is sought to be used against him. He says he never saw that letter; never signed it.

Mr. WRIGHT. I submit, if the Court pleases, the corporations whose letterheads are used, are defendants also. The mere fact that a letter is not signed by the president of a corporation but merely has his name on it, certainly does not mean it isn't admissible in evidence as aganst the corporation.

The COURT. This letter purports to have been signed by this witness, and he said he didn't sign it.

Mr. WRIGHT. I assume out of any corporation's office every day go many letters which bear the president's signature which he did not see.

The COURT. Is it indicated who did sign it?

Mr. WRIGHT. Is it your Honor's view those letters
3645 are not competent?

The COURT. Absolutely, yes, sir. Objection sustained.

By Mr. WRIGHT:

Q. Do you have any recollection as to the subject matter of these letters?

A. I do now since reading them.

Q. Well do you recall you were negotiating at the time these letters were written with Mr. Mahone with reference to his theaters?

A. I don't recall. We were negotiating for theaters over a great many years with many people. I don't recall any specific time we were negotiating with Mr. Mahone.

Q. Don't you know, as a matter of fact, that in November of 1929 you were in negotiations with him?

A. No, sir. I said I don't remember. I couldn't tell you within two years when I was negotiating with Mahone for his theater.

Q. You know you did have negotiations with him, don't you?

A. I possibly did.

Q. You know you did, don't you?

A. Yes, I talked to Charlie Mahone several times. I have talked with him in person in my office but I didn't write that letter. I am positive of that.

Q. You know you had those negotiations with him prior to the time you opened up the theater in Hobart, don't you?

3646 A. Yes, and afterward.

By the COURT:

Q. Is there anybody in the office down there that would have authority to write a letter such as that?

A. Not and sign my name to it, no, sir, your Honor.

By Mr. WRIGHT:

Q. You say you do know you had these negotiations with Mr. Mahone with reference to acquiring his theater prior to the time you went into Hobart?

Mr. COCHRAN. We object to the form of the question. He says, "these negotiations."

Mr. WRIGHT. Strike that "these". It isn't in there. I don't believe it is.

The COURT. Objection overruled. Exception allowed.

Mr. COCHRAN. You say strike out "these"?

Mr. WRIGHT. If it is in there, yes.

A. I had negotiations with Charlie Mahone about his theater, and finally bought his theater but I don't know when, whether it was prior to the time of writing that letter or the year before; I don't know.

Q. I am not talking with reference to the date of the letters. I say you do know now, don't you, prior to the time you opened up your theater in Hobart you had negotiations with Mr. Mahone with respect to buying his theater or else working out a partnership deal. Isn't that
3647 correct?

A. As I stated, I talked to Charlie Mahone about buying his theater. When I talked to him I couldn't tell you now. That is 18 years ago.

Mr. WRIGHT. Will you read the question?

(Question read.)

A. As I said, I don't know when we had the negotiations.

Q. The answer is "No." Is that right?

A. No, as far as I know now; I have to say no. That is the only way I can put it. It might have been before and might have been after.

Q. The statement in this letter that "We are going into the town as a matter of protection, not only as to Hobart, but to our entire set-up as well", does that suggest anything?

A. I know nothing about that letter, therefore, it suggests nothing to me.

Q. Wait until I get through with the question. I say does that suggest anything to you now as to the particular reasons you had at that time for wanting to go into Hobart?

A. It does not. I didn't write the letter, never saw the

letter before, the best I can remember, so therefore it would not suggest anything to me.

3648 Q. You don't remember now whether or not there was some talk or concern on your part about somebody else going into Hobart there?

A. No, I don't remember any such conversation.

Q. You would not say positively it did not occur?

A. If it occurred I don't remember it.

Q. These letters do not refresh your recollection in that respect?

A. They do not.

Q. Do you have any records of the people who worked in your office there at that time?

A. In 1929?

Q. Yes, at the time those letters were written.

Q. I don't know whether we have the records or not.

Q. Can you find out?

A. Yes, I will be glad to find out if we have any records

Q. Who was your secretary at that time?

Q. Who was your secretary at that time

A. In 1929, I don't know, I have had many secretaries since 1929; since 1926.

Q. You don't remember whom you had then?

A. No.

3649 Q. You don't remember the names?

A. No; my secretary, I had Mrs. Braum, I think was my secretary at that time, I am not positive. She left and then I had a Mrs., a Miss Woods, and many others.

Q. You can't remember anybody that was in the office there who had the initials H. H.?

A. No.

Q. But you can check your records to see if there was any such person, I suppose?

A. Yes. I can.

Mr. WRIGHT. That's all.

By the COURT:

Q. When did you make the deal with Mahone?

A. Judge, I wouldn't know without looking at the records.

Q. Do you know who handled the transaction on the part of Griffith Amusement Company?

A. I believe I handed it myself. I am not positive.

Mr. COCHRAN. That acquisition, if the Court please, according to the testimony, was an acquisition for Consolidated Amusement Company.

The WITNESS. And not Griffith Amusement Company.

Mr. COCHRAN. That is the acquisition which was made in the beginning, at the time the Griffith interests first went

into Hobart, and wasn't until after that concern went into bankruptcy or receivership, according to the
3650 testimony here, that the Griffith Amusement Company acquired an interest. They acquired a building and then put in a theater in 1934.

By Mr. WRIGHT:

Q. You can get that date for the Court, can you?

A. Yes, sir, I can get the date that the theater deal was made, that the contract was signed.

The COURT. I wish you would do that. Also find out who, as Mr. Wright asked, who the secretary and the stenographers were in your office at that time.

Mr. WRIGHT. I think, if the Court please, before excusing Mr. Griffith, we would like to have the original on this Exhibit P–1, the franchise between Paramount and Griffith Amusement Company, which was apparently signed on behalf of Griffith Amusement Company by Mr. L. C. Griffith.

The COURT. May I see that, please.

Mr. WRIGHT. This is just a copy. It is in evidence.

Mr. COCHRAN. There is no evidence in this case as to that.

Mr. WRIGHT. But the signature page is merely a copy.

Mr. KIME. You stipulated on that.

Mr. COCHRAN. No, sir.

Mr. KIME. At the opening of this trial, certainly
3651 you did.

Mr. COCHRAN. Why don't you get Mr. Griffith's signature.

Mr. KIME. Signatures in thirty years change, if the Court please.

The COURT. Has this instrument been admitted in evidence?

Mr. WRIGHT. I believe, my impression is that it has.

Mr. COCHRAN. What is it?

Mr. WRIGHT. The Paramount franchise.

The COURT. Exhibit P–1–A.

Mr. COCHRAN. The Paramount franchise is in evidence, yes. Judge Kime says it was stipulated that this is Mr. Griffith's signature that is on this document.

Mr. KIME. No, I didn't say any such thing.

Mr. COCHRAN. I thought that was what you said.

The COURT. Well, there is just a typewritten signature there.

Mr. WRIGHT. That is a copy quite obviously of the original.

The COURT. Yes, it is a copy, and not a photostat of the original.

Mr. WRIGHT. That's correct, yes, a photostat of a copy.

3652 The COURT. Yes.

By Mr. WRIGHT:

Q. Would you have, Mr. Griffith, any papers that you signed about that time available that you could furnish?

A. What year is that?

Q. 1929.

A. I might have. Do you want my signature in 1929?

Q. When you look for the records as to who was working in the office, see if you can find any agreement or letters or anything you might have?

A. With my signature in 1929?

Q. Yes, sir.

A. It hasn't changed very much since 1929.

The COURT. This doesn't seem to have been offered in evidence. Yes, here it is, P–1, A to O.

Mr. COCHRAN. I am sure that is in evidence, your Honor.

The COURT. Yes; September 15, 1934; this is in evidence.

Mr. KIME. That is in evidence, your Honor, but the original is not in evidence.

The COURT. I understand.

Mr. KIME. What we would like to see is the original.

Mr. COCHRAN. Request was made of the distribu-

3653 tors for the original, and a request was made of us, and I know that we didn't have the original, and so far as I know the distributors never were able to produce the original, that is my recollection, and I think that was the basis for a good deal of jockeying in connection with the stipulation. We finally stipulated that irrespective of the fact that it didn't bear the signature that nevertheless it might be considered in evidence.

Mr. WRIGHT. Mr. Nickerson, will you check with Paramount to see if they have it?

Mr. NICKERSON. The thing we have is the original photostat, and nothing else.

Mr. WRIGHT. You don't have the original signed instrument either?

Mr. NICKERSON. Not an original signed in ink.

Mr. COCHRAN. That was the basis of a good many negotiations between us, and I wouldn't stipulate to it until you tried to produce the original.

The COURT. This is in evidence.

Mr. COCHRAN. Yes, sir.

The COURT. I think if you have the original, why, the Plaintiff is entitled to see the original, but if you don't have it, you evidently don't.

Mr. COCHRAN. Your Honor, as I said, when the matter of photostating these documents came up, Para-
3654 mount was only able to find a copy. I declined to stipulate in regard to that document, and when we couldn't locate the original, I got Paramount's representative to check their records, and assure themselves that that was the document from which the pictures were played that year, and after they did that I stipulated that was the contract which was executed for that year. That is our position.

The COURT. Anything further with this witness.

Mr. WRIGHT. We would like to preserve the cross examination until there is a report made on this on whatever is in the record.

The COURT. Very well.

Mr. COCHRAN. I believe you will find his signature on that Universal Exhibit in '26.

Mr. WRIGHT. Have you got it?

Mr. NICKERSON. You have it.

Mr. WRIGHT. What Universal Exhibit?

Mr. NICKERSON. The contract.

Mr. COCHRAN. The original exhibit, Universal Chain Theatrical Enterprises.

Mr. WRIGHT. No, I think you have that.

Mr. COCHRAN. We can produce that.

Mr. WRIGHT. Well, why don't you?

Mr. COCHRAN. It is at the photostaters right now, but we will have it.

3655 Mr. WRIGHT. How about the modification, do you have that?

Mr. GRIFFING. He has that too.

Mr. WRIGHT. See if you can get it. That is all right now.

Re-direct examination by Mr. COCHRAN:

Q. Mr. Griffith, you testified about films being delivered to the trucks of Griffith Amusement Company for delivery to various towns, and then later testified that those trucks performed the same service that was ordinarily performed by some transportation company, some public transportation company. Now, will you tell us the point where the trucks of the Griffith Amusement Company received those films?

A. We have a local truck that picks up the film from each of the film exchanges; the name of the theater is designated on the film.

Q. You pick it up from the distributor?

A. That's correct, and then take it to our office and put it into our shipping room, in what we call a shipping stall, and in that stall is placed everything that goes to the theater for that particular day, on the next trip to that theater.

Q. To a particular theater, is that correct?

3656 A. Town and theater.

Q. How is that?

A. To a particular town and theater.

Q. And after that film has served that particular theater, then what is done with it?

A. It is returned and placed back in the stall and then taken back to the film exchange.

Q. Returned to the film exchange?

A. That's correct.

Mr. COCHRAN. That's all.

(Witness excused.)

C. B. AKERS, a witness on behalf of the defendants, having been previously duly sworn, was recalled and testified as follows:

Direct examination by Mr. GRIFFING:

Q. You are the same Mr. Akers who was on the stand before?

A. Yes, sir.

Q. Mr. Akers, I hand you Defendants' Exhibit No. 140-A, and will ask you to identify it?

A. It is a picture of the front of the Royal Theater in Enid.

Q. I hand you Defendants' Exhibit No. 168–A, and please identify it.

3657 A. That is a picture of the front of the Folly Theater at Duncan.

By the COURT:

Q. Where?

A. The Folly Theater at Duncan, as it is today.

By Mr. GRIFFING:

Q. I hand you Defendants' Exhibit No. 168–P, and ask you to identify it.

A. That is a picture of the interior of the Folly Theater at Duncan, facing the screen.

Q. I hand you Defendants' Exhibit No. 167–A and ask you to identify it.

A. That is a picture of the front of the Mecca Theater at Enid.

By the COURT:

Q. At Enid?

A. Yes sir, the Mecca at Enid.

By Mr. GRIFFING:

Q. I hand you Defendants' Exhibit No. 167–D, and ask you to identify it.

A. 167–D, that is a picture of the interior of the Mecca Theater at Enid.

3658 Q. I hand you Defendants' Exhibit 114–A, and ask you to identify that.

A. That is the interior of the Oklahoma Theater at Norman.

Q. I hand you Defendants' Exhibit 127–B and ask you to identify it.

A. That is Love's Theater at Seminole?

Q. What is the name of the theater?

A. Chief at Seminole.

Q. I hand you Defendants' Exhibit No. 131–B and ask you to identify it.

A. That is the interior of the Pix Theater at Wewoka.

Mr. GRIFFING. We offer these exhibits in evidence.

Mr. WRIGHT. Same objection.

The COURT. Let them be admitted. Exception allowed.

(Witness excused.)

L. C. GRIFFITH, was thereupon recalled and further testified as follows:

Re-cross-examination by Mr. WRIGHT:

Q. I show you a photostatic copy here of an agreement that is in evidence marked Plaintiff's Exhibit 111 between Seminole Amusement Company and Griffith

3659 Amusement Company which has your name written under the words "Griffith Amusement Company." Do you recognize that as your signature?

A. It looks a little like it, yes.

Q. Did you sign that?

A. I appear to have signed this. I would say that is my signature, yes.

Q. You are quite sure about that?

A. Yes, I am positive of that.

Q. Then here is another one, Exhibit 110, an agreement between Jake Jones and you and your brothers dated July 6, 1926, and I think that is a lease on the Cozy Theater. I will ask you if you recognize that as your signature on that document?

A. Yes, sir; that is my signature.

Mr. COCHRAN. What are those exhibit numbers?

Mr. WRIGHT. 110 and 111.

Mr. COCHRAN. Not relating to any particular company?

Mr. WRIGHT. One of them he signed individually and the other he signed on behalf of the Griffith Amusement Company.

The COURT. The contracts in Seminole and Shawnee.

By Mr. WRIGHT:

Q. Here is one between the Consolidated Theaters and Josephine Falls of Lindsey Theaters, Inc. and
3660 R. E. Griffith Theaters, Inc. dated October 1, 1938, which has the name L. C. Griffith written underneath Consolidated Theaters, Inc. Is that your signature there?

A. Yes, sir, it is.

Mr. COCHRAN. What is that number?

Mr. WRIGHT. 153.

By Mr. WRIGHT:

Q. I show you this cancellation agreement marked Plaintiff's Exhibit 26 with your name written under Griffith Amusement Company and it is dated October 1, 1938, and I will ask you if that is your signature there.

A. Yes, it is.

Q. And this agreement marked Plaintiff's Exhibit 27, dated June 16, 1935. Is that your signature under the name of Griffith Amusement Company there?

The COURT. What number is that?

Mr. WRIGHT. 27?

A. Yes, it is. I believe it is. I would say it is.

By Mr. WRIGHT:

Q. Then I will call your attention to the signature on Plaintiff's Exhibit 33, that agreement dated July 30, 1941, or '42, it isn't clear which. The signature under Griffith Amusement Company is yours, is it?

A. Yes, I believe it is.

Q. Any of these you have any doubt about, say so.

A. No, I think they are all my signatures; every
3661 one of them.

Q. I show you this administrative contract marked Exhibit 32, dated November 17, 1942, and ask you if that is your signature underneath the Griffith Amusement Corporation?

A. Yes, sir, it is.

Q. I show you Plaintiff's Exhibit 36, another memorandum agreement of Lester Dollison, which has your name written underneath Griffith Amusement Company, and ask you if that is your signature there.

A. Yes, it is.

Q. I call your attention to Exhibit 31, an agreement dated April 22, 1938, with the Texas-Oklahoma Enterprises, and ask you if that is your signature written under the words "Griffith Amusement Company."

A. Yes, it is.

Q. I show you Exhibit 30, which is the memorandum agreement with Texas-Oklahoma Enterprises dated April 22, 1938, and ask you if that is your signature written under the typewritten words "Griffith Amusement Company."

A. I believe it is. It looks a little better than I can write.

Q. I show you Exhibit 28, which is an operating agreement, dated October 1, 1938, and ask you if that is your signature under the words "Griffith Amuse-

3662 ment Company.

A. Yes, it is.

Q. I show you Plaintiff's Exhibits 18, 16, 14, 15, 13, 12 and 11, and ask you if the handwriting, the handwritten words "L. C. Griffith" on each of those is your signatures?

A. Those are all my signatures, in my opinion.

Q. I show you Exhibits 39, 38, 37, 35 and 34 and ask you if your signatures appear on all those documents.

A. Yes.

Q. That is all.

(Witness excused.)

3663 Mr. WRIGHT. I was going to ask Mr. Griffith whether these signatures on these Exhibits 107 and 386 were his.

Mr. COCHRAN. Can we go ahead with Mr. McKenna?

Mr. WRIGHT. Sure.

Mr. GRIFFING. He will be here in a minute.

The COURT. Exhibits 362 and 363 will go into the record, will they not?

Mr. WRIGHT. I beg pardon?

The COURT. Exhibits 362 and 363 will go into the record?

Mr. WRIGHT. Yes, sir; I made the offer and they are identified, and they go in as part of the offer in evidence.

The COURT. Yes; I wanted to be sure they are in there.

L. C. GRIFFITH, a witness on behalf of the defendants, was recalled to the stand, and having been previously duly sworn, was examined and testified as follows:

Re-cross-examination by Mr. WRIGHT:

Q. I hand you Exhibit No. 386 for identification; that is your signature that appears on the last page twice, is it?

A. Yes, sir.

3664 Q. One is under Griffith Brothers, and one is under——

A. (Interrupting.) Yes, sir, it appears three times, down here, and there and there.

Q. Then you signed that three times on page 5 of Exhibit 368?

A. Yes, sir.

Q. Your signature appears twice on this page 33 of Exhibit 107, does it?

A. Yes, sir.

Q. Is the Earl Hulsey that you referred to in your testimony the same as E. H. Hulsey?

A. Yes, sir, I think so.

Q. Who was formerly with Texas-Oklahoma Enterprises?

A. Yes, sir. I didn't know that he was with Texas-Oklahoma Enterprises until I heard Mr. Underwood testify to that.

Q. But that is the same fellow?

A. Yes, sir.

Mr. WRIGHT. That's all.

Mr. COCHRAN. That's all.

(Witness excused.)

Mr. COCHRAN. I believe you wanted Mr. McKenna to obtain certain matters for you, and he has those.

Mr. WRIGHT. Does he have the list there?

3665 Mr. COCHRAN. Yes, sir.

B. J. MCKENNA, a witness on behalf of defendants, having been previously duly sworn, was recalled and testified as follows:

The WITNESS. Your Honor, you asked for a list, if you recall, of these towns in which Griffith owned all the theaters, Griffith Consolidated and Griffith Amusement Company.

Re-cross examination by Mr. WRIGHT:

Q. Has that been marked as an exhibit?

A. No, sir.

Mr. WRIGHT. Maybe we had better have it marked.

The COURT. Let it be marked as a Defendants' Exhibit.

(Defendants' Exhibits 169 and 170 were then marked for identification.)

By the COURT:

Q. Now, Mr. McKenna, these theaters in these particular towns, were they owned entirely by the two corporations, or did they own an interest in some of them?

A. They owned an interest in some of them, your Honor. Do you wish me to mark those?

Q. I would like for you to indicate on those exhibits just take the exhibit, in Chandler, Oklahoma.

3666 A. In Chandler, Oklahoma, as of April 28th, 1939, ten per cent.

Q. Griffith owns ten per cent?

A. They did then.

Q. All right.

A. In Guthrie, Oklahoma, Griffith owns 50 per cent.

Q. All right; Henryetta?

A. Henryetta, Oklahoma was 100 per cent; Hugo was 100 per cent; Kermit, Texas, 56 per cent as of that date; Okmulgee, 100 per cent; Wellington, 100 per cent; and Wink, 100 per cent.

Q. Now, after you leave the stand I would like for you, after the theaters, to put the per cent, or you can put it before?

A. All right, your Honor.

Q. I would like for it to be on the exhibit.

A. All right, your Honor, I will do that. Shall I go ahead.

Q. Yes.

A. Chickasha, 50 per cent owned by Griffith Consolidated; Claremore, 66 and ⅔ per cent; Cushing is 100 per cent; Drumright is 100 per cent.

By Mr. KIME:

Q. That is "is" or "was"?

A. Is.

By the COURT:

Q. Was as of April 20th?

3667 A. Pardon me, was on April 20th. Frederick, Oklahoma, 60 per cent; Holdenville, Oklahoma, 50 per cent; Mangum, Oklahoma, 100 per cent; Midland, Texas, 50 per cent; Ponca City, Oklahoma, 100 per cent; Sayre, Oklahoma, 33 and ⅓ per cent; Vinita, Oklahoma, 66 and ⅔ per cent; Alvin, Texas, 25 per cent; and Texas City, Texas, 25 per cent.

Q. As I understand, there are no other theaters in these towns except those that are listed?

A. Yes, your Honor.

3668 By Mr. WRIGHT:

Q. The other day you were going to check some closed theater periods from your profit and loss statements and give us a report of those. Have you got those?

A. Yes, sir. Guthrie, Oklahoma, 1934, closed 52 weeks; 1935 closed——

The COURT. What theater?

A. This is the old Guthrie Theater.

Q. The old opera house?

A. Yes, sir; closed 29 weeks; operated 23 weeks.

The COURT. Which is that?

A. 1935.

Q. The same theater?

A. The same theater. This is just one theater. In 1936, closed the full 53 weeks, a 53 week year. 1937, closed 52 weeks; 1938, closed 52 weeks; 1939, closed 52 weeks. During that period of time we used the theater for overflow crowds on bank nights. That covers the Guthrie Theater in Guthrie. Now we have the Odeon Theater in Chandler, Oklahoma, which I believe Mr. Wright referred to as the Dixie Theater, but it did not become the Dixie Theater until 1941. The name was changed then. In 1934, operated 49 weeks; closed 3 weeks; in 1935 was operated 52 weeks; in 1936 it operated 53 weeks; 1937, operated 24 weeks;
closed 28 weeks; 1938, closed 52 weeks; 1939
3669 closed 52 weeks. That completes Chandler, Oklahoma, the Odeon Theater, now the Dixie Theater.

Then there is Altus, Oklahoma, the question on the Delta Theater, formerly the Rex Theater, and before that the old Empire Theater. In 1934 it was operated under the name of the Rex Theater 52 weeks. In 1935 it operated under the name of the Rex Theater 52 weeks; in 1936 it was closed for remodeling for a period of 5 weeks, and opened as the Delta Theater and operated 48 weeks, a full year. In 1937, it is now the Delta Theater, operated 52 weeks. In 1938 it operated 52 weeks. In 1939 it operated 52 weeks. That is all in regard to the Delta Theater, the Rex and old Empire at Altus. Wink, Texas, the Rex Theater. In 1934 it was closed 52 weeks; in 1935 it was closed 52 weeks; in 1936 it was closed 2 weeks and operated 51 weeks; in 1937 it was operated 52 weeks it was operated 52 weeks; in 1939 it was closed 24 weeks and operated 28 weeks. That, I believe is all, Mr. Wright, that you asked for on that information.

Mr. WRIGHT. The other thing was on the 1939 admission prices.

A. On the admission price schedule as submitted there were certain towns you wanted to put on that were left out, certain theaters, rather. The town of Lubbock, Texas.
The admission prices in 1939, the Broadway Thea-
3670 ter, children 10 cents at all times; adults 25 cents at all times. This is from June of 1939 to the re-

mainder of the year. This theater was acquired in June. The Cactus Theater, children 10 cents at all times; adults 20 cents at all times; acquired May 31, 1939. This information is for the remainder of the year. The Lindsey Theater, children 10 cents at all times and adults 25 cents at all times.

The Lyric Theater, children 10 cents at all times and adults 20 cents at all times; acquired in June, 1939. This information is for that period to the remainder of the year.

The Palace Theater, children 10 cents at all times; balcony price of 35 cents for adults and lower floor price of 40 cents for adults.

The Texan Theater, children 10 cents at all times and adults 20 cents at all times.

Chickasha, Oklahoma, the Midwest Theater, children 10 cents at all times and adults 13 cents at all times.

The Ritz Theater, Chickasha, children 10 cents at all times and adults 15 cents at all times. I believe that is all the information you requested, Mr. Wright.

By Mr. WRIGHT:

Q. Before you leave the stand, do you have any recollection as to who were working in the office there in
3671 1929? Can you tell us any of the girls who worked at typing there or who did the secretarial work, who handled the correspondence?

A. No, I sure haven't.

Q. You don't have any idea of the names of any of them?

A. I remember the girls that were there.

Q. Who were they?

A. When I first came, I don't know when they left, a girl named Lillian Pittenger, and Miss Braun—I didn't know her very well, she didn't want to get acquainted— I didn't mean that frivolously, but we didn't have many girls in 1929. Inez McCarthy.

Q. Did you have any men handling correspondence there?

A. No, sir, we didn't.

Q. Those initials, "H. H.", you can't recall anybody who had those initials in your working organization?

A. No, I sure can't.

Q. Do you have any record you can refer to you know of?

A. No, we didn't keep personal records at all about them. I think we set up a permanent record system about 1938 or '39.

By the COURT:

Q. Do the books show your pay roll?

A. We don't keep a pay roll beyond the period of the statute, which I think is five years, and we just don't
3672 have space to keep them beyond that.

By Mr. WRIGHT:

Q. These girls, Lillian Pittenger and Inez McCarthy, are they still working for you?

A. No, sir, they are not. I really don't know where they are now. I know where Lillian went but I don't know whether she is still there or not.

Q. That is all.

Mr. COCHRAN. That is all.

(Witness excused.)

Mr. COCHRAN. We have the deposition of Mr. Agnew which has been in several days and I was just asking Mr. Wright if he was expecting to submit any further interrogatories. You will recall that is the manner in which they asked permission to submit their interrogatories, and then there is the deposition of Mr. Lazarus of United Artists, which has not yet come in that we hope will be in by Monday. Mr. Wright says before definitely deciding whether he wants to submit further interrogatories in connection with Mr. Agnew's testimony, he would prefer to wait until Mr. Lazarus' deposition comes in. We have no further testimony except these two depositions at this time. It is just a question of whether we shall read Mr. Agnew's deposition as far as it goes. I think we might do this: If there is no objection we might read it,
3673 and then if the Court decides to permit further cross interrogatories by counsel, then we may want to submit some redirect in connection with those.

Mr. WRIGHT. I don't see any reason why you can't read it at this time.

Mr. KIME. I understand Mr. Rice has some oral testimony. I suggest we take that first.

3674 Mr. RICE. No oral testimony on behalf of the defendants, R. E. Griffith Theaters and Westex Theaters.

The COURT. You may proceed with your deposition now.

(The deposition of Neil F. Agnew, as read into the record, together with objections of counsel and proceedings had in connection therewith, are as follows:)

"NEIL F. AGNEW was called as a witness on behalf of the defendants and, being first duly sworn, testified as follows:

Direct interrogatories by the NOTARY:

1–Q. State your name, place of residence, and present position?

A. Neil F. Agnew; residence, New York City; present position, vice-president of Vanguard Films, Inc.

2–Q. Will you begin at the beginning of your connection with the motion picture business and give the positions held, and with what company, and the period during which each position was held?

A. Well, I started in Chicago with Paramount January 3, 1920, as a booker. Then on Febraury 19, 1923, I became branch manager for the company in Milwaukee, and on October 15, 1923, branch manager for the company in Chicago. On September 16, 1929, I became district
3675 manager, with headquarters in Chicago; on November 7, 1932, western division manager, with my office here in New York, and on November 24 or 25, 1935, vice-president of the company in charge of domestic distribution, which position I held until March 14, 1944, when I left Paramount to come with Vanguard Films, Inc.

3–Q. During the time that you were Western Sales Manager for Paramount Pictures Distributing Company did your territory embrace the States of Oklahoma, Texas, and New Mexico?

A. Yes.

4–Q. During the period from 1932 up to the present time has Paramount Pictures Distributing Company been a national distributor of motion pictures?

A. Yes, it has.

5–Q. As such national distributor, how many exchanges did Paramount have in the United States?

A. If my memory serves me correctly, they had 32 at that time.

6–Q. Did it maintain exchanges in Oklahoma City, Oklahoma, and Dallas, Texas?

A. Yes.

7–Q. During the period from 1932 up to the effective date of the Consent Decree in the case of United States v. Paramount, et al., did Paramount license its prod-
3676 uct subsequent to production or mostly in advance of production?

A. Well, they did both. It was the custom in those days to sell pictures either on a semi-annual basis or annually, which necessitated selling ahead of production in some instances and, in some instances, after production.

8–Q. State generally the several steps which were taken by your company in ascertaining the number and kind

of feature pictures which would be licensed for a particular season and in determining the policies of the company for a particular season.

A. Well, there would be a pre-season meeting, usually held in Hollywood, in the studio, attended by the president of the company, the manager of production, the sales managers and their assistants, usually, at which time the number and kind of pictures, within reason, that we thought the public would respond to the greatest, were planned and cast. The determination as to the number for the year, generally, came out of that meeting, and announcements, following those discussions, were made to the trade and to the public by, not only Paramount, but by most companies, if not all.

9–Q. Thereafter what was done in the matter of licensing the pictures to exhibitors throughout the country?

A. Sales meetings were generally held. At that time they were called conventions—either a large na-
3677 tional convention, or by way of a series of them around the country—at which branch managers and representatives of the home office, as well as field or selling offices, were represented. The product was then presented to the people in the field, and they were instructed as to the general sales policy, meaning in particular the evaluation of the pictures as distinguished between one grade and another.

Some of the pictures, of course, were designed to be more important than others and, therefore, cost more. Those separations or definitions were made and outlined to the people in the field, and sales instructions given to them, after which they proceeded to call on the trade, canvass the exhibitors, and sell the pictures.

10–Q. When there were competing theaters in a town, what was the custom of your company as to whether it would endeavor to license all of its prospective releases to one of those exhibitors for first run exhibition in such town instead of offering a portion of the releases to each of the exhibitors?

A. Generally we had a customer that we had selected and done business with previously, who put himself in a position to absorb all of our product. There were instances, however, where pictures were divided between two competing customers in a town. There was no hard and fast rule in the industry for the sale of the product, as to
3678 whether or not one theater got all or part of the product. Both practices were customary.

11–Q. What was the practice of your company relative to negotiating with an exhibitor who had been a satisfactory

customer for a particular run in a town before negotiating with a competing exhibitor?

A. We would negotiate first with our regular customer with whom we had done business in the past, and if, as on rare occasions, we were unable to get together with him, we would sell to the best customer in the town or the next best prospect in the town.

12–Q. In the matter of the initial selection of a customer in a town in which there were competing theaters, what factors were considered in making such selection of a customer?

A. Well, several factors, mostly economic; the first being the size and location of the theater and its desirability from the public standpoint, its ability to develop the greatest amount of dollar gross, the integrity of the man who operated the theater or theaters, and his ability as a showman.

13–Q. How are the prices and terms on which your company will license its product to a particular exhibitor determined?

A. The prices and terms have always been deter-
3679 mined by Paramount—and I think I can speak generally for the industry—by judging and anticipating the returns on a picture at the box office. Records were kept, and exhibitors, in making deals, would refer to past performances and grosses they were able to get, and so from those figures we were able to establish the rental value for the pictures we had to sell, or the terms of some percentage basis.

14–Q. During the period 1933 up to and including 1939 were there towns in the United States in which Paramount would not license its feature pictures to be played on second or subsequent run by a theater which was operating in opposition to Paramount's first run customer in that town?''

Mr. Wright. I think we should interpose the objection that appears on page 16, as sent to the reporter, which says: "Plaintiff objects to Interrogatory 14 on the ground that it calls for a conclusion which neither this witness nor any other would be competent to draw and upon the ground that it calls for pure speculation by the witness, in any event, as to what Paramount might or might not do under unspecified circumstances."

The Court. Read the question.

(The question was then read.)

The Court. Why isn't that competent?

Mr. Wright. If the Court please, it asks what
3680 Paramount would do or would have done during the period 1933 to 1939.

The COURT. What it did do.

Mr. WRIGHT. No, your Honor, this says what it would do. He isn't asking for facts as to what happened in those towns; he is asking for a speculation by this man as to what Paramount would do.

The COURT. Read the question again.

(The question was again read.)

The COURT. I think you have just misconstrued the verb. I think that means what they did do.

Mr. WRIGHT. If the question is reframed to read: "During the period 1933 up to and including 1939, were there towns in the United States in which Paramount did not license its feature pictures to be played on second or subsequent run by a theater which was operating in opposition to Paramount's first run customer in that town?" I would have no objection to the question.

The COURT. The question will be considered by the Court to mean that very thing and nothing else.

"A. Yes.

15–Q. If your answer to Interrogatory No. 14 is in the affirmative, state some of the circumstances under which Paramount would not so license its features for second or subsequent run.

3681 A. Well if we were dealing with a satisfactory customer, and the town was of a sufficient size or the location of the theater was such that there was an obvious injury to the first run by the sale to and exhibition of the pictures in a succeeding theater, to the detriment of the film rental income, we at times decided to sell only to the first run in that town.

16–Q. In such instances would Paramount determine for itself whether or not it would license such additional run?

A. Yes, it would."

Mr. WRIGHT. Of course, your Honor, here we are going into speculation as to what would or would not be done, and I think that is improper.

The COURT. The Court will interpret that as in the past tense. While it is unfortunate that the word is used in the question "what they would do", it will be considered as "what they did do".

Mr. COCHRAN. That's the sense in which it was used.

The COURT. That is the interpretation the Court puts upon it. Overruled and exception allowed.

"17–Q. In a situation where Paramount had a first run account in a town and there were competing second run houses, one of which was operated by your first run custom-

er and each of the competing exhibitors desired your
3682 product second run, what was your preference as to the exhibitor to whom your second run would be licensed, and explain the reason for such preference.

A. Well, in a situation where we had a first run account in a town with competing run theaters, one operated, as I understand it, by our first run customer, and considering each of the competitors, we would prefer to have our first run customer, because that advantage in my opinion has always been an important factor.

There was a tendency, where a competing theater in a second run situation played the pictures, they would deliberately wait for a star; they would take a picture that had the same star in it, that was playing currently at the first run theater. This was highly unsatisfactory to the first run operator, and often worked an injury to the gross of the first run picture. That is one reason why it is desirable to have that booking in the control, in that case, of the first run customer, because he would then have a greater over-all interest, generally, in the play-off of the picture, to sustain the value of the product and the trade-mark and the picture itself; more so than when a second run competitor played the picture.

18–Q. During the period 1932 up to and including 1939, state whether or not you participated in the negotiations with R. E. Griffith and H. R. Falls for the licensing of
3683 motion pictures for numerous theaters in Oklahoma, Texas and New Mexico.

A. From 1932 to 1935 I did, after which date I became general sales manager and, therefore, had little if any negotiations with them.

19–Q. For the seasons 1932–33 and 1933–34 did Paramount make a season's deal for its feature product to the Griffith circuit in any of the towns in which Griffith operated theaters?

A. No.

20–Q. State whether or not you attempted to license the product of Paramount to the Griffith circuit for each of those seasons in each of the towns in which Griffith had been your regular customer.

A. We did.

21–Q. Were there some towns in which Griffith had theaters that the opposition exhibitor was your regular first run account?

A. Yes.

22–Q. If your answer to the above is in the affirmative, please state whether in Sapulpa, Oklahoma; Oklahoma City, Oklahoma, and Gallup, New Mexico, Griffith or the opposition exhibitor was your regular first run account.

A. We licensed our entire product to A. A. Moulder of Sapulpa, and Funk & Nagel in Gallup. New Mexico.
3684 Prior to the time the Griffith organization acquired theaters in those towns, we continued to sell our product to those accounts. After Griffith acquired theaters in those towns, we were still doing business with them when I left Paramount.

23–Q. When you were unable to license Griffith in a competitive town in which Griffith was your regular customer what was then done by Paramount?

A. We tried to license our picture to his competitor.

24–Q. In the situations where Griffith had been your regular customer prior to the season 1932–33 and where you licensed your product for the seasons 1932–33 and 1933–34 to Griffith's opposition, state whether or not you considered the exhibitor to whom Paramount licensed its product for those two seasons to be your established customer, and whether or not Griffith remained your choice of a customer for those towns.

A. Griffith did remain our choice of a customer for those towns. We considered Griffith our regular customer, in that he was the account we desired to sell and, not having been able to sell him for two seasons, we sold our product, as above stated, to his competitor. The sale to those theaters did not lessen Griffith's desirability as our choice of a customer.

25–Q. For the season 1934–35 what steps, if any, were taken by you to again license your product to Griffith
3685 in those towns?

A. We again tried to sell Griffith our pictures.

26–Q. Did you continue to sell the opposition exhibitor in each of the towns in which the opposition exhibitor was your regular account?

A. Yes.

27–Q. The three year deal, or franchise, between Paramount and Griffith, which has been introduced as Plaintiff's Exhibit P–1, A to T, recites that it was executed on July 17, 1934, but the acceptance by Paramount is dated September 15, 1934. Will you state whether negotiations had been going on prior to July 17, 1934, which did result in an agreement for a franchise on July 17, 1934?

A. Yes, film negotiations, for circuit deals particularly, almost always consume a great deal of time, and there is an interval between the commencement of negotiations and the closing of the deal. Usually after the closing there is a lapse of time in which many disputes are ironed out and settled before the signatures are actually affixed.

28–Q. Give us briefly the history of the use of franchises by Paramount in the licensing of pictures.

A. Well, there was a period in the operation of the distribution of pictures by Paramount when franchises were sought. We thought they were desirable, and sold a great many; we went out after them and sought them.
3686 Along about the year 1933 or 1934 the desirability of franchises became less, in our minds, and we sought to discourage the sale of franchises and encourage the sale of pictures in less than annual blocks. The basic reason for that was unknown factors of production, such as rising production costs, making the determination of film rentals far in advance very impractical, if not impossible, and which in some instances would work a hardship on the exhibitor as well as on ourselves. We decided that a more accurate plan of selling would be a shorter term contract."

Mr. WRIGHT. If the Court please, I don't think that, beginning with the basic reason there, it is responsive. The question was, "Give us briefly the history of the use of franchises by Paramount in the licensing of pictures."

The COURT. It isn't prejudicial, is it?

Mr. WRIGHT. Well, I think it is, your Honor; particularly when you are dealing with written interrogatories, I think it is. The question is not one from which you would assume he would launch into a discussion of the reasons for what was done.

The COURT. Read the question again.

Mr. WRIGHT. "Give use briefly the history of the use of franchises by Paramount in the licensing of pictures."

The COURT. I don't think the question is prejudicial.
While he does launch into a discussion of his
3687 reasons for it, they seem to be germane to the subject. Overruled and exception allowed.

Mr. WRIGHT. The grounds of my objection are not that what he said is not relevant, but what he said is not responsive to the question.

The COURT. I understand.

"29–Q. At the time an agreement was reached with Griffith for this franchise, approximately how many franchises did Paramount have, and what percentage of those franchises were with independent exhibitors?

A. About 150 or more franchises covering in all hundreds of theaters, because franchises in many instances were with circuits, and in many instances, too, they were with independent exhibitors. As I remember, there was no distinction between the desirability or otherwise of a franchise with a circuit as compared with an operator of a single theater, and there were actually a greater number of fran-

chises with independent theaters than there were with circuits at that particular time."

Mr. WRIGHT. Again I move to strike that part of the answer which says, "As I remember, there was no distinction between the desirability or otherwise of a franchise with a circuit as compared with an operator of a single theater," as not responsive to the question.

Q. Mr. COCHRAN. The question is, "At the time an
3688 agreement was reached with Griffith for this franchise, approximately how many franchises did Paramount have, and what percentage of those franchises were with independent exhibitors?"

The COURT. I think that is not responsive.

Mr. COCHRAN. He follows that with this statement: "As I remember, there was no distinction between the desirability or otherwise of a franchise with a circuit as compared with an operator of a single theater, and there were actually a greater number of franchises with independent theaters than there were with circuits at that particular time."

The COURT. I think where he makes the comparison should be stricken.

Mr. COCHRAN. You mean the part where he says there were actually a greater number of franchises?

The COURT. No.

Mr. WRIGHT. Specifically where he says, "As I remember." and so forth.

Mr. COCHRAN. Strike the words, "As I remember, there was no distinction between the desirability or otherwise of a franchise with a circuit as compared with an operator of a single theater"?

Mr. WRIGHT. Right.

The COURT. That part goes out, but the other part remains in, as a conclusion.

3689 30–Q. By October 2, 1934, what was Paramount's policy in the matter of entering into negotiations for new franchises?

A. I think I anticipated that question when I explained that we changed our policy with respect to soliciting franchises and discouraged them from that time on."

Mr. WRIGHT. I submit that answer is not responsive.

The COURT. Overruled. Exception.

Mr. WRIGHT. If that answers the question I still don't know what the answer is.

The COURT. I don't think it is.

Mr. WRIGHT. I agree.

"31–Q. In Paramount's printed form of contracts which were in use during the period 1933 to and including 1939

there were blanks for the insertion of the admission prices which the exhibitor was charging What was Paramount's policy in regard to the prices which were to be inserted in those blanks?

A. Well, Paramount had no policy with respect to admission scales. We had one prohibition, and that was that we did not permit the pictures to be played for less than fifteen cents. The admission prices were determined, and still are, by economics in the territory and by the
3690 enterprise and judgment, or both, of the exhibitor beyond that one point."

Mr. WRIGHT. I move to strike out the last answer as not competent. What he was asked for was what Paramount's policy was in regard to admission prices and not for an economic dissertation.

The COURT. Overruled.

Mr. WRIGHT. Exception.

"32–Q. It appears that in the Griffith contracts for 1937–38 and 1938–39 there is no provision stating the admission prices which were to be charged. Please explain that omission.

A. That omission occurred in many instances where admission prices were scaled on the previous contracts and existing operation in the territory, and were sometimes omitted from the contract by error.

33–Q. In the event admission prices were cut from the amount stated in the contract of an exhibitor, what was Paramount's attitude in regard to such departure from the terms of the contract?

A. Well, we would insist upon their being restored to what they were.

34–Q. During the period 1934 to and including 1939 was there any agreement by Paramount with the defendants that Paramount would not license its product second
3691 or subsequent run to any competitor of the defendants, or any of them?

A. No, not that I remember.

35–Q. During that period was there any agreement between Paramount and any of the defendants or their executives, representatives or employees not to deal with any competing exhibitor, or to fix or restrict the terms of Paramount's dealings with any such competitor?

A. No, sir.

36–Q. At the time of the negotiating of the franchise agreement or later agreements with Griffith, or at the time of the execution thereof, had you any knowledge of what other deals or contracts were then in effect or were being negotiated by Griffith with any other distributor?

A. No."

Mr. WRIGHT. As to question 34 and 35 there, which were the ones regarding whether or not there was an agreement we make the same objection as we made heretofore. They call for conclusions which the witnesses are not competent to draw and that should be made by the Court.

The COURT. Since there are interrogatories and he has had no opportunity to explain, I think it is competent. Overruled. Exception allowed.

Mr. WRIGHT. We also add an objection to No. 27. I don't think I called your attention to it at the time.

3692 "Will you state whether negotiations had been going on prior to July 17, 1944, which did result in an agreement for franchise on July 17, 1934?" We object to that as calling for a conclusion also. Obviously, he can say what the negotiations were and I suppose your Honor could conclude from those negotiations whether there was an agreement at a prior date.

The COURT. Overruled and exception. I think he would know as much about it as anybody.

"Cross-interrogatories by THE NOTARY:

1-XQ. If the answer to Direct Interrogatory 14 is 'Yes' name the towns referred to, together with the periods of time and names of exhibitors respectively involved.

A. I don't recall what those theaters were, because they were scattered throughout the country, and I was handling the general sales policy of the company, and not the details. I definitely remember that such situations existed, but without referring to tens of thousands of contracts for each season, I can not state specifically the towns, the names of exhibitors or the periods of time.

2-XQ. In the situations referred to in the answer to Cross Interrogatory 1, is your conclusion that Paramount

3693 'would not license its feature pictures to be played on second and subsequent run by a theater which was operated in oposition to Paramount's first run customer' based on information as to specific negotiations carried on by others or upon a definite policy established by you or with your knowledge?

A. We had no such policy. There were individual instances, as heretofore explained, calling for such action in specific instances.

3-XQ. If the answer to Cross Interrogatory 2 is that Paramount had such a policy, name any written document in which such a policy is stated or which you believe shows that such a policy was generally in effect.

A. There was no such policy.

4–XQ. If your answer is that Paramount had a policy of not licensing its feature pictures to be played on second or subsequent run by a theatre which was operated in opposition to Paramount's first run customer, in any particular town or with respect to any particular customer, at any time, describe the manner in which the policy or policies in question were made known to exhibitors seeking to license pictures from you.

A. There was no such policy.

5–XQ. If your answer to Direct Interrogatory 18 is 'Yes', describe the extent to which you participated
3694 in these negotiations and the extent to which they were carried on by other Paramount executives.

A. Well, I was called in, after the negotiations were fairly well completed, to decide remaining points of dispute or, more properly, to help persuade Griffith of our position on any of the remaining points of dispute that existed.

6–XQ. State what you meant by 'regular customer' in answering Direct Interrogatory 20.

A. A regular customer is one we choose to sell, and have continued to sell generally in succeeding years.

7–XQ. State what you meant by the phrase 'regular first run account' in answering Direct Interrogatories 21 and 22.

A. A regular first run account is the first run we choose to sell in any situation.

8–XQ. State what you meant by the phrases 'your regular customer', 'established customer,' and 'choice of customer' in answering Direct Interrogatory 24.

A. They are terms generally meaning the same thing, indicating your choice of a customer in a town, and a man with whom you have been dealing consistently.

9–XQ. If you make any distinction between these three phrases, please state what the distinctions are and what determines into which of these three categories a particular customer falls.

3695 A. To me these terms mean generally the same thing.

10–XQ. At the time the independents in opposition to Griffith licensed your product for the seasons 1932–33 and 1933–34, did you advise or direct anyone else to advise any of these customers to the effect that if Griffith decided to buy Paramount's films for its circuit for the 1934–35 season, they would lose their runs to Griffith, regardless of what terms they offered?

A. I advised no one of any action which would be taken in the event Griffith bought the pictures, nor did I direct any one to so advise any customer.

11–XQ. If the answer to Cross Interrogatories is 'Yes' state the names of the respective exhibitors to whom such advice was given, the manner in which it was given, and the respective dates and places when and where it was given.

A. The answer is no.

12–XQ. State what you meant by the term 'regular account' in answering Direct Interrogatory 26.

A. By 'regular account' in answering that interrogatory I meant the same thing as my answer to Cross Interrogatory 8.

13–XQ. If your answer to Direct Interrogatory 26 is 'Yes', is it not a fact that the opposition exhibitors referred to bought your films at substantially higher
3696 terms for those towns than Griffith paid in comparable situations?

A. Not to my knowledge. Furthermore, there are no comparable situations involved. We analyse the worth of the pictures in each town and each situation, and sell accordingly."

Mr. WRIGHT. I think "furthermore" should be stricken as not responsive to the question.

The COURT. Overruled. Exception allowed.

"14–XQ. If your answer to Cross Interrogatory 13 is 'No', state the terms on which the opposition exhibitors in question were sold and those on which Griffith was sold, in comparable situations.

A. I think I have covered that in answering the preceding cross interrogatory.

15–XQ. Did you write the letter marked Plaintiff's Exhibit No. 120 for identification on or about the date it bears?

A. Yes.

16–XQ. Was there any statement in this letter which was not true at the time it was made?

A. Not to my knowledge.

17–XQ. If the answer to the preceding Cross Interrogatory is 'Yes' please specify the statement or statements and explain how they were untrue.

3697 A. The answer was No."

(Subscribed and sworn to by the witness.)

Mr. WRIGHT. We will re-offer the letter which was offered before, being Plaintiff's Exhibit No. 120.

(Hereupon the above letter was received in evidence and read by Mr. Cochran, and is as follows:)

PARAMOUNT PICTURES DISTRIBUTING CORPORATION.

Paramount Pictures

TIMES SQUARE NEW YORK

Office of Neil F. Agnew October 2nd, 1934.

Plff 120 for iden.

Mr. Jake Jones
Ritz Theatre
Shawnee, Okla.

Dear Sir:

I trust you will pardon this delayed reply to your letter of September 13th but as we have just passed through the most active selling period of the year I have been unable to give it the attention it merits, and I wanted to answer it myself because I felt it required an explanation.

In handling sales problems of a large organization it sometimes becomes necessary to make decisions which while they may seem unfair to an individual are made of necessity in order to conscientiously serve the best interests of the organization. In the instance of our sale to
3698 the Griffith Amusement Co. it was simply a matter of bettering our income from the territory as a whole so materially that I could not conscientiously, in the best interest of the stockholders and other people who have their money in this company, refuse to sell them. You are no doubt aware of the fact that we have been through a very critical two year period of receivership and bankruptcy, and every effort humanly possible has been required to pull this company through the crisis.

I do not quite see how Mr. Dugger could have promised you our product for three years in Bartlesville and Shawnee because such a promise would amount to a franchise and it is against the company's policy at this time to write franchises.

I am sending Mr. Dugger a copy of your letter and my reply so that if you feel that any further discussion in the matter is necessary I am sure he will be glad to see you and talk to you about it. Meanwhile, also, if there is anything we can do to help you in any way possible please do not hesitate to enlist the services of either Mr. Dugger or myself.

Sincerely yours,
/S/ N. F. Agnew.

nfa sc

3699 The COURT. Did you want to submit any additional interrogatories?

Mr. WRIGHT. As I see it right now we probably will not but I would like to reserve decision on it until we see what goes on in the rest of the case and after Mr. Lazarus' deposition is offered

3700 The COURT. You gentlemen appreciate the fact that the testimony in the case is very voluminous, it has taken not only a lot of time, but covers a large territory.

As I see the case at this time, there are two propositions: One is whether or not these defendants have entered into a conspiracy, and the second proposition is whether or not even though there is no conspiracy whether or not they constitute a monopoly in restraint of trade, as specified under this Act.

You are confronted in an analysis of the testimony with reference to these two propositions, two characters of testimony: One is the positive testimony of the witnesses as to whether or not there was a conspiracy, whether or not the circumstances to which the witnesses testified are related, or such as to constitute a conspiracy or a monopoly, and the second is whether or not the contracts themselves are of such a character as that a conspiracy or monopoly can be reasonably inferred from the contracts; and then another proposition, which of course relates to the first two, is whether or not a circuit having a certain buying power within itself would be sufficient to constitute either a conspiracy or a monopoly.

Now, in order to arrive at the proper conclusions in these matters, I should like to have you prepare your requested findings of fact and conclusions of law, and

3701 I think in doing that it will be necessary to make a careful analysis of the testimony as it relates to each town. You will have to take each town and analyze not only the acquisitions of theaters there, the construction of new theaters, the purchase of competitive theaters, but also the manner in which the product was licensed to the various exhibitors.

Now, that is going to take some little time, I appreciate that, but I think you gentlemen are perhaps better acquainted with the testimony in this case since you have been working with it for several years, than the Court would be, and while it is the Court's intention to go through this record very carefully, yet your requested findings will be very helpful.

Now, after you have submitted your requested findings, and you may submit your briefs at the same time, if you desire to have oral argument in the case, the Court will be glad to accommodate you, but you perhaps can deter-

mine that for yourselves by the time you get through briefing.

Of course, in a long case like this, covering six weeks, I haven't found oral argument very helpful to the Court, because unless you take a week to argue it, you can't cover all of the points, and it can be covered so much better, I think, by briefs because in your briefs you can cover every detail.

3702 Now, can you indicate about how much time you would like, Mr. Wright, to submit your findings and brief? I know you are a very busy man and have troubles.

Mr. WRIGHT. Well, if your Honor please, normally of course it would be a matter I suppose of thirty days or something like that, but we are in a position where I have to go into the trial of the Paramount case beginning October 8th, and how long our prima facie case will take to present I don't know at this time, but at least when that is in I assume there might be come sort of gap between that and the defendant's case, but until we at least have had our prima facie case in I would have almost no time that I could devote to the matter, so that it is very hard for us to give or fix a date now as to when we could have this findings and conclusions and the brief prepared. I would be rather doubtful as to whether we would be able to get it in much before December 1st, if then.

The COURT. The Court fully appreciates the work that you gentlemen have all done in this case, and I can understand how it is important to the Government and it is important to the defendants, and the Court is not going to limit you beyond a reasonable time, if you find that December 1st is insufficient.

Mr. WRIGHT. I think that would be the date for us to aim at at this time.

3703 The COURT. And if you find before that time that that time is insufficient, if you will kindly advise the Court, that will be extended. Now, as to the defendants, of course, you can be working on yours all this time too, but how much time would you like to have, now, after the Plaintiff has filed its findings?

Mr. COCHRAN. We would like to have sixty days, with the assurance that if we can get it in sooner, we will do it. We want to get it out of the way as soon as possible, but previous jobs of this kind have convinced me that it takes time and there is nothing else that will do it, because you have to go through the records and weed out every particular thing and then brief those various points, and it takes time. We would like to have sixty days.

The COURT. The Court has no objection to giving you that time, and if either of you feel that you need more time, I am not going to ask you to spend three or four years preparing a case and six weeks to try it, and then rush you in perhaps the most important matter, because I realize the situation and I want to give you plenty of time, because this is a very interesting matter and it involves some very interesting questions.

The Court was asked on one occasion about whether or not the Court could keep informed as to what the law is.

I just made the remark that if this Court didn't do
3704 anything but read the Supreme Court Decisions, and the Circuit Court Decisions, and then the regulations, he wouldn't have time to try a single case. For that reason the Court is compelled to rely on counsel to at least suggest what the law on certain questions is, and then that can be verified at least without taking so much time.

Very well, we will recess until Monday morning at 10:00 o'clock.

(Whereupon, a recess was taken until 10:00 o'clock a. m., on Monday, October 1st, 1945.)

3705 PROCEEDINGS

October 1, 1945, 10 o'clock a. m.

Mr. COCHRAN. I have some further questions to ask Mr. L. C. Griffith in connection with some matters partially developed by Mr. Wright in his examination. This will not be entirely cross examination, but are matters which were suggested by those questions. If you get the chain of thought, on page 3432 of the record Mr. Wright asked Mr. Griffith:

"By Mr. WRIGHT:

"Q. Mr. Griffith, at the time you and other people bought the stock from the receiver, there was no agreement made, was there, between you and any of these other partners that any picture theaters would or would not be acquired in the future?

"A. No.

"Q. And since you and these other people have owned their stock there hasn't been any agreement or any question between you and those people, or between the corporation and those people which would prevent the Griffith Amusement Company from acquiring such theaters as it might wish to acquire. Isn't that right?

"A. There has been no agreement."

L. C. GRIFFITH, was hereupon recalled, and further testified as follows:

3706 Re-direct examination by Mr. COCHRAN:

Q. At the time you and those other people acquired the stock that had been held by Universal Chain Theatrical Enterprises, and at any time since that time, has there been any discussion or arrangement between you and anyone or between the Griffith Amusement Company and anyone which would prevent the Griffith Amusement Company from acquiring such theaters as it might wish to acquire, or from acquiring theaters at any place you might wish to acquire them?

3707 Mr. KIME. I object to the form of the question. It says, "Other people." The record shows that it wasn't other people; it was two corporations, and with that correction or substitution, if Judge Cochran agrees, or has no objection.

Mr. COCHRAN. Make that "Any other person or corporation."

Mr. KIME. As I recall, the record shows it was two corporations; no persons were involved.

Mr. COCHRAN. That did what?

Mr. KIME. That purchased the stock from the receiver of Universal Chain Theatrical Enterprises.

Mr. COCHRAN. Regardless of that, what I am attempting to show by this witness, and the purpose of my question is to show that he nor Griffith Amusement Company had any arrangement with any person or corporation at any time which would prevent that corporation from acquiring any theaters that it wanted to acquire or at any place it wanted to acquire them.

Mr. KIME. That's all right.

The COURT. You may answer.

Mr. COCHRAN. Probably I had better reframe the question.

The COURT. Withdraw the question and reframe it.

3708 By Mr. COCHRAN:

Q. Has there at any time been any discussion or arrangement between you and anyone, or between Griffith Amusement Company and anyone, and by "anyone" I mean any person or corporation, which would prevent the Griffith Amusement Company from acquiring such theaters as it might wish to acquire, or from acquiring theaters at any place that it might wish to acquire them?

A. No, there has not.

Mr. KIME. Wait just a minute. Are you through?

Mr. COCHRAN. Yes.

Mr. KIME. If he knows.

The COURT. Well, of course, he is asking you within your knowledge.

A. Not to my knowledge, no, there hasn't.

By Mr. COCHRAN:

Q. You have already testified that you were in charge of the acquisitions for Griffith Amusement Company?

A. That's correct.

Q. And you were also at all times president of the corporation, were you not?

A. Yes, sir.

Q. And a member of its Board of Directors?

A. That's correct.

3709 Q. Has there been any discussion or arrangement by you or between Griffith Amusement Company and anyone, and again I say by "anyone" I mean either individuals or corporations, representing Consolidated Theaters, Inc., or R. E. Griffith Theaters, Inc. or Westex Theaters, Inc., which would prevent Griffith Amusement Company from acquiring and operating theaters in opposition to Consolidated Theaters, Inc. or Westex Theaters, Inc., or R. E. Griffith Theaters, Inc.?

Mr. KIME. May I have that question read, please?

(Question read by the reporter.)

Mr. KALLIS. If the Court please, the way the question is framed, it clearly calls for a conclusion of the witness, and for that reason it is objected to.

The COURT. I think it also calls for a fact. He was the one that was in charge of all purchasing of or acquisition arrangements for the Griffith Amusement Company. I think he can answer.

A. There has not been any understanding, even as much as a discussion as to where Griffith Amusement Company or any of the companies might build theaters, as far as I know, not in my presence, nor have I ever heard of such a thing.

3710 By Mr. COCHRAN:

Q. Has there ben any discussion or arrangement between you, or between the officers or directors of Consolidated or R. E. Griffith Theaters, Inc., or Wes-Tex Theaters, Inc., which would prevent Consolidated from operating theaters in opposition to R. E. Griffith Theaters, Inc., or Wes-Tex Theaters, Inc.?

Mr. KALLIS. Same objection.

The COURT. If you know.

A. No, Consolidated has had no understanding with anyone about those theaters.

By Mr. COCHRAN:

Q. Have you had any understanding as a representative of Consolidated?

Mr. KIME. Same objection.

The COURT. Overruled. Exception allowed.

A. No, I haven't.

By Mr. COCHRAN:

Q. Since the stock which at one time was owned by Universal Chain Theatrical Enterprises was acquired by you and your associates, has there been any agreement or arrangement of any kind between you and anyone, or between Consolidated Theaters, Inc., and anyone which would prevent Consolidated Theaters, Inc., from acquiring such theaters as it might wish to acquire, or from acquiring theaters at any place it might wish to acquire them?

Mr. KALLIS. Same objection.

The COURT. Overruled. Exception allowed.

A. No, there has not.

3711 By Mr. COCHRAN:

Q. The testimony shows that R. E. Griffith left the employ of the Griffith Amusement Company in 1931, and Consolidated Theaters, Inc. conveyed to R. E. Griffith, or some corporation at his request, the theaters in, I believe three towns in New Mexico. At that time was there any discussion or arrangement or understanding of any kind or character as to what theaters R. E. Griffith, either individually or in behalf of any corporation which he might organize, might acquire or the places where he might acquire theaters?

A. No.

Mr. KALLIS. The same objection.

The COURT. Overruled. Exception allowed.

A. There was no discussion whatever as to where he would acquire those or where Consolidated would acquire theaters at any time.

Q. Was there any discussion as to whether at any future time Griffith Amusement Company or Consolidated Theaters might go into New Mexico or any other towns in which R. E. Griffith or his companies were operating?

Mr. KIME. Same objection.

The COURT. Overruled. Exception allowed.

A. No.

3712 By Mr. COCHRAN:

Q. Why was it that theaters in these New Mexico towns were conveyed by Consolidated Theaters to R. E. Griffith?

Mr. KIMB. That calls for a conclusion.

Mr. COCHRAN. I withdraw the question.

By Mr. COCHRAN:

Q. What were the circumstances under which the theaters in the three New Mexico towns were conveyed to R. E. Griffith by Consolidated?

A. As I recall it, at this time my brother, R. E. Griffith, wished to resign from the company and to establish a business in his own name. He had a certain amount of stock in Consolidated—I don't recall what it was—so all the theaters were listed, and he was told he could choose whichever theaters he wished and those were the theaters he selected.

Q. Did he exchange his stock?

A. He exchanged his stock for those theaters and I think paid some additional money. I don't recall the complete transaction.

Q. Was there any discussion then or afterwards as to either his future acquisitions or future acquisitions of any of the companies he was interested in?

A. No, there was not.

Mr. KIMB. To which we object.

By the COURT:

3713 Q. Did he transfer his stock in the corporation in exchange for those theaters?

A. Yes, he did.

By Mr. COCHRAN:

Q. I believe you testified that some years later H. J. Griffith left the organization and acquired some theaters of his own. Is that correct?

A. Yes, sir, he did.

Q. Prior to the time he made those acquisitions, did you know anything about the fact he was negotiating for those theaters?

A. I knew nothing about it until the transaction had been closed.

Q. When he did acquire those theaters, from that time did he cease to be an employee of the Griffith Amusement Company?

A. Yes, he did.

Q. And has he been employed by that company since that time?

A. No, he has not.

Q. Have you or any of the companies in which you are interested had any discussion or arrangement or understanding with H. J. Griffith as to places where he might

or could acquire theaters or territory in which to operate?

A. No.

Mr. KIMB. Same objection.

The COURT. Overruled. Exception allowed.

3714 A. No, we had no discussion with him about it at all.

By Mr. COCHRAN:

Q. That is all.

3715 Cross-examination by Mr. KIMB:

Q. Mr. Griffith, have you recalled to mind who this stenographer whose initials are H. H. was?

A. No, I have not.

Q. Do you recall Helen Hagen?

A. Yes, I believe there was a girl who worked in our office by that name.

Q. She worked for you a long period of years, didn't she?

A. She was there awhile, I don't recall just how long.

Q. She was there in 1929, wasn't she?

A. She possibly was.

Q. And she was still there in 1934, wasn't she?

A. I don't recall the date she left.

Q. Did you make a search to determine that?

A. Yes, sir; I inquired of Mr. McKenna.

Q. What did Mr. McKenna, with his excellent memory, say about it; was he unable to recall Miss Hagen who worked there for five years?

A. He didn't recall it, no.

Q. I show you what has heretofore——

Mr. COCHRAN. (interrupting.) Just a minute. In regard to that statement that Mr. McKenna didn't recall Miss Hagen until the name of Miss Hagen was mentioned——

A. (Interrupting.) He didn't say Miss Hagen; he

3716 didn't recall who H. H. was.

Mr. KIMB. That's all right, that's just as good.

By Mr. KIMB:

Q. I show you what has heretofore been identified as Plaintiff's Exhibits Nos. 387 to 392, inclusive, purporting to bear your signature. Are those your signatures?

A. Yes, sir, they are.

Q. Each and every one of them?

A. They are.

Mr. COCHRAN. Will you identify the documents?

Mr. KIMB. They have been identified.

Mr. COCHRAN. You have referred to them in the record by exhibit number?

Mr. KIME. Yes, I referred to them as Exhibits 387 to 392, inclusive.

The COURT. What are the numbers?

Mr. KIME. Exhibits 387 to 392, inclusive, for identification.

By Mr. KIME:

Q. Now, I believe you testified that you had never seen, never heard of, and never dictated the letters which heretofore have been identified as Plaintiff's Exhibits 362 and 363?

A. That's correct.

Q. All right. Did you ever receive a letter from Charles Mahone dated June 23rd, 1939?

A. I don't know.

3717 Q. Will you read that, please? (Handing.) Now, again referring to Plaintiff's Exhibit 362 for identification, does that refresh your memory in any way?

A. It does not; I have never seen that letter to my knowledge.

Q. You have never seen the letter?

A. I have never seen either of these letters to my knowledge.

Q. And the reading of this and refreshing your memory from Exhibit 362 doesn't bring back to your memory anything relative to these letters?

A. It does not.

Q. Do you have in your files, or in the files of Griffith Amusement Company the original of this letter purporting to be from Charles Mahone, dated June 23rd, 1929?

A. I don't believe we have.

Q. Will you cause a search to be made today, so that if you don't have the original, we can be in a position to offer this secondary evidence?

A. Yes, I will be glad to make a search.

Q. Now, I hand you a carbon copy of a letter dated August 5th, 1929, and ask you to read that. (Handing.) Now, after having read this letter bearing date of August 5th, 1929, and referring to Plaintiff's Exhibit 363 for identification, does that refresh your memory as to this transaction?

A. It does not.

3718 Q. Do you have the original of this letter in your files?

A. I don't know.

Mr. COCHRAN. At this point I would like to ask permission to see the documents which have been identified and which Mr. Kime presented to the witness, and ask if those

were his signatures. Tht witness has already given his answer and I would like to see those documents.

Mr. KIMB. I am going to use them at the moment.

The COURT. Very well. When he gets through.

By Mr. KIMB:

Q. I hand you Plaintiff's Exhibit No. 395, a letter addressed to Griffith Amusement Company, attention of L. C. Griffith, dated June 12, 1929, and ask you whether or not you recall that letter.

A. This is a letter you just showed me, isn't it?

Q. I don't think it is. No, I showed you one in June, 1923, and August 5, but there is the date of June 12. After reading that, does that refresh your recollection as to that transaction?

A. No, it doesn't. I can't remember a letter I received 16 years ago; every letter I received 16 years ago.

Q. I hand you what has heretofore been identified as Plaintiff's Exhibit No. 389. Does that bear the initials of "H. H."?

3719 A. Yes, it does.

Q. You have already identified that as your signature?

A. Yes.

3720 Q. Read that letter and see if that assists you in refreshing your recollection as to this matter.

Mr. COCHRAN. Did you say that this is one of the series which he identified as being his signature?

Mr. KIMB. Yes, sir.

Mr. COCHRAN. Exhibit 389?

Mr. KIMB. Yes, Exhibit 389.

A. Yes, I wrote that letter.

By Mr. KIMB:

Q. Does that refresh your recollection as to the series of correspondence?

A. It refreshes my memory as to this letter, the contents of this letter, what I said in it.

Q. This letter contains some references to material mentioned in the matter I have just shown you in the other five letters, does it?

A. Some of the information, yes, sir; as to some things —it says, "I am in receipt of your letter of July 12th, and contents have been noted," but I don't recall at this time what the contents were.

Q. I show you Plaintiff's Exhibit No. 390 for identification, which you have testified bore your signature, and that also contains the initials H. H.

Mr. COCHRAN. May I now see No. 389?

Mr. KIMB. Yes, sir. (Handing.)

A. Yes, I wrote that letter.

3721 By Mr. KIMB:

Q. Calling your attention to the initials here, being L. C. G.—H. H.

A. Yes, sir.

Q. Do you now believe that the H. H. initials attached to these letters are the initials of the girl Helen Hagen who was a stenographer in your employ at that time?

A. It might have been.

Q. Was it usual and customary for the stenographer who took the dictation in your organization to attach the initials of the dictator and the transcriber to the letters?

A. I suppose it was; it usually is in the writing of all letters.

Q. Do you know the signature of R. M. Clark?

A. I believe I would.

Mr. KIMB. I will withdraw that question a moment.

Q. I show you what has been heretofore identified as Plaintiff's Exhibit No. 396, and calling your attention to what purports to be a signed name, L. C. Griffith, that is not your singature, is it?

A. No, it is not.

3722 Q. Calling your further attention to the intials in the lower left-hand corner which the "L. C. G.—H. H."

A. Correct.

Q. Referring to Plaintiff's Exhibits 362, 363, and 306 for identification, particularly the signature or the ink writing of L. C. Griffith, I will ask you whether or not in your opinion those were all subscribed by the same hand?

A. I don't believe they were.

Q. Do you believe any of them were?

A. You mean this one and this one?

Q. Yes, this one and this one, or any combination of the three?

A. I am not a handwriting expert. These all look the same.

The COURT. That doesn't mean a thing. If you will give the number——

Mr. KIMB. He has indicated that 396 and 363 for identification are similar?

A. Yes, to some extent.

By Mr. KIMB:

Q. Were you familiar with the handwriting of Helen Hagen at that time?

A. I possibly was. I wouldn't know her signature now.

Q. I hand you what has heretofore been identified as Plaintiff's Exhibit No. 397, and I believe you said you
3723 thought you would recognize the signature of R. M. Clark?

A. That is right.

Q. Is that Mr. Clark's signature?

A. Yes, I think it is.

Q. And the initials in the lower left-hand corner are "R. M. C.—H. H."?

A. That is right.

Q. Was it customary in the usual course of business there for certain people to sign their names with green ink?

A. No, I don't know. They signed them with any kind of ink they might had, I guess.

Q. There was no particular color used for the president and another color for the vice president?

A. No.

Q. And another for the secretary or general manager?

A. Not that I ever heard of.

Q. I hand you what has heretofore been identified as Plaintiff's Exhibit 398, which bears the ink initials and name "L. C. Griffith." Is that your signature?

A. No, it is not.

Q. That bears the initials "L. C. G.—H. M." Do you know who "H. M." was?

A. No, I do not.

Q. Had Helen Hagen married there in the meantime?

3724 A. No. We had a rule in the office for years when they married they left our employ.

Q. So you are satisfied that "H. M." could not have been Helen Hagen under a married name?

A. I am not positive.

Q. Well, you are fairly so?

A. I don't think it was Helen Hagen. "H. M." would not be Helen Hagen.

Mr. COCHRAN. Judge Kime, as I understand the purpose of identifying Exhibit 387——

Mr. KIME. The purpose of identifying them all except 398 is only for the purpose of identification at the present time of the signatures.

Mr. COCHRAN. The identification of the signatures of L. C. Griffith.

Mr. KIME. Yes.

Mr. COCHRAN. You are referring to Exhibits 387, 388, 391, and 392?

Mr. KIME. Yes. However, I propose to offer them for whatever they may be worth.

3725 Q. I hand you what has heretofore been identified as Plaintiff's Exhibit 399; will you read that and tell me whether or not you have the original of it?

A. I wouldn't know, Mr. Kime, whether we have the original or not without looking through the files.

Q. But from reading that you don't recall that you have ever seen it?

A. No, I don't remember having seen it.

Q. Will you cause an examination to be made?

A. Yes, sir.

Q. And if any of these copies that we have offered to introduce from Mr. Mahone, if you have the originals, will you produce them?

A. Yes, I will be glad to.

Q. Mr. Griffith, do you happen to recall what the rental was on the old Victory or Rex Theater in Shawnee, Oklahoma?

The COURT. Just a moment. Are you offering all these exhibits in evidence?

Mr. KIME. Yes, your Honor.

The COURT. From Exhibit No. 387?

Mr. KIME. From Exhibit No. 387 through and including Exhibit No. 399, Your Honor.

Mr. COCHRAN. There are some of them that are admissible, and some that are not. I think they would probably have to be taken up separately. Do you mean

3726 all of these that he is inquiring about or just the ones he has passed up to you?

The COURT. No, all these letters. I can reserve my ruling until after the recess and you can go through them during the recess.

Mr. COCHRAN. I will have to wait until I can get the transcript of the record in order to say which ones there are, because we don't have them all together.

The COURT. They are all right there, from 387 to 399.

Mr. COCHRAN. All right.

The COURT. The ruling will be reserved on the offer until after the recess.

Mr. KIME. If any of them are rejected, Your Honor, I would like an opportunity to express my reasons why each one should be admitted.

The COURT. Yes, sir.

Mr. KIME. Or reply to any objection that might be made by Judge Cochran.

The COURT. Very well.

By Mr. KIME:

Q. I have lost track whether you answered the last question or not.

A. You asked me if I knew the rental on the Victory Theater, which was later named the Rex, in Shawnee. I wouldn't know without seeing the contract.

3727 Q. I hand you what purports to be that lease.

The COURT. What is the number of the exhibit.

Mr. KIME. I am not going to offer it, Your Honor; I just want to get the amount into the record.

The COURT. You are offering it for the purpose of refreshing his memory?

Mr. KIME. For refreshing his memory only.

A. This says $225 a month, but I wouldn't have known what it was, whether it was two twenty-five, one twenty-five, or three twenty-five.

By Mr. KIME:

Q. After reading that, is it your opinion that the rent was $225 a month?

A. I guess it was; that is what this lease says.

Q. And this has an amendment of that. Will you attempt to refresh your memory from that as to whether there was any change in the rental, the monthly rental? (Handing.)

A. Yes, there was a change of $25 a month, according to this contract.

Q. To $25?

A. No, it was reduced $25.

Q. Reduced $25, and that makes it $200 a month then after a certain date, and what was that date?

A. After the date—date of this contract?

Q. Well, the date the reduction was to be effective?

3728 A. Let's see (referring to document). The date it was cancelled is January 1st.

Q. What year?

A. January 1st, 1930. That is the date of the expiration of the first lease.

Q. That's the first lease, is it?

A. Yes, sir, that's what I said. I guess——

Q. (Interrupting.) You leased it on that date, didn't you, originally?

A. $200, yes, is that what you wanted?

By the COURT:

Q. $200 after when?

A. It was $200 after the expiration of this lease, but I haven't been able to figure when the other lease expired.

Q. Do you mean after this lease expired?

A. This seems to be a supplemental lease, Your Honor; it seems that this—(Hesitating).

3729 Mr. COCHRAN. It is agreed, without introducing the original lease in evidence, that it bears date of January 1, 1930, and the lease between A. O. Baker, party of the first part and T. G. Teeter, and covers the time from the first day of January, 1930, until the 30th day of June, 1934, and provides for rental payable at $225.00 a month.

By Mr. KIME:

Q. Now this lease was subsequently assigned to your company?

By the WITNESS:

A. I imagine it was. It doesn't say so but I assume it was.

Q. I have the assignment here.

Mr. GRIFFING. We can stipulate the whole history.

Mr. COCHRAN. It is further stipulated that on January 10, 1931, the above lease was assigned by T. G. Teeter to the Griffith Amusement Company; then on April 7, 1933, an agreement was entered into between A. C. Baker and the Griffith Amusement Company, which refers to the original lease between A. O. Baker and T. G. Teeter, and the assignment to the Griffith Amusement Company, and recited that the parties hereto desire to cancel the lease dated January 1, 1930, and to enter into a new lease covering said premises on terms and conditions hereinafter stated. It then provides that the premises are leased

3730 from A. O. Baker to the Griffith Amusement Company for a period of three years commencing at midnight April 30, 1933, and ending at midnight April 30, 1936.

It further provides that the second party shall make certain repairs and improvements which have heretofore been mutually agreed upon, and that the first party shall pay the sum of $200 toward the cost of such repairs and improvements by allowing second party to deduct from the rental payments to be made as hereinafter provided, the sum of $50 for each of the months, May, June, July and August of 1933; that for the use and occupancy of such premises while the lease shall remain in force, the second party shall pay the first party 10 per cent of the gross box office receipts that may be derived from the operation of such theaters, provided that when a road or other stage performance be given in said theater, only that part of the proceeds from such exhibitions received by second party shall be considered as gross receipts as determining the rent provided herein. Provided, in any event that second party shall be liable to first party for a minimum rent of $100 a month; that the payment of rent as provided herein shall

be made monthly, on statement furnished by second party to first party on or before the first day of each preceding month. I think in view of the complicated problem
3731 involved here that this document should be introduced in evidence.

Mr. KIMB. I have no objection.

Mr. COCHRAN. Section 5 provides:

"That the second party shall operate said theater so long as in its discretion it is advisable to do so; that in the event the second party shall elect to close said theater the monthly rent to be paid to the first party during the remainder of the term of this lease or until the second party reopens and operates said theater shall be a sum equal to the average monthly rent paid by the second party during the period that said theater was operated, all as determined by the last preceding paragraph; that if after having closed said theater the second party shall reopen and operate said theater, the monthly rent to be paid to the first party shall be determined in the manner provided in the last preceding paragraph."

3732 By Mr. KIMB:

Q. Mr. Griffith, from June 12th, 1929 to August 4th, 1929, do you recall having a telephone conversation with Charlie Mahone?

A. No, I do not.

Q. Do you recall having a conference or talk with him in your offices?

A. As I said yesterday on the stand, I remember having a conference, or possibly one or two conferences, maybe more, with Mr. Mahone, but as to the dates, I wouldn't remember.

Q. Do you recall a trip to Dallas, Texas during this period which kept you there three days?

A. No, I do not. I have made a lot of trips to Dallas; I wouldn't know when, or what dates, weeks, years, months, or anything else.

Q. But you do recall having some discussion with Mr. Mahone relative to this theater you were putting in in Hobart?

A. Yes, sir, I had a discussion with him about it.

Q. Do you recall your offering him a proposition on a partnership basis?

A. Yes, sir, I think we made him every conceivable proposition at the time; we offered to make a partnership arrangement with him, offered to sell the theater to him,

offered to buy his theater. I think we finally did
3733 make a deal and acquired his theater. I say "we"; I mean, that was the former company, Consolidated Amusement Company, which later on went into receivership.

3734 Mr. KIMB. That is right.

By Mr. KIMB:

Q. Do you recall any counter proposals that he made?

A. No, I don't remember the proposals or conversation or anything about it. I just remember we tried to make a deal with him and finally did make a deal.

Q. Wasn't there something you were to look up in your records?

A. Yes.

Q. What was that?

A. I was asked about the date of the contract with Charlie Mahone. The first contract, I believe, was May 14, 1930.

Mr. KIMB. I was under the impression that the Mahone, contract was in evidence. If it isn't, I want to offer it——

By the WITNESS:

A. I was also asked to get the dates that the Griffith Amusement Company acquired the Kiowa Theater building. That was January 11, 1933, and the Griffith Amusement Company did not commence operating it until November 7, 1934.

Mr. KIMB. It is in evidence and that is all there is from this witness, Your Honor.

Re-direct examination by Mr. COCHRAN:

3735 Q. What was the date the Consolidated Amusement Company made the lease contract with Judge Tolbert on the Kiowa Theater in Hobart?

A. I was under the impression it was made May 14, 1930. I would have to see the contract.

The COURT. As to these records, the record is in a rather unsatisfactory state in regard to the Exhibits 387 to 399. Now are they offered in evidence?

Mr. KIMB. They are offered. I will say this very frankly to Your Honor, that until they make search as to the originals of these yellow copies they are not competent because we haven't exhausted the best evidence, yet, but that is the Exhibits 393, 394, 395 and 399.

3736 The COURT. 393, 395, and 399.

Mr. KIMB. Those are copies of letters, if Your Honor will recall.

The COURT. Yes, sir, I recall that.

Mr. KIME. As the record now stands, of course, they are not competent until they give us an answer as to the originals. If they don't have the originals, then these will be competent on the production of Mr. Mahone or by stipulation.

The COURT. If you can prove that those letters were mailed to Griffith Amusement Company.

Mr. KIME. That's right.

The COURT. But under the present——

Mr. KIME (interrupting.) That will entail this, your Honor,——

The COURT (interrupting.) Exhibits 387 to 392, the Court has no idea what those are; he hasn't seen them.

Mr. COCHRAN. So far as these exhibits are concerned, your Honor, I had assembled all of them and had started reading them when counsel needed the documents for further examination, so I haven't yet examined all of them.

The COURT. We can defer that.

Mr. KIME. May I make this suggestion, Judge? In the event the originals of these yellow carbon copies purporting to be from Mr. Mahone are not discovered, it
3737 will necessitate, unless we can stipulate that he did write them and send them or deposit them in the United States Mail, it will require the calling of Mr. Mahone from some 130 miles from here, I understand, to come back. Now, of course, we can do that.

The COURT. I will reserve a ruling on this. You gentlemen see what you can work out.

Mr. COCHRAN. I will say that unless we can agree on the documents, that is, agree to waive the presence of Mr. Mahone, I feel satisfied we are not going to be able to find the originals, because I know from our efforts to obtain documents of this character, that that correspondence has not been retained over that period; it will be purely an accident if it were available. However, Mr. Griffith will make a search for it, but I am telling you now that I am satisfied that they will not be available.

Mr. KIME. Then you think it would be advisable to have Mr. Mahone here?

Mr. COCHRAN. Well, we will let you know after noon, just as soon as I can peruse these documents.

Mr. KIME. Fine.

The COURT. Anything further with the witness? I think, gentlemen, that this is spending a lot of time on something that is not very material. Suppose he did have this correspondence. Here is an admission on the part of the
3738 witness that they did finally make a deal, that there were negotiations and they made the deal. Now, I

don't know what this correspondence is going to add to it.

Mr. KIME. Well, your Honor, it will add this: The witness denied ever having seen, ever having dictated, seen or having any knowledge of the two letters.

The COURT. Yes.

Mr. KIME. Which were on the stationery, one of them on Griffith Amusement Company, and another on Consolidated Amusement Company letterheads. They bore his initials, they were in relation to a subject which was really brought out in a letter that he acknowledged he had written, which contained the same initials, which evidently had been taken by the same stenographer and transcribed by the same stenographer, and I think it has a very important bearing.

The COURT. While we are on that matter, he said that isn't his signature.

Mr. KIME. I will frankly agree that it isn't; I don't think it is either.

The COURT. I haven't seen the signatures to compare them at all; I don't know; but he says it isn't his signature, and he says he has no recollection of ever having dictated or writing a letter of that character. Now, it is entirely possibly that these negotiations could have been go-
3739 ing on there between somebody else in the office who knew about this transaction, and this witness not know anything about it. Therefore, why is it so material when the contract itself shows what was done, and that is the material thing; the only material part of it is the character of contract that was entered into.

Mr. KIME. Your Honor please, this is submitted for the purpose of impeachment.

The COURT. Well——

Mr. KIME. And I submit that after you have looked at this correspondence, it shows that clearly.

Mr. COCHRAN. If the Court please, on these acquisitions by Consolidated Amusement Company in Hobart, I think the record is still confused, and if Mr. Kallis has that contract between Consolidated Amusement Company and Mr. Mahone, I would like to get the date of that contract, so there will be no question about it.

3740 Mr. KALLIS. If the Court please, we have made an index of the exhibits which have been identified and either received or rejected or not offered at all, and according to my index, the document in question is marked as Plaintiff's Exhibit 354, and was identified on page 1659 of the record, and was received in evidence on page 1661 of the record.

Mr. COCHRAN. During the noon hour we will check that 354 and be prepared to state the date.

Mr. KALLIS. On that I can say that this index which I have before me, and which was prepared by a young lady in our office, indicates there was a memorandum agreement between Mary L. James and Charles H. Mahone and the Consolidated Amusement Company, dated May 14, 1930, and her summary of this document in evidence is that it pertains to the sale of the equipment and pictures of the Cozy and Oklahoman Theaters in Hobart, Oklahoma. Now that bears the same date as the one Mr. Griffith just mentioned a few moments ago.

Mr. COCHRAN. He gave May 14.

Mr. KALLIS. Which is the same date as Exhibit 354 and the lease agreement is 355, identified and received on the same pages as the previous exhibit.

Mr. COCHRAN. Then on the Kiowa theater we want to have Mr. Griffith check the records and get the date
3741 the lease contract was made on that theater, unless these gentlemen will stipulate that in the record.

Mr. KIME. If you say what it is we will stipulate.

Mr. COCHRAN. The lease was dated May 18, 1929, and the rent commenced on August 31, 1929.

Mr. KIME. And the witness would so testify if you produced him?

Mr. COCHRAN. That is right.

Mr. KIME. That is all right.

The COURT. Is there anything further with this witness?

Mr. COCHRAN. That is all.

Mr. KIME. Just one more question.

By Mr. KIME:

Q. Did you go to Shawnee when the Bison Theater was opened?

A. Yes.

Q. Do you recall what picture was played there then?

A. No, I certainly do not.

Q. That is all.

(Witness excused.)

Mr. COCHRAN. There has been some evidence dictated into the record in regard to admission prices which were being charged at the Rex Theater on certain dates.
3742 At the time that stipulation was made counsel for the plaintiff had in court certain records from a newspaper office in Shawnee, the Morning News, Shawnee, Oklahoma. He had those in court. They did not cover a continuous period of time but each volume covered between certain dates. We have gone through the volumns which were produced and have shown they were for the Rex Theater the Ritz Theater and Odeon Theater, and the admis-

sion prices which are shown in the advertisements for each of the dates are shown in those volumes and we want to introduce in evidence a list showing just what the admission prices for those theaters shown by those volumes produced, in court, actually were.

The COURT. Can you stipulate that?

Mr. KIME. Here was our purpose the other day in doing that. I personally went to Shawnee and went through a large number of old files, and we found this ten cent price at the Rex started on June 18, 1933. I won't say to your Honor now that I examined every newspaper from June 18, 1933, to the time it went back to the 15 cent price or to the 10 and 15 cent price, which was January 7, 1935, but I did go through many months day by day and look at some newspapers there each day that the paper was published, and I think it was on Saturday night when it was not published, or Monday morning, I don't know which—the
3743 two newspapers that were then published there, being the Morning News and Evening Star. It is our purpose in offering that to show that this 10 cent price was established on June 18, 1933, and continued to be in effect as the price of that theater until the 7th day of January, 1935.

Then the other day when this material was offered your Honor put a big doubt in my mind by saying that generally those prices were only applicable on those dates. Well, that is true. Now unless it can be stipulated that this 10 cent price became effective on this date, and it remained in effect until the other date, we want the opportunity to submit each and every day to show that it did go into effect on the 18th of June, 1933, and remained in effect until 1935.

Mr. COCHRAN. It is counsel's privilege to offer such additional evidence as he desires, but I am taking just the period by the volumes which he produced in court and from which he dictated stipulations as to certain dates, and I am taking those volumes as being the thing that is in evidence now and showing the admission prices on each day shown in each of those volumes for the Rex Theater and Ritz Theater and Odeon Theater.

The COURT. Is there any objection to that?

Mr. KIME. No objection.

3744 The COURT. Let it be so stipulated.

Mr. COCHRAN. Defendants' Exhibit 17 covers the admission prices for the Rex for the date shown there. Defendants' Exhibit 172, the admission prices for the Odeon for the same period and Defendants' Exhibit 173, the admission prices for the Ritz during the same period, and we offer in evidence Defendants' Exhibits 171, 172, and 173.

The COURT. They will be admitted.

Mr. COCHRAN. We now want to read the deposition of Mr. Lazarus. Counsel has requested that we postpone the reading of that deposition to allow them to put Mr. Pat Duffy on the stand.

Plaintiff's Rebuttal Evidence

PAT DUFFY, was thereupon recalled as a witness on behalf of the plaintiff in rebuttal, and having been previously sworn, further testified as follows:

Re-direct examination by Mr. KIMB:

Q. Your name is Pat Duffy?

A. Yes, sir.

Q. You are the same Pat Duffy who was on the witness stand heretofore in this case?

A. I am.

Q. Mr. Duffy, there has been testimony introduced here to the point that at the time you made this twenty-two
3745 thousand dollar option which was not exercised, that you were to secure a lease from the Masonic Temple ownership as a part of the option agreement. When was the first time you ever heard of such a thing?

A. When was the first time I heard it?

3746 Q. Huh?

A. When was the first time I heard it?

Q. Yes.

A. I don't remember ever hearing it.

Q. You heard it from me this morning, didn't you?

A. Yes, sir.

Q. In my office when I asked you?

A. Yes.

Q. With your memory refreshed from this testimony, would you say, tell the Court whether or not there was ever such a portion of this agreement that you were to secure a lease on the Masonic Temple where this Temple was operated?

A. There never was no agreement like that.

Mr. KIMB. That's all.

By the COURT:

Q. What rental were you paying the Temple Association?

A. $150 a month.

Q. Now, do you know whether they agreed to continue the lease at that rate?

A. I didn't know; no, I didn't; I wasn't in on the conference.

Q. Were you ever present at a conference——

A. I never was.

Q. —with any of them——

3747 A. No.

Q. —on that matter?

A. No, I never was. They wanted to make a lease themselves, make a deal for the building themselves.

Q. What rental did you continue to pay then to the Temple?

A. $150 a month.

Q. For how long?

A. Well, until the time I told to Griffith; from 1933 to 1938.

Mr. COCHRAN. Are you through?

Mr. KIMB. Yes.

Cross-examination by Mr. COCHRAN:

Q. Do you know Mr. Head of Mangum?

A. I do.

Q. Did you have any conversation with him about the continuation of that rental in the event the Griffiths acquired those theaters?

A. I did not.

Q. You had no conversation with him about it?

A. About the rent that was supposed to be paid?

Q. About paying the rental at the same figure you were paying, in the event Griffith exhausted their option?

A. No, I did not.

Q. Were you operating both theaters at that time?

3748 A. Yes, sir.

Q. Did you have any conversation with any other representative of the Masonic Lodge about the rental which was, which would be charged in the event the Griffiths acquired your theaters?

A. No, I did not.

Q. Did you have any conversation with any representative of the Masonic Lodge about the rentals continuing on the same basis which you were paying in the event the Griffiths acquired your theater?

A. I did not.

Mr. COCHRAN. That's all.

Mr. KIMB. That's all.

(Witness excused.)

Mr. COCHRAN. Your Honor please, I find that this Lazarus deposition hasn't yet been received by the Clerk.

Mr. KALLIS. We haven't received it either, your Honor. Mr. Griffing about 20 minutes or so ago handed me his copy, but I haven't had a chance to read it, and I suggest that we postpone the reading of it until this afternoon's session.

The COURT. If it hasn't been received, of course, you couldn't read it.

Mr. COCHRAN. No, we can't read it yet.

3749 The COURT. Anything further?

Mr. COCHRAN. That's all at the present, your Honor. We can't rest until we get the Lazarus deposition, but that's all we have except we may want to put on some rebuttal testimony.

The COURT. Is the Plaintiff in a position to put on any testimony at this time?

Mr. KIME. Yes, we are, your Honor.

The COURT. Very well, call your witness.

LAWRENCE C. BOCHER, called as a witness on behalf of Plaintiff in rebuttal, and having been duly sworn, was examined and testified as follows:

Direct-examination by Mr. KIME:

Q. State your name, please.

A. Lawrence C. Bocher.

Q. Where do you live, Mr. Bocher?

A. Shawnee, Oklahoma.

Q. You have lived there for several years, have you?

A. Yes, sir.

Q. Prior to 1927?

A. Yes, sir.

Q. Were you an officer of the Seminole Amusement Company?

3750 A. Yes, sir.

Q. What officer?

A. Secretary and Treasurer.

Q. Secretary and Treasurer?

A. Yes, sir.

Q. And did this Seminole Amusement Company build the Criterion Theater in Shawnee?

A. It did.

Q. When was that, Mr. Bocher?

A. Oh, in 1927.

Q. Do you recall approximately when the Criterion Theater opened?

A. Sometime in July.

Q. Then, the Seminole Amusement Company sometime later leased that Criterion Theater to one of these defendants here, did it?

A. The Seminole Amusement Company leased the Criterion to the Griffith Amusement Company.

Q. To the Griffith Amusement Company?

A. Yes, sir.

Q. Now, that lease is in evidence. Do you recall what the monthly rental was?

A. The rental was $561.61 for a period of ten years, with an option for another ten years at an increased rental of $100 per month.

3751 Q. Then sometime later was that rental reduced?

A. Yes, sir.

Q. Now then, from the time of that $500 rental, just tell the Court what transpired with reference to any further reductions?

A. Well, the lease was originally for $561.61, and it was reduced to $500 per month along in September, I believe, 1931; then in July, 1932 Mr. L. C. Griffith had a meeting with Jake Jones and myself to obtain a further reduction.

Q. Where was that meeting?

A. That meeting was in Shawnee.

Q. And who was there?

A. Jake Jones and myself.

Q. And L. C. Griffith?

A. And L. C. Griffith.

Q. Just the three of you?

A. Just the three of us.

Q. Was the rent reduced as a result of that meeting?

A. As a result of that meeting we reduced the rent to $400 per month for a period of two years. That expired, I believe—it covered 1932 to 1934, to July, 1934.

Q. Did you have any further meetings with any representatives, anyone representing Griffith Amusement Company, relative to this Criterion Theater?

A. Yes, sir.

3752 Q. What and when was that?

A. Along in the first part of 1933, either in January or February, Jake called me, that is Jake Jones, called me up one day and said, "The Griffiths,"——

Mr. COCHRAN. We object to what Jake said to him.

By Mr. KIMP:

Q. Don't state what Mr. Jones said to you, but just tell what happened.

A. All right. A meeting was arranged at the Aldridge Hotel, and I didn't know what the meeting was supposed to be for. Those present at the meeting, as far as I remember, was Jake Jones and myself, McKenna, and R. E. Griffith and H. J. Griffith. L. C. wasn't there.

Q. And what occurred at that meeting?

A. We met in a room in the Aldridge Hotel on the second floor. I was more or less anxious to find out what the meeting was called for, since we had already made two reductions in the rent. H. J., he broke the ice as regard to what the meeting was called for, and he stated that they had to have some relief, and the rent should be reduced.

Q. Was there any further conversation?

A. Yes, sir. I immediately told him that we had already reduced the rent twice, and that when L. C. had met with us that he had promised us that no further reduction in the rent would be asked. We were a little reluctant to reduce it to $400. That was because I was afraid there
3753 might be some technicality in drawing up a new contract that might abrogate the whole contract. So I immediately told him about our former agreement, and I said, "Possibly that is why L. C. isn't here, because he made the agreement with us that there would not be any more reductions in the rent." Then R. E., he stated at that time that there would have to be a substantial reduction in rent. In fact, he says, "We can't pay over $250."

Q. Was there any further conversation?

A. And then when I told him there wouldn't be a chance at all to reduce it to $250, he says, "We will open up another theater and buy all the second run pictures in Shawnee," and the meeting busted right up then.

Q. Do you recall any conversation on the part of Mr. Jones?

A. Well, Mr. Jones, he grabbed his hat and said something, well, he swore a little bit, and he said, "Come on, let's go," and we walked out, and they were still sitting there.

Q. Now, is there anything further that you remember that was said at that meeting by anyone?

A. Oh, not at the meeting. Going up the steps, I talked to Mr. McKenna about when they opened their sound pictures in Shawnee, we had had several discussions on that, I kept telling him he should have charged $1 admis-
3754 sion instead of seventy-five cents; that he could have paid for his equipment.

Q. Were these other people within your hearing, or was that just some——

A. Oh, that was——

Q. —pleasantry that you passed with Mr. McKenna?

A. That's right.

Q. You say as you were going up the steps. I thought you said you met them in the room?

A. Well, we met in the lobby of the hotel.

Q. You met in the lobby?

A. Yes, sir, and walked up to the mezzanine floor.

Q. To the mezzanine floor?

A. The room was off the mezzanine floor.

3755 Q. Do you recall anything about the room, what furniture it might have had or how close to the elevator it was; where it was?

A. Well, it was the opposite side of the mezzanine from the elevator, and the room was a room ordinarily used for just such meetings as that. If a firm wanted to bring in their salesmen and have a meeting it was available. If you wanted to have a luncheon and talk at the same time, that could be furnished too.

Q. Had you been in the room in such meetings many times?

A. Yes, sir, and since.

Q. Now, after this meeting in the early part of 1933, I believe you said January or February, do you recall any subsequent meetings with anyone from the Griffith Amusement Company relative to this Criterion Theater?

A. Yes, sir.

Q. What was that and when?

A. Just before the expiration of the $400 a month rental, possibly, oh, 30 or 60 days before, we were called over to Oklahoma City to have an interview with L. C. Griffith.

Q. Whom do you mean by "we"?

A. Jake Jones and myself.

Q. And did you come to Oklahoma City?

3756 A. We did.

Q. And have a meeting?

A. Yes, sir.

Q. What transpired at that meeting?

A. Well, we waited a considerable time for L. C. He was busy with some of his field men or someone. He didn't come out. Then when we got together the first thing he told us was that he couldn't afford to go back to the $500 a month for the rental on the Criterion Theater, and we had discussed a while and he would have to leave, he would be called to the telephone or something, and the meeting drug on for two or three hours.

Q. Where was this meeting?

A. It was in L. C.'s office here in Oklahoma City.

Q. Didn't he have a telephone in his office?

A. He might have had, but he would be called out, and later on came back after we had been discussing or he had been discussing a $350 rental, he came back and said he could only pay $300. We told him it was impossible to reduce it from $500 down to $300, and he said they were not making enough money to pay the $500. Whether he showed us any figures or not, I don't remember, as to what the receipts of the theater were, but he said" according to what 'we are making' or 'taking in' we can't pay that."

3757 I asked him "How much are you charging at the Criterion Theater for the services that the Griffith Amusement Company is rendering?" that is, buying pic-

tures and overhead, and we came to no agreement at all. We expected it to go back to the $500 a month.

Q. That was Jake Jones and you?

A. That is right.

Q. In L. C. Griffith's office here in Oklahoma City?

A. That is right.

Q. Was there anyone else in the room?

A. Not when we were discussing the matter.

Q. Was there anyone else in the room at any time?

A. No, sir.

Q. You say he was called out. How would he be called out?

A. I don't remember. Somebody might have come to the door or rung a buzzer and say, "You are wanted."

Q. Do you recall anything else of the conversation that was said by anyone of you three?

A. We were just discussing, and he wanted the rent reduced and we didn't, and it was just a stand-off.

Q. Was there any reference made to the theater that they had acquired from you in Seminole?

A. Oh, as regard to that, I told him that the Griffith Amusement Company had made plenty of money off
3758 of the Seminole Amusement Company, plenty of money. We had delivered them without any charge at all, when we had sold them the Ritz Theater in Seminole, picture contracts that were worth considerable money, and as I had learned and seen in the magazines, this theater in Seminole was one of the biggest money makers in the United States, as far as the town and everything was concerned. In other words, the picture contract——

Mr. COCHRAN. I suggest this testimony is not proper at this time because it is not rebuttal of anything in this case. This is a rebuttal witness.

Mr. KIMP: I am just attempting to have him give all the conversation for whatever it may be worth.

The COURT. Overruled. Let's get through with it.

By Mr. KIMP:

Q. Was there anything else said there that you now recall?

A. At this meeting?

Q. At the meeting here in Oklahoma City.

A. Nothing, except we tried to leave the impression, or we did leave the impression we expected the $500 a month to come to us just as soon as the reduction in the lease was over.

Q. And later there was some agreement entered into relative to continuance of the lease?

A. Yes, sir. That is, in a month or two, whatever
3759 time it was, it reverted back to the $500 a month.

Q. You were the secretary of the Seminole Amusement Company when this Criterion was built. Can you tell the Court approximately what the building equipment cost?

A. Approximately $75,000. Maybe just a few hundred dollars under that.

Q. There were not any beds in this room on the mezzanine floor of the Aldridge Hotel, were there?

A. No, sir, not that I recall.

Mr. Kime. I think that is all, your Honor.

The Court. We will recess at this time until 2:00 o'clock.

(Hereupon Court adjourned until 2:00 o'clock p. m., this day.)

3760 PROCEEDINGS

September 1st, 1945, 2:00 o'clock p. m.

Lawrence C. Bocher, a witness for the plaintiff in rebuttal, having been previously duly sworn, was recalled and was examined and testified as follows:

Cross-examination by Mr. Cochran:

Q. When did you first meet R. E. Griffith?

A. The first time I met him was in Shawnee, Oklahoma either in the month of January or February, 1933, at this meeting in the Aldridge Hotel.

Q. Is that the only time that you ever saw R. E. Griffith that you know of?

A. As far as talking to him, that's the only time.

Q. Well, had you met him prior to that time?

A. I hadn't met him personally, no, sir.

Q. Had you seen him to know who he was?

A. Why, I had seen him, yes, sir, and we had discussed him and talked about the three Griffiths, L. C., R. E. and J. H.

Q. Where had you seen R. E. Griffith prior to that time?

A. Well, in Oklahoma City.

3761 Q. When?

A. Well, let's see. I can't remember the exact dates.

Q. About how long before this meeting which was held at the Aldridge Hotel?

A. I didn't meet him before that. I had seen him after that.

Q. You hadn't seen him to know who he was prior to that time?

A. No, not prior to that time.

Q. Subsequent to that time, how long was it before you saw R. E. Griffith again?

Q. Do you mean after that time?

Q. After that time?

A. Well, sometimes I would go over with Jake to the film row over there and we would drop into the cafeteria to get a bite to eat and maybe I have gone upstairs there to see McKenna. I don't remember the dates. But they have been pointed out to me as R. E., H. J., and L. C.

Q. So on film row there at the place in the Griffith Amusement Company building, and elsewhere in that building, you have seen this man that you have told us was R. E. Griffith and he attended the conference at the Eldridge Hotel?

A. That's right.

3762 Q. At that time what was he doing, at the time you would see him around there in this Griffith Amusement Company building?

A. Well, at one time Jake and I went over there, I don't remember the date, and we would either see—oh, he had been pointed out to me because he looked so much like L. C. I asked him—I said, "That is R. E., isn't it?" And he said, "Yes."

Q. I asked you what this R. E. Griffith was doing at the times you would see him around in the Griffith Amusement Company building subsequent to the conference in the Aldridge Hotel?

A. I couldn't tell you about that. I just remember having seen him.

Q. Was he working about the building there in one of the offices?

A. No, he was out on the street or inside the cafe.

Q. How often would you say you saw him?

A. I don't suppose I have ever seen him over two or three times.

Q. And you are sure that the man you saw on those occasions was the man that was present in the conference at the Aldridge Hotel?

A. Yes, sir; there were two Griffiths at the conference and L. C. was not there.

3763 Q. You are sure the times you saw him after the conference was subsequent to the year 1933, during the year 1933, or subsequent thereto?

A. Somewhere along in those times, yes, sir.

Q. Do you know it was after January, 1933?

A. Yes, sir.

Q. Now, R. E. is the man, is he, who made the statement "there would have to be a substantial reduction in rent.

We cannot pay over $250," and when you told him there wouldn't be a chance at all to reduce it to $250 he said, "We will open up another theater and buy all the subsequent run pictures in Shawnee."

A. He is the man that made that statement.

By the COURT:

Q. Who was present?

A. Jake Jones and myself and McKenna, H. J. Griffith and R. E. Griffith.

By Mr. COCHRAN:

Q. At the time of that conference were you acquainted with Mr. McKenna?

A. Yes, sir.

Q. When did you first get acquainted with him?

A. Well, I was under the impression that he possibly had lived in Shawnee at one time or went to school there. However, I didn't remember him at the time. That was what my impression was, but in our dealings with the Griffith Amusement Company I had come in contact with
3764 him several times before that meeting.

Q. What was the first time you met him in your dealing with the Griffith Amusement Company?

A. Well, it was in connection with some lease that was on the theater.

Q. On the Criterion Theater?

A. It was in that connection.

Q. In what year?

A. Well, let's see—I can't tell you the first year or the first time I ever met him. We have known each other over a period of the last several years.

Q. Extending back how far?

A. Well, let's see—it was possibly a year or so before this meeting that took place in the Aldridge Hotel.

Q. One or two years prior to 1933?

A. It is my recollection——

Q. So that would be '32 or '31?

A. Somewhere along in there.

Q. Did you participate in the negotiations leading up to the execution of the original lease on the Criterion Theater from the Seminole Amusement Company to the Griffith Amusement Company?

A. No, sir. I think we had the attorneys to pass on it after the lease was written.

Q. But you did not participate in the negotiations?

3765 A. In the negotiations, no, sir.

Q. Did you have any meeting with Mr. McKenna in the upstairs office of the Criterion Theater in 1929?

A. At the time they took the inventory I believe he was present.

Q. Isn't that the first time when you met Mr. McKenna in 1929, when he came down there on behalf of the Griffith Amusement Company to make an audit of the assets of that theater?

A. Possibly so.

3766 Q. Do you remember that he came down?

A. It is my recollection, since you have refreshed my mind, it is my recollection I met him about that time, and I believe he was there in connection with the inventory of the furniture and fixtures.

Q. After the theater had been leased?

A. Well, it might have been prior, but, or after it was agreed upon probably.

Q. Well, as a part of the leasing of the Criterion Theater to Griffith Amusement Company?

A. That's right.

Q. Isn't it a fact that it was at that time and in that meeting in which you had the conversation with Mr. McKenna that they made a mistake in not charging $1 admission when they opened the Ritz Theater instead of 75 cents that they had charged?

A. I did then, that is when it first came up, and we mentioned it at the other meeting at the Aldridge Hotel.

Q. You did discuss it at the first meeting?

A. Yes, sir.

Q. And three years later you again brought the matter up?

A. Yes, sir; I was trying to find out why.

Mr. KALLIS. As I recall the testimony, it wasn't three years later; it was two years later.

3767 Mr. COCHRAN. This was in '29, and this conference in the Aldridge Hotel was in '33.

Mr. KALLIS. That's right; pardon me; you are right. I thought you said 1930.

Q. Do you know Adam Hornbeck of Shawnee?

A. I do.

Q. Do you remember the occasion when Jake Jones came over here and testified in this case?

A. I saw it by the newspapers that he came over here.

Q. After Mr. Jones had taken the stand in this case, did you have a conversation with Mr. Adam Hornbeck?

A. Mr. Adam Hornbeck called me up over the telephone.

Q. Didn't you tell him at that time that the conference in the Aldridge Hotel was had, that you didn't remember the date, but it was when the expiration of the extension on the—on the reduction, on the modification of the lease con-

tract, that you didn't remember enough to testify to the conversation; didn't you have that conversation?

A. I had a conversation——

Q. (Interrupting.) No, just answer that "Yes" or "No".

A. Repeat the question.

Mr. COCHRAN. Read the question.

(Question read by the reporter.)

A. No, sir.

3768 Q. Didn't you further tell him that Jake Jones had got up and left the conference?

A. Yes, sir.

Q. Didn't you further tell him that R. E. Griffith wasn't there at that conference?

A. No, sir.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KIMZ:

Q. At the time this Criterion lease was made, you were a cashier of a bank in Seminole, Oklahoma, Mr. Boucher, were you not?

A. In Shawnee.

Q. In Shawnee?

A. Yes, sir.

Mr. KIMZ: That's all.

Re-cross-examination by Mr. COCHRAN:

Q. Did R. E. Griffith wear glasses on this occasion?

A. Well, let's see; as well as I remember, I don't believe that, I don't remember that he had glasses on, as well as I remember.

Q. In that conversation with Mr. Hornbeck, did you tell him that you didn't know whether R. E. Griffith was present or not?

3769 A. No, sir; I didn't tell him that.

Mr. COCHRAN. That's all.

Re-direct examination by Mr. KIMZ:

Q. Did Mr. Griffith have a coat on?

A. Yes, sir.

Q. Did he have a tie on?

A. Yes, sir.

Q. Did he have a shirt on?

A. Yes, sir.

Mr. KIMZ. That's all.

The COURT. Did he have shoes on? Stand aside. We are putting so many details into this case, gentlemen, that have nothing to do with it. Call your next witness.

(Witness excused.)

MRS. JUANITA BERRY, recalled as a witness on behalf of plaintiff in rebuttal, and being duly sworn, was examined and testified as follows:

Direct examination by Mr. KALLIS:

Q. Your name is Juanita Berry?

A. Yes, sir.

Q. Talk a little louder.

A. Yes, sir.

Q. You are the same Juanita Berry who testified
3770 in this case before, are you?

A. Yes, sir.

Q. Are you personally acquainted with S. G. Ambrister of Norman, Oklahoma?

A. Yes, sir.

Q. Now, Mrs. Berry, calling your attention to the period during which Raymond Berry operated the Campus Theater in Norman, Oklahoma until he died, did you have any financial interest in that theater?

A. No, sir.

Q. After Mr. Berry died, and when was that?

A. April 8th, 1932.

Q. Did you form a partnership with your mother, Mrs. Vinnie Boldman and your brother, Millard Boldman in the Campus Theater?

A. Yes, sir?

Q. What was your interest in the Campus Theater, in terms of the amount of ownership you had?

A. A half interest.

Q. How much did Mrs. Boldman, your mother, have?

A. A one-fourth interest.

Q. And your brother had a one-fourth interest, is that right?

A. Yes, sir.

Q. Are you still operating the Campus Theater now?

3771 A. No, sir.

Q. You did until sometime in 1938, did you?

A. Yes, sir.

Q. And at the time you vacated the Campus Theater, was your mother and was your brother interested in the operation of the theater?

A. No, sir.

3772 Q. And when did they terminate their interest in the Campus Theater?

A. In December, 1936.

Q. Do you know whether the rent had been paid in full during the time, beginning with the death of Raymond

Berry until you became sole owner in 1936 of the Campus Theater?

A. Yes, sir.

Q. Then you began operating the Campus Theater, you say, in 1936?

A. Yes, sir.

Q. And operated it until sometime in 1938. Is that right?

A. Until May, 1938.

Q. Can you tell the Court whether the rent on the Campus Theater was paid in full for the period in which you occupied the theater alone as a sole operator?

A. Yes, sir.

Mr. COCHRAN. Objected to as not proper rebuttal testimony. It was covered in the direct examination.

The COURT. Overruled. It is in response to Mr. Ambrister's testimony, I think.

By Mr. KALLIS:

Q. I show you Plaintiff's Exhibit 400 for identification. Will you please examine that, Mrs. Berry. Now, did you give this check which has been marked as Plaintiff's
3773 Exhibit 400 to Mr. Ambrister on September 9, 1938?

A. Yes, sir.

Q. And that was in Mr. John Lutteral's office?

A. Yes, sir.

Q. Who was he in 1938?

A. An attorney, an attorney for Mr. Ambrister.

Q. Practicing where?

A. In Norman.

Q. At the same time you gave that check, did you give Mr. Ambrister a note?

A. A note.

Q. How much was the note?

A. $290, I believe it was.

Q. Has that note been paid?

A. That note has been paid.

Mr. KALLIS. We offer Plaintiff's Exhibit 400 in evidence.

By Mr. KALLIS:

Q. Calling your attention to the early part of 1938, Mrs. Berry, did you have a leak in the roof of the Campus Theater?

A. Yes, sir.

Q. Did you have a discussion with Mr. Ambrister in which you requested him to repair the leak?

A. Yes, sir.

Q. Did he repair the leak?

3774 A. No.

Q. Did that leak have anything to do or any connection with the ventilating fan in the roof?

A. No, with our rugs and the show in general.

Q. Was the leak located in the roof at the same place where the ventilating fan was?

A. No, it was up in the auditorium.

Q. Can you tell us what damage was done?

A. It ruined the rugs around the wall, the walls were wet and the wiring and such as that.

Q. Now calling your attention to the period from December, 1936, until the time you vacated the Campus Theater in 1938, were you away from Norman, Oklahoma, at all?

A. No, sir.

Q. Where did you spend your time?

A. Right there around the show.

Q. Was the Campus Theater being operated in the summer of 1936, '37 and '38?

A. No, never in the summertime.

Q. Was the Oklahoma Theater being operated during the summer months?

A. Yes.

Q. And is that where you were working?

A. Yes, sir.

3775 Q. And you resided in the theater building, didn't you?

A. Yes, we have an apartment over the theater.

The COURT. In which theater did you reside?

A. The Oklahoma Theater, we have an apartment upstairs.

Q. That is downtown?

A. That is downtown.

By Mr. KALLIS:

Q. Did you ever make an appointment with Mr. Ambrister and then fail to keep it?

A. No, sir.

Q. Mrs. Berry, I show you what has been marked as Plaintiff's Exhibits No. 401 and 402 for identification. Do you recognize those checks?

A. Yes, I do.

Q. Do you recognize the signatures on there as your mother's, Mrs. Vinnie Boldman's signatures?

A. Yes, I do.

Q. Do you know where the $660 represented by these checks came from, the source of income?

A. From the Campus Theater.

Q. You mean from the operation of the Campus?

A. Operation of the Campus Theater.

Q. And when, just prior to the time time these checks—

A. Prior to the time they were written.

Mr. Cochran. May we have the date?

3776 A. January, 1933.

The Court. What is the date?

Mr. Kallis. January 14, 1933.

3777 Q. How many restrooms were there at the Campus Theater at the time you vacated?

A. One.

Q. Did you tear out any fixtures out of the restroom of the Campus Theater at that time?

A. No, sir.

Q. Do you know whether these checks represented by Exhibits 401 and 402 were to apply on any monies that Raymond Berry owed Mr. Ambrister at the time of his death?

A. Yes, sir, I think they were for back rent at the time of Mr. Berry's death.

Q. In January of 1933 did you owe Mr. Ambrister any $1,200, you personally?

A. No, sir.

Q. Did you owe Mr. Ambrister anything?

A. No, sir.

Q. Where did Mr. Millard Boldman live during the time he was a fourth owner in the Campus Theater?

A. In Oklahoma City.

Q. And what was his business at that time?

A. The Sooner State Oil Company.

Q. Was he devoting his full time to that business?

A. Well, yes.

Q. How often did he come down to Norman?

A. He usually came down about once a week.

3778 Q. During the period that he and his mother had a quarter interest each in the Campus Theater, were you the manager?

A. With Mr. Crawford, Roy Crawford was our manager.

Q. Was he subject to your orders?

A. Yes, sir.

Q. And did you help him with the buying and booking?

A. Yes, sir.

Q. What did your mother do?

A. She kept the books and signed the checks.

Q. During that period?

A. And sat at the box office.

Q. Mrs. Berry, during the time that you operated as the sole owner of the Campus Theater, did you make any repairs and improvements in the Campus?

A. Yes, sir, the Christmas before our lease, I mean before we moved out, we painted the inside and the outside and the screens.

Mr. COCHRAN. We object to that as repetition. She has covered that in the direct testimony.

The COURT. I think that was covered in the direct examination.

Mr. KALLIS. I am not sure, Judge.

The COURT. Very well; she has answered it.

A. We spent about $2,000 remodeling. We done everything we could think of to do.

3779 Mr. KALLIS. I think that's all.

Cross-examination by Mr. COCHRAN:

Q. In the early part of 1938 you say that the roof of the Campus Theater leaked, causing damage to certain of your property in the Campus Theater, is that correct?

A. Yes, sir.

Q. Did you make some calculation or estimate as to the probable damage that had been occasioned by that leakage?

A. I, I don't know that I did that; I did ask Mr. Ambrister to fix the roof.

Q. Did you make any claim on him for the damage that had been occasioned to your property in that theater?

A. Not as far as money was concerned, no; I told him what had been damaged.

Q. And he reminded you of the fact that the leak was on account of the former removal of the penthouse that was on that theater, didn't he?

A. No. There was a penthouse up there at that time; we had replaced it.

Q. Your husband had removed the original penthouse and taken it down to the Oklahoma Theater, had he not?

A. When he was living, yes, sir.

Q. Then you had replaced it?

3780 A. Yes, sir.

Q. The penthouse?

A. Yes.

Q. Did Mr. Ambrister tell you that the——

A. (Interrupting.) Our lease——

Q. (Interrupting.) That the leak was occasioned by reason of the fact that that penthouse had been taken off, and had not been repaired?

A. No, sir; that wasn't where the building leaked.

Q. I asked you if Mr. Ambrister made that claim?

A. No.

Q. Your relationships with Mr. Ambrister were very good during the early part of 1938, weren't they?

A. I think so; yes.

Q. You had no differences with him whatsoever?

A. None that I know of.

Q. Was there an apartment in the Campus Theater in 1938?
A. An apartment, no.
Q. Or rooms, living rooms?
A. No, sir.
Q. In the Campus Theater?
A. No, sir.
Q. Was there an office there?
A. In '38, yes, there was an office there.
Q. And you state that during that time time it is
3781 not a fact that you had an office—there was no living quarters in the Campus Theater?
A. No, sir.
Q. But your living quarters were in the Oklahoma Theater?
A. Yes, sir.
Q. And the office which you maintained was in your apartment in the Oklahoma Theater?
A. Well, our office isn't in the apartment. The office is between the show and the apartment, it is over the booth part.
Q. Well, is it connected with the apartment?
A. No, it is not connected; it is halfway up the stairway, just off the booth, my office is there.
3782 Q. Regardless of which theater your quarters might have been in, you did not maintain your office in your apartment?
A. No, sir.
Q. During the year 1938?
A. No, sir.
Q. That is all.

Re-direct examination by Mr. KALLIS:

Q. Mrs. Berry, the Oklahoma Theater is on the first floor, isn't it?
A. Yes.
Q. And your living quarters are on the second floor?
A. On the second floor.
Q. Where is your projection booth?
A. Half way up the stairway.
Q. Between the first floor and second floor?
A. Yes, sir.
Q. With respect to the projection booth, where is your office at the Oklahoma Theater?
A. Just off the entrance to the booth.
Q. It is right in front of the projection booth?
A. Yes, right in front of the booth.
Q. In order to get to the apartment from the street you have to pass the office?

3783 A. You have to pass the office.

Q. And use the same stairway to get to the apartment as you do to get to the projection booth and your office?

A. Yes.

Q. That is all.

(Witness excused.)

The COURT. Were those checks introduced in evidence?

Mr. KALLIS. Yes.

Mr. KIME. We have here the release schedules of Fox and Loew's, or Metro-Goldwyn-Mayer——

Mr. COCHRAN. Are you identifying them as exhibits? Let's identify each one as an exhibit.

Mr. KIME. I think I will identify those from each company as a separate exhibit. Here are the releases of the Fox Film Corporation and the successor, Twentieth Century Fox for 1933–34; '34–35; '35–36; '36–37; '37–38; '38–39; '39–40; '40–41; '41–42; '42–43; and '43–44.

The COURT. What is the date of your first release?

Mr. KIME. 1933–34.

The COURT. They are from 1933 to 1944 inclusive?

Mr. KIME. That is right, your Honor.

Mr. COCHRAN. We object to the period after the season of 1938–39.

3784 Mr. KIME. We do not insist that they go in but there has been some testimony about pictures after those years and it might assist you in some manner, but if Judge Cochran objects strenuously I will not offer them.

The COURT. Then you want to offer 1933 to 1939 inclusive?

Mr. KIME. '39. I am informed this has heretofore been identified but has not been admitted.

The COURT. Let them be admitted.

Mr. COCHRAN. 338 is the number they have previously given to Fox.

Mr. NICKERSON. Suppose we give them this number and if the numbers are duplicated they can be corrected.

The COURT. Let them have the present number and in the event the reporter finds they are duplicated they need not be recopied in the record.

Mr. KALLIS. According to my list of exhibits they were identified with Fox No. 338, identified on page 1340 of the record but apparently never offered.

Mr. COCHRAN. Suppose we change this present number then to 338.

Mr. KIME. Here is Loew's, Metro-Goldwyn-Mayer, which has been identified as Plaintiff's Exhibit 336 for the

1933–34; '34–35; '35–36; '36–37; '37–38; '38–39. Exhibit No. 337 is RKO for the season of 1933–34 to and including 1938–39. Warner's has been given exhibit number
3785 340. This includes some twenty-nines and some after the 1938–39 season. Exhibit No. 339 is Paramount for the 1933–34 season to the 1938–39 season inclusive.

3786 Mr. KALLIS. If the Court please, there has been some discussion or testimony dealing with the question as to whether or not Phillips, Texas is or is not a separate community, distinct from Borger, Texas, and I would like at this time to read into the record from the United States Official Postal Guide as of July, 1939 the statement that Phillips, Texas, had a separate Post Office, and the same thing with reference to the situation as of July, 1941, as shown by the United States Official Postal Guide, published by the United States Post Office Department as of July, 1941.

The COURT. Merely to the effect that there was a separate Post Office?

Mr. KALLIS. Yes, sir, during those two years. Would Your Honor want to see that?

The COURT. No, it isn't necessary.

Mr. KALLIS. Now at this time I would like to read from the findings of fact and conclusions of law entered in this Court by Bower Broaddus, United States District Judge, on July 31st, 1944, in the case of A. B. Momand versus Twentieth Century Fox Film Corporation, et al., No. 6516, in the District Court for the Western District of Oklahoma, and the case of A. B. Momand versus Griffith Amusement Company, a corporation, Consolidated Amusement Company, a corporation, Consolidated Theaters, Inc., a corporation, et al., Case No. 6517, in the District Court
3787 for the Western District of Oklahoma. Findings of fact made by Judge Broaddus, No. 55–A.

Mr. COCHRAN. Wait just a minute. We object to the admission of the findings of fact and conclusions of law in that case. It involves a period entirely distinct from the period involved here in the first place; in the second place, the findings in that case are not at all evidence in the case brought by a different party; in the third place, the finding which he refers to relates only to a question of the number of pictures licensed during particular seasons, and it would be necessary for us, if that went into evidence, to go back and rehash the Momand Case here. The Government hasn't seen fit to bring anything in about the Momand Case here, and we accordingly haven't attempted to meet that issue.

Mr. RICE. Let me add to that objection. Do you claim, Mr. Kallis, that R. E. Griffith Theaters, Inc., and Westex Theaters, Inc. were parties to that suit?

Mr. KALLIS. I understand those two corporations were not parties to this suit.

Mr. RICE. I object as to them. It couldn't be received in evidence, your Honor, under any theory.

The COURT. On what theory do you contend this is competent?

Mr. KALLIS. That the issue or issues in the two
3788 Momand Cases were identical—strike that—that they were substantially the same, at least for a portion of the period as those that are involved in this case. I understand that the charge of monopolization of major product in the Momand Cases goes through 1935 or '36 or '37, I am not just right sure.

Mr. COCHRAN. That is not true.

Mr. KALLIS. In the second Momand Case it isn't true?

Mr. COCHRAN. Griffith Amusement Company wasn't a party to but one case, and it didn't involve any such period in that case.

The COURT. The objection will be sustained. That is a finding of a Court, and I know of no rule of law which would make a finding of a Court with similar jurisdiction binding on other Courts. The parties are different.

Mr. KALLIS. Two of the parties are the same, your Honor, and what I had in mind was with reference to—

The COURT (interrupting.) The objection will be sustained, and an exception allowed. I don't think it is competent.

Mr. KALLIS. I want to show by this offer, if your Honor please, that Universal Chain Theatrical Enterprises was connected with Universal Pictures Corporation, and the other Universal Corporations.

3789 The COURT. We will have to try this case on the evidence that is introduced in this case. You cannot ask this Court to reach a conclusion of fact without the introduction of evidence to support that fact. There is no evidence introduced here so far that would connect the film company.

Mr. KALLIS. I will call Mr. L. C. Griffith.

L. C. GRIFFITH, one of the defendants, called as a witness by and on behalf of the plaintiff in rebuttal, and being previously duly sworn, was examined and testified as follows:

Direct examination by Mr. KALLIS:

Q. Mr. Griffith, you are the same L. C. Griffith who has testified before?

A. Yes.

The COURT. I recall his testimony on that point very clearly, but you may recall him.

By Mr. KALLIS:

Q. You are a defendant in this case?

A. Very much so.

Q. Do you remember testifying when you went to New York with Mr. D. I. Johnston you saw a Mr. Fair there?

A. Yes, sir.

Q. And a Mr. Willard McKay?

A. Yes, sir.

3790 Q. You were acquainted with Mr. McKay at that time, were you not?

A. I met him at that time.

Q. What was your understanding from your introduction to him as to what his connection or his business was?

A. I understood he was attorney for Universal Chain Theatrical Enterprises.

3791 Q. Did you have any understanding at all as to whether he was an attorney for the Universal Pictures Corporation?

A. No, I had no understanding about Universal Pictures Corporation; had no occasion to discuss Universal Pictures Corporation at all.

Q. Was anything said about his being attorney for Universal Pictures Corporation?

A. Not that I remember.

Q. I suppose you followed the Momand proceedings quite closely?

A. Yes, I was there.

Q. Did you attend court all of the time during all of the sessions?

A. No, I don't believe I did all the time. Most of the time, though, I was there.

Q. I suppose your attorneys advised as to the substance of all the testimony that was offered in behalf of the plaintiff and defendants?

A. No.

Q. They did not?

A. No, I don't recall that they did. I read most of the testimony; that that I didn't hear. I kept pretty well up with it.

Q. Did you ever discuss this matter with D. I. Johnston?

A. What matter is that?

3792 Q. The Momand case.

A. The Momand case was discussed with all the attorneys.

Q. Did Mr. Momand, to your knowledge, file any papers and pleadings of any kind in the Momand case in behalf of Universal Pictures Corporation?

A. Mr. Momand filed papers, I think, against everybody; all companies.

Q. Well, I show you a special appearance of the Universal Pictures Corporation, a motion to set aside pretended service of summons filed May 18, 1931 in this court, and ask you if you recognize that as Mr. Johnston's writing.

A. No, I don't know that I know Mr. Johnston's writing.

Q. You don't recognize it at all?

A. No.

Q. Does it look like his writing?

A. I don't know whether it does or doesn't. I don't know whether I know his writing or not.

Q. You have seen his writing on many occasions, haven't you?

A. I might have.

Q. He was your attorney for many years, wasn't he?

A. His firm was.

Q. Who in the firm represented the Griffith corporations?

A. Mr. Johnston and Mr. Henry Griffing.

3793 Q. Mr. Griffing did considerable amount of work for the Griffith corporations while he was connected with Keaton, Wells, Johnston & Barnes?

A. Yes, he did.

Mr. KALLIS. If your Honor pleases, I don't think I was permitted to make the kind of offer I think should be made.

The COURT. You are just offering the findings of fact in that case. The Court holds that as not competent evidence in this case, regardless of what the findings were.

Mr. KALLIS. I had the understanding—I don't know whether it covers the entire period but I think it covers sufficient of the pereiod with reference to two of these corporate defendants—that there was a sufficient similarity between these issues——

The COURT. Giving the benefit of the doubt and assuming there was, suppose it covered the same period—

Mr. KALLIS. Then, I think it would be res judicata with regard to that particular matter as far as the two corporate defendants are concerned.

The COURT. If it were between the two litigants. Here you have now the government a party to this suit. You have a different plaintiff and different defendants. No, that will be carrying it too far.

Mr. KALLIS. I was assuming, of course, your
3794 Honor would take judicial notice of all the findings of fact and orders entered in this court and I just wanted to call them to your Honor's attention.

The COURT. Perhaps the Court will review those findings, but he will do it like would any other decision of the court. That is a decision of a court. It would be the same as introducing a decision of the Supreme Court in this case; something that would be binding, but it is not proper evidence.

Mr. KALLIS. I wonder if we can have Mr. Johnston here?

The COURT. I don't care what the evidence was in that case. This witness has testified, as I recall, when this question was being investigated and he was asked the question, if he knew of any interest Universal Film Corporation, that picture company or producer had in this corporation, the Dallas corporation, which later sold out its interest to Griffith. This witness says he didn't, never heard they had any interest in it.

Mr. COCHRAN. And also when asked about the Universal Chain Theatrical Enterprises and the interest, as to his knowledge of any interest Universal Picture Company had in that corporation, he said at the time the deal was made with Universal Chain Theatrical Enterprises and during the time of the continuance of that relationship,
3795 he had no knowledge of any connection. I submit if he has any records from the Momand case where this witness testified anything to the contrary, that would be admissible on the question of impeachment.

The COURT. But the fact some attorney represented this film company and producer in that case, and represented the defendant in that case, that would not be competent evidence. An attorney might represent a number of defendants.

Mr. COCHRAN. Also in that case, as I recall it, Universal Chain Theatrical Enterprises was not a party to that lawsuit. I may be mistaken about that. Do you have a pleading signed by Universal Chain Theatrical Enterprises Corporation?

Mr. KALLIS. No, but Universal Pictures Corporation was and there was extensive testimony taken on that very issue, which was the basis of the specific findings which I wanted to read your Honor, and with which Judge Cochran is thoroughly familiar.

Mr. COCHRAN. I am, but I can say this witness testified in that case as he has here on this occasion, in perfect harmony with his testimony here, and the fact that Mr. McKay, an attorney, or somebody else may have testified to any direct connection which Universal Pictures had is not admissible. If you want to go into that bring in your proof.

3796 The COURT. The Court has ruled on it. Let's go to something else. I think it is fundamental.

Mr. KIME. I think, your Honor, that brings it down to one question on admissibility. It is also bound up with the proposed offer. That is the Plaintiff's Exhibits for Identification, Nos. 351 and 352, which you may recall by glancing at those huge volumes over there, are film rentals and the releases of Universal which incidentally are the only releases we have from Universal.

3797 The COURT. That is Universal Producing Company, or Universal Pictures Company?

Mr. KIME. Universal Pictures Corporation, one of the distributors, and one of the original defendants here.

Mr. COCHRAN. I can furnish the gentlemen with releases of Universal Pictures for the period involved, and will be glad to do so.

The COURT. Exhibits 351 and 352 were identified.

Mr. KIME. That's right, your Honor.

The COURT. That was all. Now they refer to what, represent what, did you say?

Mr. KIME. That represents the production of Universal for this period involved; it also shows when they were played, where they were played, and how much money was paid for the film rental by either the defendants or any independents that ran those pictures, either first or second run, the complete tabulation of what those pictures did from the time they were produced, insofar as this locality is concerned.

Mr. COCHRAN. If the Court please, this is the third time that we have had this matter up. These are the books which this man Murray, who came down from New York, talked about, having been prepared by somebody. The records were not brought into Court. We stated at that time —and they are answers which were prepared by

3798 Universal to interrogatories propounded to Univer-

sal when it was a party to this lawsuit. Since Universal is out, they are not admissible by reason of being answers to interrogatories, or admissions, by a party not a party to the lawsuit. There is no rule of evidence whereby these tabulations, without having the original documents from which they were made, can be used in evidence.

The Court suggested when we adjourned after the first hearing that if the attorneys for the Government desired to have certain matters in these documents in evidence, that they could get the records and then have us examine those records and check the particular thing they wanted to introduce, check those with it, in order that we might be prepared to stipulate, if possible. That was the Court's suggestion. We have gone all the way up to this time and there has been no attempt made to do anything except to try to again introduce these tabulations. We say they are not admissible.

Counsel referred to the fact that he wants to show the releases, and he doesn't have the releases from Universal. I have stated that we have the releases and he doubtless has the published releases, counsel can have them, and I am prepared now to check the releases and to agree on the releases with Universal. I can furnish the list, and I am sure he has it in his file, a listing of the Universal releases,
3799 because I was advised by counsel for Universal when I obtained them that the Government had obtained a copy of their releases. But so far as these tabulations are concerned, they are not admissible in any shape, form, or fashion, because it contains a bunch of statements which are not supported by any documentary evidence, and we have no opportunity whatever to cross examine the witness in regard to these matters, which are very vital in regard to some things in this case.

Mr. KIME. A portion of that statement is all right, and a portion of it is incorrect, as I understand the situation. As I recall, this witness testified that these were prepared under his supervision and direction, were prepared from the records of the company, and they are just as competent as any such exhibit prepared under the direction and supervision of for instance an expert witness, who prepares a list of charts, and so forth. Furthermore, Mr. McKenzie, if I recall the record right, and I am attempting to find where he made the offer—it is in the first part of the volume, you don't need to look in the back,—came into Court one morning and said, "Here are all of the records behind this exhibit; all of the records that the Government has ever subpoenaed are here for whatever use any of the parties may desire to make of them. Those records are

here in Oklahoma City, I am informed, up in a
3800 room over in the corner, lying there; most of them have never been opened, I am informed, and so believe.

Now, subsequent to that time, we extracted from Universal, from Exhibits 351 and 352 and had photostated and furnished to defense counsel two copies, one to Judge Cochran and one to Mr. Rice, of certain specified pages, that in the event your Honor's ruling should be adverse to us on the admission of Exhibits 351 and 352, that they could then specifically check these; and there was also some from United Artists to the same point, which shows comparison of the film rentals made and paid by the defendants, and by certain independents, which it seems would be very necessary to have in determining some of the issues that are here presented.

Now, Judge Cochran says this matter has been up three times. It was continued at the time they were first offered, and when we started in this time it was continued again when we offered these portions which we extracted from 351 and 352, and from the answers to interrogatories of United Artists.

The COURT. What are these that you have extracted?

Mr. KIME. Well, they are the sheets from Universal relating to Norman for the '34–'35 and '35–'36 seasons, and Hominy for '34–'35 to and including 1938–'39; Enid for '36–'37, and '37–'38 seasons; Elk City for '36–'37,
3801 '37–'38, and '38–'39; Drumright for '35–'36, and '36–'37 seasons; Clinton for the '35–'36, '36–'37, and '37–'38 seasons; Chickasha for the '35–'36, and '36–'37 seasons; Clarksville for the '34–'35 to and including the 1938–'39 season; Hobbs for the '34–'35 and '36–'37 seasons; Roswell for the '37–'38 season, from Exhibits 351 and 352, and from the answers to interrogatories of United Artists, as to Mangum for the '34–'35 and '35–'36—well, Mangum from '34–'35 to and including '37–'38; Enid '37 and '38 season; Maude, '36–'37 and '37–'38. Now, just a recital of those towns and recalling the evidence that has been introduced, I believe will cause your Honor to believe that these would be very necessary in reaching some of the findings and conclusions that you may want to reach.

I have this statement of Mr. McKenzie's here, and it appears on page 1145 of the record. Let me see if I can extract what he says about those without reading the whole thing.

The COURT. Who asked for these records?

Mr. KIME. We did, your Honor. We had served on them a subpoena duces tecum for the production of certain records.

The COURT. That was while they were a party to the suit?

Mr. KIME. No, that was after they were dismissed
3802 out, your Honor.

Mr. COCHRAN. What is the page number?

Mr. KIME. 1145 and 1146. "In that connection, the subpoena also calls for the first three items having to do with the matter of film rentals covering the series of towns under Item 1, and the film rental paid by what is designated as the 'Griffith Circuit,' and also the title and national release dates of the feature pictures of the '34–'35 through '39–'40 seasons. Those three items of the duces tecum subpoena I do not have. I have discussed the matter with Mr. Wright, and as I understand from him, that phase of the subpoena duces tecum is dormant right now, because, as he explained to me, that probably would be worked out during the interim recess. However, I called his attention to the fact, and also mentioned it to Mr. Griffing, representing some of the defendants, that in the answer to interrogatories filed in this case, as I understand it, the information requested is covered by those answers. I do not know whether the interrogatories have been made available or will be made available in this case."

That indicates that this particular matter was not——

Mr. COCHRAN (interrupting.) He said he didn't have the information.

Mr. KIME. But he says it is in the interrogatories.
3803 He says, "I represented United Artists Corporation, Columbia Pictures Corporation, and Universal Film Exchange until the suit was dismissed as to them. They later shipped to me their records, except Universal. Universal sent their records to the exchange here. I think on the 15th it was, of this month, I got copies of the supoenaes duces tecum in this case on all three of the people that I represent. I have the records of United Artists and Columbia, and in response to the last subpoena duces tecum I have gone through and delivered to Mr. Wright for the Government all of the contracts called for on these two subpoenaes as to Columbia and United Artists, and I communicated with Mr. Gibbs and Mr. Holstein of Universal, and I understand those contracts will be delivered to the Government this morning from the exchange here."

So, conceding these were not here at the moment, they were here after these three parties were dismissed, and available for any inspection that might be desired to be made.

Mr. DUDLEY. If the Court please, let's read all of Mr. McKenzie's statement.

Mr. KIME. I had no intention of leaving any of it out.

Mr. DUDLEY. I know you didn't, but I want to get it all before the Court.

3804 Mr. KIME. I think the only thing I left out was "May I make a statement in this suit?"

Mr. DUDLEY. Down there he says, "In that connection, the subpoena also calls for the first three items,"——

Mr. KIME (interrupting.) That's where I started.

Mr. DUDLEY. —"having to do with the matter of film rentals covering a series of towns under Item 1, and the film rental paid by what is designated as the 'Griffith Circuit' and also the title and national release dates of the feature pictures of the '34–'35 through '39–'40 seasons, Those three items of the duces tecum subpoena I do not have. I have discussed the matter with Mr. Wright, and as I understand from him, that phase of the subpoena duces tecum is dormant right now, because, as he explained to me, that probably would be worked out during the interim recess. However, I called his attention to the fact and also mentioned it to Mr. Griffing, representing some of the defendants, that in the answer to interrogatories filed in this case, as I understand it, the information requested is covered by those answers. I do not know whether the interrogatories have been made available or will be made available in this case. They may not, but I want to say to the Court that is all the information that I have been able to furnish since the subpoenaes were issued, and they were returnable this morning, and I wanted to make that statement to your Honor."

3805 Mr. DUDLEY. I want to be heard on an objection which has been made here to the introduction of this compilation. In the cross examination of this witness from New York the following appears:

By Mr. COCHRAN:

"Q. Those are merely tabulations taken from the original records of the company, are they not?

"A. Yes, sir.

"Q. Then why do you say they are the most accurate records that the company has?

"A. That is what the company possesses and that is all.

"Q. Doesn't the company possess the original records?

"A. They do possess the original records and these are taken from them.

"Q. I am asking you why you say that these are the most accurate records, more accurate than the original records?

"A. I didn't make such a statement; if I did, I want to correct it.

"Q. You said they are the most accurate records they had, didn't you?

"A. I said they are a transcript of the most accurate records they have.

"Q. If that is your statement, we will accept that. You don't have the original records from which these purport to have been made, do you?

"A. No, sir, not here.

3806 "Q. But those records are in the possession of the company?

"A. Yes, sir."

Following that this objection was made back there in May and we are renewing it here. So we have a simple proposition whether this witness from New York could go over there and make a record from this company and put it in the form of an interrogatory and bring it down here and introduce it in evidence against the defendants in this case without having the original records here for our examination. I think to receive that in evidence would be fundamental error. I don't know of any authority anywhere that provides you may have one man go out and make an examination of a whole bunch of books and records and say they are made under his supervision and are correct and then bring that witness here in the absence of the books and introduce that record. I say it is unheard of.

Mr. KIME. The compilation was made and after it was made the record from which it was made was here in Oklahoma City. That is all I care to say on that particular subject.

The COURT. Objection sustained and exception allowed.

I recall very much of Mr. Murray's testimony. He

3807 said that he didn't do any of this work himself; that it was merely done there in the offices of the company and he could not testify that it was correct.

Mr. KIME. I have here the answers and interrogatories as given by United Artists. It contains the only record I have of the releases of United Artists during this period, and also contains the same data as did Exhibit 351 and 352. I offer that in evidence.

Mr. COCHRAN. We object to the introduction of the answers to the interrogatories filed by United Artists for the reason that United Artists is not a party to this suit, and answers and interrogatories filed by it in this case are not admissible against the defendants.

The COURT. Was that given a number?

Mr. KIME. That is No. 403, your Honor, and I have a similar one, Exhibit 404, of Columbia Pictures Corporation. It is the same form of material as 351 and 352.

Mr. COCHRAN. Same objection.

The COURT. Objection sustained and exception allowed.

Mr. KIME. As to Exhibit No. 352, there was certain material extracted and presented to counsel for the defendants, relative to Enid for 1937—38, which shows the films that were sold to Griffith, the films that Griffith
3808 played; the amount they paid for them and the films that were shown by other exhibitors in Enid for the 1937—38 season.

Mr. COCHRAN. Is that United Artists?

Mr. KIME. That is United Artists.

Mr. COCHRAN. I don't know whether any identification has been given to your exhibits or not. You had better identify them so we can tell just what we are talking about.

Mr. KIME. That is the only identification I can give these.

Mr. COCHRAN. You had some photostats made.

Mr. KIME. I don't have any copies of the photostats. If you will loan me back the photostats I gave you I will have them re-photostated and submit those.

Mr. COCHRAN. It just so happens I didn't think about this being offered in rebuttal. I can bring them up in the morning if you would rather have it in that shape. Why not identify the pages by some exhibit number so the Court can tell what you are offering.

Mr. KIME. Number this page 405.

(The page is so numbered by the reporter.)

Mr. COCHRAN. As I understand, this Exhibit No. 405, Plaintiff's Exhibit No. 405 for identification, is a sheet appearing in the answers to the questionnaires by the
3809 United Artists Corporation, and counsel states that at some time he delivered to C. B. Cochran, attorney for some of the defendants, a photostatic copy of this sheet with notice that the plaintiff would expect to offer it in evidence. We are objecting to the introduction of Exhibit No. 405 for the reasons which have been stated in connection with the other answers to interrogatories filed by United Artists and in connection with the statement made by Judge Kime as to serving a photostatic copy. The facts are these: That after the first hearing in this case, after the recess at the end of the three weeks hearing, and after there had been a tender of these answers to interrogatories —I mean by that all of the answers filed by United Artists—depositions were taken in New York City during the summer, and prior to and up to the conclusion of those depositions, this sheet, which is identified as Defendants' Exhibit 405, had not been served. I then went on my vacation and returned to my office about December 1, and

I believe on the day I returned or the day after, I received a photostatic copy of some part of the answers filed by United Artists with the request I admit the correctness of the same. At that time I had no opportunity of comparing them and was not presented with any of the records of United Artists from which these purport to be taken. I do not know whether those records are in Oklahoma
3810 City or not, and my understanding is that they were in the New York office, and there was no way at that time, and prior to the commencement of this hearing by which I could compare the same with the records from which they purport to be taken. Therefore, I was not in a position to admit the correctness of them, and the objection which we have made to the other answers to interrogatories is now made to the introduction of this sheet from these interrogatories.

The COURT. Objection will be sustained, that would be good as against United Artists certainly, and that is the purpose of interrogatories, is to secure answers that are admissions but United Artists is not in this case now.

Mr. KIME. They are charged with being co-conspirators in this case and entering into this combination which had been carried on here all of these years as alleged by the Government.

The COURT. I realize that but there are certain limits beyond which you cannot go in admitting the evidence of a co-conspirator who is not a party to the action. Once the conspiracy is established then these would be entirely competent as an act of a conspirator.

Mr. KIME. If the conspiracy has not been proven by this afternoon I don't think we will prove it before we
3811 rest. I am going on the assumption it has been proven.

Mr. COCHRAN. Even though a conspiracy had been established the rule is that a statement must have been made in the course of and pursuant to the conspiracy, and certainly answers made in court to interrogatories propounded to a party, even though a co-conspirator, is not a statement being made pursuant to an alleged conspiracy.

The COURT. No, if that is the only evidence you had, you didn't know a conspiracy existed.

Mr. KIME. If that is the only evidence in here I would say we had failed to make a case and I submit that in this voluminous material a conspiracy may be found.

Now we offer Plaintiff's Exhibit 406, which is the data relative to Mangum for the season of 1935—36, and Plaintiff's Exhibit No. 407, which is the data relative to Man-

gum for 1936—37. There is other data on those two pages, but all we are offering is that confined to those two seasons.

Mr. DUDLEY. We make the same objection to that offer.

The COURT. Objection sustained. Exception allowed.

Mr. COCHRAN. I think I should state into the record, in regard to these exhibits of Mr. Mahone, our stipulation, as the Government did not want to bring him back.

3812 As to Plaintiff's Exhibit No. 393, which purports to be a carbon copy of a letter dated August 5, 1929, without any signature, addressed to Griffith Brothers Amusement Company, Oklahoma City, attention L. C. Griffith, we agree that if Charlie Mahone were present he would testify that this exhibit is a carbon copy of a letter which he wrote and addressed to Griffith Brothers Amusement Company, Oklahoma City, Oklahoma, about the date which it bears, and that the same was deposited by him in the United States mail.

As to Plaintiff's Exhibit No. 394, which purports to be a carbon copy of a letter dated June 23, 1929, with the typewritten signature of Charles H. Mahone, addressed to Griffith Amusement Company, Oklahoma City, Oklahoma, we stipulate if Charles H. Mahone were present he would testify that this exhibit is a carbon copy of a letter which he wrote and addressed to the Griffith Amusement Company, Oklahoma City, on or about the date which it bears and that he deposited the same in the United States mails.

3813 Exhibit 395, which purports to be a carbon copy of a letter dated June 12th, 1929, addressed to Griffith Brothers Amusement Company, Oklahoma City, Oklahoma, and unsigned, we stipulate that if Charles H. Mahone were on the witness stand he would testify that this exhibit is a carbon copy of a letter which he wrote and addressed to Griffith Brothers Amusement Company, Oklahoma City, Oklahoma, about the date which it bears, and that he deposited the same in the United States mail;

Plaintiff's Exhibit No. 399, which purports to be a carbon copy of a letter dated August 14th, 1929, addressed to Griffith Brothers Amusement Company, Oklahoma City, Oklahoma, and which has no signature attached, we stipulate that if C. H. Mahone were present he would testify that this exhibit is a carbon copy of a letter that he wrote and addressed to Griffith Brothers Amusement Company on or about the date which it bears, and that it was deposited by him in the United States Mail;

Plaintiff's Exhibit No. 396, which has been offered in evidence, we have no objection to its admission;

Plaintiff's Exhibit No. 397——

The COURT. That's the one that has Clark's signature?

Mr. COCHRAN. That's right. As I recall it, Mr. Clark's signature was identified by Mr. Griffith, and we
3814 have no objection to that instrument;

Plaintiff's Exhibit No. 398, I do not recall what the testimony was in regard to that Exhibit No. 398.

Mr. KIME. Mr. Griffith testified, as I recall, that that was not his signature.

Mr. COCHRAN. Well, we are objecting to Plaintiff's Exhibit No. 398.

The COURT. Let me see that.

Mr. COCHRAN. Yes, sir. (Handing.)

The COURT. Yes, he said that wasn't his signature.

Mr. KIME. Now, if your Honor please, that is offered for the purpose of showing that in that organization during this period of time the office force or certain at least of the stenographers or secretaries on occasions did sign the names of certain officers of the corporation to certain correspondence. It is further evidence——

The COURT. (Interrupting.) There is nothing in the substance of the letter that you regard as material?

Mr. KIME. No, absolutely not, as far as I recall.

Mr. COCHRAN. I don't think the statement of counsel necessarily follows at all, and that is the reason I am objecting.

Mr. KIME. Well, it is some evidence here on the 18th day of February, 1933, someone other than L. C. Griffith wrote in ink the letters and words, "L. C. Griffith,"
3815 and that it further bears the initials "L. C. G.—H. M." in the lower left-hand corner, which is some indication at least that that letter was dictated by L. C. Griffith, and that either this girl, whoever H. M. might be, or whatever H. M. might be, in all probability subscribed that signature there.

The COURT. Exhibits 393, 394, 395, 396, 397 and 399 will be admitted in evidence and exception allowed; the objection will be sustained to Exhibit 398 and exception allowed. Mr. Griffith testified that wasn't his signature, that he didn't know anything about that letter.

Mr. KIME. That's right, your Honor.

The COURT. There seems to me there would have to be something that would be binding on him before that could be admitted as against him.

Mr. KIME. If your Honor recalls, these two early offers of 362 and 363 were both signed by some other person, and we are offering this 398 to show that that wasn't an unusual procedure in that organization.

The COURT. What about 387?

Mr. COCHRAN. There is no objection to Exhibit 387; there is no objection to Exhibit 388; there is no objection to Exhibit 389, except that we contend that its admissibility, that it is admissible only for its historical value; that it covers a period of time back of the period involved in this case; in other words, it is in 1929, but we think it is
3816 admissible from the historical standpoint, so with that statement, there is no objection to Exhibit 389, and the same is true as to Exhibits 390, 391 and 392. Have I covered all of them?

The COURT. Yes. They are all admitted.

Mr. KIME. Now, if your Honor please, since this series of exhibits from 387 relative to this particular matter, we again want to call your Honor's attention to Plaintiff's Exhibits 362 and 363, and say that the reading of those carbon copies from Mr. Mahone together with the letter acknowledged to be signed by Mr. Griffith makes 362 and 363 now admissible, and we reoffer them.

The COURT. The Court will take these and examine them before we resume in the morning.

(Short discussion off the record, then the following proceedings were recorded:)

The COURT. Let the record show that it is stipulated that the information from the historical society relative to the contents of the Shawnee Newspapers giving admission prices to the theaters involved will be submitted and will be admitted under this stipulation, even though the Court has adjourned.

Mr. COCHRAN. Now, you say you have no other oral testimony to put on?

Mr. KIME. No other oral testimony, and none
3817 other that I have any present knowledge of, aside from these few exhibits here.

Mr. COCHRAN. We may have a small amount of testimony tomorrow. I believe we can surely finish reading the deposition of Mr. Lazarus and putting on those other witnesses, if we have any, by noon tomorrow. We have a witness that is out of the state at present, and I understood he was going to try to fly in. If he doesn't, it may take a little longer, but that is the situation.

The COURT. Can you agree what his testimony would be?

Mr. COCHRAN. I don't think so.

Mr. KALLIS. Who is he?

Mr. COCHRAN. Mr. Hornbeck.

Mr. KIME. I doubt if we could agree on that, your Honor.

The COURT. I doubt it too. Very well, we will stand in recess until 10:00 o'clock tomorrow morning.

(Whereupon, a recess was taken until 10:00 o'clock a. m., on October 2nd, 1945.)

3818 PROCEEDINGS

October 2, 1945, 10 o'clock a. m.

Mr. COCHRAN. Have you any further testimony?

Mr. KIME. No, no further testimony.

E. E. DODSON, was hereupon called as a witness by the defendants in surrebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?

A. E. E. Dodson.

Q. Where do you live?

A. Mangum, Oklahoma.

Q. How long have you lived there?

A. All my life.

Q. Do you hold any official position in that county?

A. I do.

Q. What is it?

A. Under sheriff.

Q. How long have you been under sheriff in Greer County?

A. Since January, 1933.

Q. In 1936 did you hold any position in relation to the property of the Masonic Lodge in Mangum?

A. I did.

3819 Q. What was that position?

A. Trustee.

Q. How many trustees were there?

A. Three.

Q. And you were one of the three trustees?

A. Yes, sir.

Q. Do you know Pat Duffy?

A. Yes, sir.

Q. At the time mentioned was Pat Duffy running or leasing a portion of the building of the Masonic Temple for his Temple Theater?

A. He was.

Q. Do you recall having a conference with some representatives of the Griffith interests in connection with that building or that portion of that building occupied by the Temple Theater?

A. I do, the summer of 1936, as I recall it.

Q. The summer of 1936?

A. Yes, sir.

3820 Q. Who were the men in that group representing the Griffith interests?

A. Well, Mr. Griffith, I wouldn't know his initials, and Mr. Griffing, an attorney, and Mr. Slocum.

Q. The Griffith that you speak of, is this the gentleman here?

A. That is my recollection of him, yes, sir.

Q. Indicating H. J. Griffith?

A. Yes, sir.

Q. Where did that conference take place?

A. At the Franklin Hotel in Mangum, Oklahoma.

Q. Before you had that conference at the Franklin Hotel, had you had a conference, had your committee had a conference with Pat Duffy?

A. Yes, several times before that.

Q. The last conference that you had prior to the conference which you had with these representatives of the Griffith interests in the Franklin Hotel, what transpired at that conference between your committee and Mr. Duffy?

A. Well——

Mr. KIME (interrupting.) Who was there?

By Mr. COCHRAN:

Q. Go ahead and answer.

A. Well, of course, the Board of Trustees had the conference with Mr. Duffy.

Q. With Mr. Pat Duffy?

3821 A. Yes, sir, with Mr. Pat Duffy.

Q. All right.

A. And he indicated from his conversation that he was on a deal to sell his interest in the theater.

Q. What was he seeking from the committee?

A. Well, he had us called together for the purpose and hope that he could get a re-lease for his new owners, whoever he was selling to.

Q. You said a re-lease?

A. Yes; I mean a long lease or extended lease. In other words, the only thing we had in our business dealings was the matter of a long lease, ten years for example was what we wanted to lease for.

Q. Was that what Mr. Duffy was attempting to negotiate with you at that time?

A. Well, he mentioned, to my recollection, he mentioned at the time that he was contemplating selling and it was contingent on a lengthy lease at a certain price.

Q. What rental did he say the parties he was selling to insisted upon?

A. He was paying $150 at that time, and that was what he was in hope whoever he was selling to, whoever was buying, would get the lease for.

Q. Then in this conference that he had with the representatives of the Griffith interests in the Franklin
3822 Hotel, was Mr. Duffy present?
A. No, sir.
Q. Well, at that conference, what took place?
A. Well, we met there for the purpose of talking with the Griffith Theaters in the hope of leasing to them, in case Mr. Duffy sold to them.
3823 Q. What was said as to the rent?
A. Well, we made them a flat proposition of $250 a month.
Q. What was said by any of the men present?
A. They immediately, I believe their attorney was the spokesman, said, "We would not be interested at that figure" and the conference ended, as far as my recollection goes.
Q. Take the witness.
Mr. KALLIS. No cross examination.
(Witness excused.)

ADAM F. HORNBECK, called as a witness on behalf of the defendants in surrebuttal, being duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your name?
A. Adam F. Hornbeck.
Q. Where do you live?
A. Shawnee.
Q. What is your business?
A. Theater business.
Q. Are you interested with the Griffith Amusement Company in certain of the theaters in Shawnee?
A. Yes, sir.
3824 Q. What interest do you have in those theaters?
A. Fifty per cent interest.
Q. How long have you been associated with the Griffith Amusement Company in operating theaters in Shawnee?
A. Since September 1, 1926.
Q. Do you recall the modification of a lease contract between the Griffith Amusement Company and Seminole Amusement Company on the Criterion Theater?
A. Yes, sir.
Q. Reducing the rent?
A. Yes, sir.
Q. Do you recall the year that that modification was made?

A. 1932.

3825 Q. And for what period?

A. Two years.

Q. Did the reduction continue?

A. Two years.

Q. Prior to the expiration, or about the time of the expiration of that reduction agreement, what did you do, if anything, in regard to that lease contract?

A. Well, that modification agreement was about, just about to expire, and I contacted Mr. Griffith by letter, calling his attention to the fact.

Q. You needn't state the contents of it.

(Defendants' Exhibit No. 174 marked for identification.)

Q. Did you send a carbon copy of that letter to Mr. McKenna?

A. Yes, sir.

Q. I hand you Defendants' Exhibit 174 for identification, and ask you to state if that is the letter which you wrote to Mr. Griffith, or if that is a carbon copy of the letter which you wrote to Mr. Griffith?

A. Yes, sir.

Q. With a carbon copy to Mr. McKenna?

A. Yes, sir.

Q. Was that letter which you referred to written on the date which this exhibit bears?

3826 A. Yes, sir.

Q. And what date was that?

A. May 12th, '34.

Q. After you wrote that letter, what was the next thing that took place in connection with that matter?

A. Well, I spoke to Mr. Jones, and I didn't get any information out of him to speak of, and it passed on there for several days, and so I talked to Mr. McKenna by 'phone.

Q. All right, after talking to Mr. McKenna by 'phone, what did you do?

A. Well, Mr. McKenna suggested—

Q. (Interrupting.) You can't say what Mr. McKenna told you.

A. Oh.

Q. After talking to Mr. McKenna by 'phone, what did you do?

A. I arranged a meeting with Mr. Jones to discuss this matter of continuing this modification.

Q. Where did you arrange for that conference to be held?

A. In the Aldridge Hotel, Shawnee.

Q. Who came to Shawnee to attend that conference pursuant to the arrangements which you had made?

A. H. J. Griffith.

Q. Who?

3827 A. H. J. Griffith.

Q. Yes.

A. R. M. Clark and B. J. McKenna.

Q. Did R. E. Griffith come?

A. No, sir.

Q. Did he attend that conference at all?

A. No, sir.

Q. Were you present during that conference?

A. No, sir.

Q. What did you do after the parties came for that conference?

A. Well, we first had a meal together, and then they were assigned to the room that I had arranged for, and after that I went back to the theater. I had some important matters there in connection with operations, so I went back.

3828 Q. You did not participate in the conference?

A. No, sir.

Q. You say you arranged for a room there in the hotel?

A. Yes, sir.

Q. But you did not go up to the room?

A. No, sir.

Q. Mr. Hornbeck, do you know Mr. Lawrence C. Bocher?

A. Yes, sir.

Q. Do you recall having a conversation with Mr. Bocher at Mr. Griffing's request during the trial of this case while the witnesses were being placed on the stand?

A. Yes, sir.

Q. In that conversation with Mr. Bocher did he tell you that he didn't remember the date of your conference but it was——

Mr. KIME. To which we object, if your Honor pleases. Counsel should not testify. He has been doing it for two months and I suggest he ask the questions.

The COURT. He asked that very question of Mr. Bocher.

Mr. KIME. Certainly he did——

The COURT. It is proper for him to ask the same question of this witness. Overruled and exception allowed.

By Mr. COCHRAN:

3829 Q. But then it was near the expiration of the modification of the Ritz contract.

A. Yes, sir.

The COURT. Ask the question you asked him. You asked him the same question that you asked Mr. Bocher?

Mr. COCHRAN. I am reading it.

By Mr. COCHRAN:

Q. In that conversation did he say he did not remember enough to testify to that conversation?

A. Yes, sir.

Q. In that conversation did Mr. Bocher tell you that he didn't know whether R. E. Griffith was present or not?

A. That is right. His words were that the boys looked so much alike he didn't know one from the other.

Q. Take the witness.

Cross-examination by Mr. KIME:

Q. What were you calling up Mr. Bocher about?

A. About this meeting.

Q. Why?

A. Mr. Griffing asked me to contact him.

Q. What did Mr. Griffing ask you to ask him?

A. To ask him what to do about this meeting.

Q. You knew he was under subpoena here at that time, didn't you?

A. No.

3830 Q. Didn't Mr. Griffing tell you that?

A. No, sir.

Q. You had not discussed it with any of the Griffith organization?

A. No, sir.

Q. When did you go on this vacation?

A. I left on the 10th of the month, September.

Q. When did you have the conversation with Mr. Bocher?

A. Well, it was about the 29th—a week this Saturday—

Q. Well, what day. You ought to remember that. You remember that 1934 meeting.

A. It was about, I should say it was about the 15th or 16th.

Q. You called him over the telephone?

Mr. COCHRAN. What month?

A. September—I mean in May.

By Mr. KIME:

Q. May?

A. Yes.

Q. You called him up over the telephone?

A. Yes, sir.

Q. At Mr. Griffing's orders?

A. At his request, yes, sir.

3831 Q. You were attempting to find out from Mr. Griffing what Mr. Bocher might testify to here?

A. No, no, no; I asked him——

Q. (Interrupting.) What were you trying to find out?

A. If he knew anything about the dates, and who was there at this meeting.

Q. Did you think that if he did know the dates and have it down in black and white, that he would tell you?

A. I didn't know that.

Q. But you hoped he would?

A. Well, I just merely—information is all I was seeking.

Q. Didn't he tell you that he didn't want to discuss this matter with you?

A. No, sir.

Q. He didn't?

A. No, sir.

Q. Didn't he tell you that even if he did remember, he wouldn't tell you?

A. No, sir, absolutely not.

Q. You were sure you knew the date of the meeting, weren't you?

A. Approximately, yes, sir.

Q. Why did you call Mr. Bocher to find out what he was going to say?

3832 A. Well, I, I would say that Mr. Griffing would like to use him as a witness.

Q. Mr. Griffing?

A. Yes, sir.

Q. You had interviewed Mr. Bocher many times before that, hadn't you?

A. No, sir.

Q. In an attempt to find out?

A. No, sir.

Q. Didn't you interview him once with Mr. Griffing?

A. No, sir.

Q. Didn't you interview him once with Red Slocum?

A. No, sir.

Q. Do you recall the time Mr. Griffing was down there interviewing him?

A. No, sir.

Q. You said you didn't know Mr. Bocher was under subpoena?

A. No, sir.

Q. When you talked to him?

A. No, sir.

Q. When did you first find that out?

A. I didn't know it until just this morning.

Q. Didn't he tell you that night in that telephone conversation that he had been subpoenaed as a witness?

3833 A. No, sir.

Q. And that he didn't want to talk to anyone, you or anyone else, about it?

A. No, sir, he did not.

Q. You pay the Griffith Amusement Company a certain amount of money for administration and legal services, don't you?

A. Oh, I wouldn't say just legal services.

Q. Well, you have an administration contract with them?

A. Yes, sir.

Q. Where a certain per cent is for administration?

A. Yes, sir.

Q. And legal services, haven't you?

A. Yes, sir.

Q. However, you thought they might forget when this lease would expire, and you wrote him a letter and told him it would expire at a certain time?

A. Yes, sir.

Q. When did you first find out you were going to be a witness?

A. Yesterday.

Q. Yesterday?

A. Yes, sir.

Q. You had discussed this several times with the attorneys and officers of Griffith Amusement Company as to whether or not you should be a witness, hadn't you?

3834 A. No; they called me yesterday at Colorado Springs and said for me to come in.

Q. Do you know what Mr. Jones testified to here?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. What did Mr. Griffing tell you when he called up and told you to see Mr. Bocher?

A. He told me to see if he had any information as regards to this meeting, and he would like to use him as a witness.

Q. Did he tell you then that Jake Jones had been on the stand and testified?

A. No, sir.

Q. Didn't you read in the paper that Jake Jones had been on the stand and testified?

A. No, sir.

Q. Were you in Shawnee at that time?

A. Yes, sir.

Q. And you didn't read the Oklahoma paper?

A. I don't take the morning paper.

Q. Or the Shawnee paper?

A. I take the Shawnee paper.

Q. And it didn't say anything about Mr. Jones having been up here, or being up here for several days testifying?

3835 A. If it did, I didn't see it in the paper.
Q. You didn't see that?
A. No.
Mr. KIME. That's all.
Mr. COCHRAN. That's all.
(Witness excused.)
The COURT. While you are on this Shawnee proposition, I am not sure whether or not the question was asked Mr. McKenna and H. J. Griffith as to this January, 1933 meeting. You see, Mr. Bocher testified that this meeting at the hotel with reference to modifying this lease was in January, 1933.
3836 Mr. COCHRAN. Everybody testified there was only one meeting in the hotel.
The COURT. I just wanted to know if the record is clear on it.
Mr. COCHRAN. The record is clear. Mr. Jake Jones says there was only one meeting. Everybody agrees there was only one meeting and it was in the Aldridge Hotel.
Mr. KIME. Everybody but Bocher. Bocher says there was another meeting here in the office.
Mr. COCHRAN. What I mean, they didn't say there was one meeting at the Aldridge Hotel. There was just one meeting.
The COURT. I don't recall just exactly what the testimony was.
Mr. COCHRAN. We now give notice there is on file and being filed the deposition of Paul N. Lazarus, and we ask permission to have it opened in public.
The COURT. Very well.

"PAUL N. LAZARUS was called as a witness on behalf of the defendants and, being first duly sworn, testified as follows:

Direct interrogatories by the NOTARY:
1–Q. State your name, place of residence, and present position.
3837 A. Paul N. Lazarus; residence, Mahopac, New York; present position, manager of the Contract Department of United Artists Corporation.
2–Q. How long have you been with the Contract Department of United Artists?
A. From 12 to 15 years.
3–Q. How long have you been head of such Contract Department?
A. The same length of time, 12 to 15 years.

4–Q. During the period from 1933 up to the present time has United Artists been a national distributor of motion pictures?

A. Yes.

5–Q. As such national distributor, how many exchanges does United Artists have in the United States?

A. Twenty-six exchanges.

6–Q. From what exchanges has United Artists product been distributed to the States of Oklahoma, Texas and New Mexico?

A. Dallas, Denver and Kansas City.

7–Q. Where is the home office of United Artists Corporation located?

A. 729 Seventh Avenue, New York City.

8–Q. During the above period did United Artists produce any pictures?

3838 A. No.

9–Q. Did it own any theatres?

A. No.

10–Q. During the period you have been with United Artists has it ever produced any pictures or owned any theatres?

A. Until very recently, no. Within the last recent period, United Artists Corporation has acquired interests in partnerships.

11–Q. For each of the seasons 1933–34 up to and including 1938–39, give the names of the several persons or corporations who produced the pictures which were released through United Artists.

A. Season 1933–1934.

B & D	Korda
Goldwyn	Krimsky & Cochran
London Films	Reliance
20th Century	

Season 1934–1935:

B & D	Reliance
Goldwyn	Trafalgar Productions
Al Lichtman	20th Century
London Films	Viking Productions

Season 1935–1936:

Chas. Chaplin	Pickford–Lasky
3839 Criterion	Reliance
Goldwyn	Selznick
Max Marcin	20th Century
London Films	

Season 1936–1937:

Criterion	Pickford–Lasky
Goldwyn	Reliance

Korda	Selznick
London Films	Trafalgar Productions
Pendennis Pictures	Wanger
Season 1937–1938:	
Goldwyn	Reliance
Korda	Wanger
London Films	
Season 1938–1939:	
Goldwyn	Selznick
Korda	Small
London Films	Wanger
Roach	

12–Q. For each of the seasons 1933–34 to and including 1938–39, state the number of foreign-made pictures released through United Artists.

A. 1933–1934.....4 1936–1937.....6
1934–1935.....8 1937–1938.....9
1935–1936.....3 1938–1939.....2

3840 13–Q. During said period has United Artists licensed pictures for first run exhibition subsequent to or in advance of the production of the pictures?

A. Both subsequent to and in advance of production.

14–Q. Does every application for a contract for pictures which are distributed by United Artists in the course of a year come through your department?"

Mr. KALLIS. As to that particular interrogatory we make the objection that it calls for a conclusion of the witness, the answer would be based both on speculation and hearsay evidence.

The COURT. He certainly would not know whether it did or not. Overruled and exception allowed.

"A. Yes.

15–Q. What are the mechanics of licensing of pictures of United Artists to a particular theatre in a given town?

A. Every picture that is licensed is negotiated for by the owner of the theater with either a United Artists salesman, branch manager, district manager or some home office sales executive. When an agreement is reached between an exhibitor and the salesman, an application for a license is sent to the home office, here in New York City. This is then transmitted by the home office to the representative of the producer and, if the producer's representative approves the application, the branch office is then
3841 notified and the contract is consummated. The representative of the producer in each case has the right to accept or reject the application.

16–Q. Does every acceptance or rejection of an application by the producer go through your department?"

Mr. KALLIS. With respect to that interrogatory we make the same objection.

The COURT. Overruled. Exception allowed.

"A. Yes.

17–Q. During the above period how did United Artists go about selecting a customer in a town in which there were competing theatres?

A. In view of the fact that I did not personally negotiate any deals, I am in no position to say just how various customers in different situations were selected.

18–Q. For the seasons 1933–34 to and including 1938–39, state the number of pictures which were licensed for each of the seasons to Griffith Amusement Company for exhibition in its theatres at Ada, Oklahoma. Also for each of said seasons, the number of pictures which were licensed to Miss Nona Kyser for exhibition in her theatres at Ada.

A.

		Griffith	Nona Kyser
3842	1933–1934—1st run	10	3
	1933–1934—2nd run	—	7
	1934–1935—1st run	2	20
	1934–1935—2nd run	—	6
	1935–1936—1st run	6	7
	1935–1936—2nd run	6	2
	1936–1937—1st run	1	17
	1936–1937—2nd run	—	16
	1936–1937—3rd run	—	4
	1937–1938—1st run	10	6
	1937–1938—2nd run	10	5
	1937–1938—3rd run	—	3
	1938–1939—1st run	15	1
	1938–1939—2nd run	13	—
	1938–1939—3rd run	—	15

19–Q. What difficulty, if any, was experienced by United Artists in obtaining a playoff on the pictures which were licensed to Miss Kyser for the season 1936–37?

A. I have no knowledge of any difficulty with regard to obtaining a playoff of pictures licensed to Miss Kyser for the season 1936–1937. That would be a matter which would be handled by the local branch office serving Miss Kyser. If there was some acute difficulty, it might have been referred to the home office by the branch office, but I know of no such instance.

20–Q. For the season 1936–1937 state the number of pictures which were licensed to the Griffith theatres in
3843 each of the towns of Altus, Chickasha, Clinton, Holdenville, Lubbock, Midland, Borger, Duncan, Enid,

Oklahoma City, Pampa, Seminole, Carlsbad, Clovis, Deming, Gallup, Roswell, Belton, Brady, Clarksville, Georgetown, Lampasas and Plainview. Also in Hobart, Norman and Shawnee.

A.

Altus	9	Carlsbad	10
Chickasha	10	Clovis	10
Clinton	9	Deming	10
Holdenville	10	Gallup	10
Lubbock	10	Roswell	9
Midland	10	Belton	10
Borger	10	Brady	9
Duncan	9	Clarksville	10
Enid	9	Georgetown	10
Okla. City—Rialto	10	Lampasas	10
" " Redskin	1	Plainview	10
" " Reno	1	Hobart	1
Pampa	10	Norman	1
Seminole	9	Shawnee	1

3844 21–Q. For each of the seasons 1932–33 to and including 1938–39, state the number of United Artists pictures which were licensed to Griffith Amusement Company for exhibition in the town of Duncan, and also the number of pictures which were licensed for each of said seasons to exhibitor Guest for exhibition in the town of Duncan.

A.

	Griffith	Exhibitor Guest
1932–1933	4	3
1933–1934	10	—
1934–1935	2	1
1935–1936	7	1
1936–1937	9	4
1937–1938	13	—
1938–1939	15	—

22–Q. For each of the seasons 1934–35, 1935–36 and 1936–37, state the number of pictures licensed to each of the exhibitors, Griffith Amusement Company, Charles Mahone, and J. J. Hale for exhibition in the town of Hobart.

A.

	Griffith	Chas. Mahone	J. J. Hale
1934–1935	—	—	16
1935–1936	3	—	1
1936–1937	1	1	—

23–Q. State what difficulty, if any, United Artists experienced in obtaining the liquidation of its contracts for the 1934–35 season with J. J. Hale, and what pic-
3845 tures, if any, were unplayed at the time Hale dis-

continued operating the Palace Theater in 1936, and the season in which such pictures were released.

A. This is a matter of branch office record, which I am unable to answer from my own knowledge.

24–Q. For the seasons 1935–36 and 1936–37, how many pictures were licensed to Griffith Amusement for exhibition in Norman, Oklahoma, and how many were licensed to Mrs. Berry for exhibition in the Campus or Oklahoma Theaters?

A.

		Griffith	Campus or Oklahoma Thea.
1935–1936	1st run	6	10
1935–1936	2nd run	—	13
1935–1936	3rd run	11	6
1936–1937	1st run	1	17
1936–1937	2nd run	—	15
1936–1937	3rd run	—	1

25–Q. In the early part of 1938 were there pictures of the 1936–37 season which had been licensed to Mrs. Berry and which were unplayed and which had not been paid for?

A. I don't know. This, likewise, is a matter of branch office record.

26–Q. If your answer to the last question is in the affirmative, state what steps were taken to obtain a liquidation of that account.

A. My answer was in the negative, and, therefore,
3846 I do not know.

27–Q. During the seasons 1933–34 to and including 1938–39, state the number of pictures for each season which were licensed to A. A. Moulder for exhibition in the Criterion Theater at Sapulpa, and also state the number of pictures which were licensed to Griffith Amusement Company for exhibition in Sapupla for each of said seasons.

A.

	Griffith	A. A. Moulder
1933–1934	—	15
1934–1935	—	17
1935–1936	—	14
1936–1937	—	11
1937–1938	—	16
1938–1939	—	16

28–Q. State the names of the exhibitors in Plainview, Texas, to whom United Artists product was licensed for the seasons 1933–34 and 1934–35, and the amount of product licensed to each of said exhibitors.

A.

1933–1934	O. K. Theaters	12
1934–1935	O. K. Theaters	11
1934–1935	Dennis Scaling	3

29–Q. What was the date of the first application for the licensing of any of the pictures of United Artists for the season 1936–37 which was made by Westex Theaters, Inc., or R. E. Griffith?

3847 A. I cannot answer this question. It is a matter of branch office record.

30–Q. During the period 1933 to and including 1939 were all agreements relating to the licensing or exhibition of pictures which were released by United Artists required to be in writing and to come through you for submission to the respective producers for their approval?

A. Yes.

31–Q. During that period was there any agreement by United Artists, or the producers whose pictures it released, with the defendants that United Artists pictures would not be licensed second or subsequent run to any competitor of the defendants, or either of them?"

Mr. KALLIS. To that interrogatory we make the objection that it calls for a conclusion by the witness which he is not competent to draw, and for him to give an answer to the question would invade the province of the Court, and require him to state a conclusion not only of law but of fact as well, and for the further reason that this answer would be purely based upon hearsay evidence.

The COURT. The Court has ruled on these questions where they have asked the witness a question using the word "agreement". The Court has sustained the objection in oral testimony because they would have an opportunity to ask the question in another form; and the Court has

3848 overruled the objection where they have not been given an opportunity to reexamine the witness after sustaining the objection. I think a man in his position would understand what the word "agreement" means as much as he would anything else. The objection is overruled, and an exception allowed.

"A. I do not know of or recall any such agreement.

32–Q. During that period was there any agreement between United Artists, or the producers whose pictures it released, with any of the defendants or their executives, representatives or employees, not to deal with any competitor of the defendants, or to fix or restrict the terms of United Artists' dealings with any such competitor?"

Mr. KALLIS. The same objection, your Honor, for the same reason.

The COURT. Overruled and exception allowed.

"A. I know of no such agreement.

Cross Interrogatories

1–XQ. For the seasons of 1933–34 to and including 1938–39, state the number and names of all pictures which were licensed for each of these seasons for exhibition in the towns of Ada, Altus, Chickasha, Clinton, Holdenville, Lubbock, Midland, Borger, Duncan, Enid, Oklahoma City, Pampa, Seminole, Carlsbad, Clovis, Deming, Gallup, Roswell, Belton, Brady, Clarksville, Georgetown, Lampasas, Plainview, Hobart, Norman, Shawnee and Mangum, and state
3849 the contract number of each picture, the name of the theater where it played, the film rental received. the date when it played, and the name of the exhibitor who played it.

A. Our original contracts have been sent to Oklahoma City, and the only information on which I could possibly answer this question is in the form of voluminous schedules which were prepared for this action. This information is not complete, and it could not be compiled in final form within less than a week. However, all of the information that is asked for in this question is a matter of record on the contracts themselves now in Oklahoma City, and I could not go beyond that information, from my own recollection.

2–XQ. If your answer to Direct Interrogatory No. 30 is "Yes", state whether you had anything to do with the negotiations of these agreements.

A. I had nothing whatsoever to do with the negotiation of these agreements."

(Subscribed and sworn to by the witness.)

3850 Mr. COCHRAN. Defendants' Exhibit No. 174 is a letter which was identified and handed to Mr. Hornbeck. We did not offer that letter in evidence because we considered it a self-serving declaration. It was produced merely for the purpose of having the witness fix the date, and it was tendered to counsel for the plaintiff, and we thought they could make any use of it they desired, so it is simply in the record for identification but is not offered in evidence. The defendants rest.

Mr. KIME. Your Honor, these separate pages, what have heretofore been identified as Plaintiff's Exhibit 352, have now been marked and they are Plaintiff's Exhibits No. 408 to and including 426. Does your Honor desire any more definite description?

The COURT. Just state briefly the substance of those exhibits. That is, what they show generally.

Mr. KIME. The parties to the contract, both for all runs in that particular situation, that particular town and who the parties were that signed the contract on behalf of each corporation, or the individual, if it was an individual, signing for himself. They show the pictures that were produced in those years. They show the date of the delivery of the print. They show the national release date, the number of prints that were available to the particular
3851 branch offices here. This series is all the Oklahoma City branch office. They show the contracted rental and the actual rental received, whether or not there was any increase or decrease between the contracted and actual rental; when the pictures were played, whether or not any particular picture contracted for was eliminated and the full rental for the particular season and all preceding seasons down to the season involved.

The COURT. Are all of these contracts in evidence?

Mr. KIME. All of the contracts, I believe all of the contracts insofar as the defendants are concerned, are in evidence. I am satisfied on that and all of the individual contracts I believe are likewise in evidence.

The Court. That is, the contracts with the competitors of the defendants.

Mr. KIME. I think so, your Honor.

Mr. COCHRAN. That is not correct, and also not all of the contracts with the defendants are in evidence, but only the memo contracts are in evidence. If they are spot booked contracts or other contracts made during the season to cover other pictures, which invariably occurs and which would be reflected in this tabulation, they do not show. Also this tabulation does not purport to set forth itself the tabulation or what is in the contracts. It goes be-
3852 yond that and takes in other records. That is the reason of our objection. The Government has prepared a tabulation and it will be presented in their brief as to what they contend is shown by the contracts themselves, and we will prepare our tabulation also, but this goes beyond that. That is the reason they are offering these documents instead of offering the record, so we object on the same grounds to which we objected to the book as a whole.

Mr. KIME. This shows the play-off records as they were actually played.

The COURT. Objection will be sustained. Exception allowed.

Mr. KIME. Now as to the pages extracted from Exhibit 351——

Mr. COCHRAN. That is the other volume of Universal.

Mr. KIME. That is right. I offer Exhibits 427, 428, and 429, relative to Hobbs and Roswell, New Mexico, Hobbs for 1935–36 and Roswell for '37–38.

Mr. COCHRAN. Same objection.

The COURT. Objection sustained; exception allowed.

Mr. KIME. The other day Judge Cochran was reading from RKO's 6720, I believe, and he read three small print provisions, and saying they were applicable to a particular RKO master contract. I believe that is RKO 6722
3853 for the year 1934–35, which was the one attached to the particular master contract, is the one that actually governs. However, I haven't had time to compare this fine print of the two contracts, and if there is any change in the wording I would like leave to submit the wording of that contract that is actually applicable.

3854 Mr. COCHRAN. I imagine the record will speak for itself as to which is the applicable contract. The photostatic copy of the document, of the franchise which was furnished to me, as being the document taken from the RKO files, did not have the standard form attached to it; that is simply incorporated by reference, and I think that is the situation, and it will be the standard form for the particular season, I don't remember what season it was.

The COURT. Let it be understood that the standard form which was applicable for that season——

Mr. KIME (interrupting.) No, that isn't the situation, your Honor. The portion of the standard form that was attached to the master contract was the standard form for the year 1934–35, and that had been scratched out and written in was the year 1935–36, and that's where I think the mistake is. Now, I don't believe that those paragraphs have been changed by even the inclusion of an additional comma in the last twenty years, but if they have I just want the opportunity to submit the other one.

The COURT. Very well.

Mr. COCHRAN. As I say, the record will speak for itself as to what is included in the franchise, and what was attached.

Mr. KIME. That's right.

Mr. COCHRAN. I don't recall that there were any documents actually attached to that franchise; it was
3855 only incorporated by reference, but the record will speak for itself.

Mr. KIME. Yes. I handed it to you at the time. Now, there is only one or two other matters that I think of. Many of these original exhibits are the property of the distribu-

tors and various complaining witnesses. Photostatic copies have been given to the Clerk for all of those down to the time of the recess, and photostatic copies will be given to the Clerk for all of the originals that we desire to withdraw, and we will ask the Court's permission to withdraw those originals and substitute photostats.

The COURT. That will be the order of the Court, and the Clerk is instructed to accept the photostats in lieu of the originals.

Mr. COCHRAN. May the defendants have the same order?

The COURT. The same order will apply to the defendants, the same rule.

Mr. DUDLEY. Mr. Rice had to go home yesterday evening, and he asked me to announce today that he had no further evidence.

The COURT. Very well.

Mr. KIME. There is only one other matter that I think of, and that is how the record will be corrected if we find any material thing in there which either party believes
3856 should be corrected.

The COURT. That can be done by calling it to the attention of the Court and getting together.

Mr. COCHRAN. I stated to counsel that I thought the proper way to handle it would be for the parties to get together, and if an agreement could be reached, present it to the Court as a matter of agreement for the change, but if an agreement could not be reached, then the only thing to do is to take the matter up with the Court where both parties are represented.

The COURT. The Court will give you an opportunity to offer corrections to be made in the record that would be made to make the record speak the truth.

Mr. KIME. I guess that's all; the Government rests, your Honor.

Mr. KALLIS. If the Court please, I would like to say a word in behalf of my own reactions, and I am sure I am speaking for both Mr. Wright and Judge Kime. We want to thank you for your courteous supervision of the case, acting in your judicial capacity. While we haven't always agreed as to whether or not certain evidence should be received or excluded, we do appreciate the courteous manner in which you have conducted the trial, and I am sure that your Honor will give due consideration to everything that has been presented.

3857 *Remarks of Judge Vaught*

The COURT. The Court appreciates the remarks of counsel. I might add that ordinarily in a case taking more than six weeks to try, it is tedious and taxes the patience of the Court and all, but when attorneys in the case have been as courteous and as cooperative as you have in this case, it relieves a great burden for the Court.

There are many times that the Court in passing on objections to the introduction of evidence, makes mistakes, and this Court doesn't claim to be any exception to that rule. The principal reason that the Court makes mistakes, I think, is because at one time he was a lawyer, and the best lawyer that I ever recall of having known, intimately at least, was one who constantly complained of the numerous mistakes that he made.

Now, there are some questions in cases of this character that are very close. Sometimes the introduction of evidence is influenced, if not controlled largely, by the difference in jurisdictions, the practice in different sections of the country. Rules of evidence, while it looks like they ought to be the same at all times, particularly in the Federal Court, yet it is not infrequent that we find distinguished members of the bar disagreeing on small matters of that character. But the Court has enjoyed the trial of this case. I am just a little afraid though that the troubles of the Court are just about to begin.

3858 But I do hope that in preparing your briefs, gentlemen, that you will analyze this testimony carefully. That's the big job here. As I stated in Mr. Wright's presence, I think you have a number of interesting propositions here. First is whether or not there was a conspiracy. Now, one of our most learned Judges in discussing conspiracy said that a conspiracy is an easy matter to allege, and it is the most difficult of all cases to defend, because the defendant never knows what he is expected to meet until the evidence is in. But I look at a conspiracy this way: Before there can be a conspiracy, there must be those who conspire, there must be some kind of understanding. Of course, that doesn't need to be proven by contracts, written contracts, written agreements, written memoranda; it may be shown by circumstances, but there must be something which indicates to the Court that there was a meeting of the minds of the alleged conspirators to do a certain thing.

Now, there is another element in this case, and that is whether or not there was a monopoly, whether or not these defendants constitute a monopoly. It is well known what a

monopoly is, and under this Act, the Sherman Act, monoply is defined. It must be a monoply that restrains trade. There could be monopolies that are absolutely innocent. Unless the monopoly accomplishes the purposes alleged in the complaint, it would be immaterial.

3859 Another proposition, and that has been suggested many times during this trial, is whether or not a chain of theaters within itself constitutes such interference with trade as defined by the Act. I think the term "buying power" has been used. Whether or not that within itself is sufficient to bring these defendants within the Act.

I merely mention these things so you gentlemen will know what the Court has in mind, and that you can meet it in your briefs.

I suggested the other day in regard to these various towns, now, you have taken each one of these theater towns and you have given a complete history of the theater business in that town from the beginning, and I think a good way to brief this case would be, so far as the facts are concerned, to take the individual towns and give a history of the theater business in that town, the dates, the character of the theaters, the participation by these defendants in this development, whatever was done there, so the Court can reach a conclusion as to a particular town whether or not the allegations of the complaint are sustained by the evidence.

3860 Now, would the mere acquisition and building of theaters control the loan, and then there comes in next the sale of pictures, the licensing of pictures. What effect does that have on the main issue? Then your proposition is very largely a law question as to whether or not buying power within itself constitutes a monopoly or borders on a conspiracy, and I am going to give you plenty of time because I expect you to do most of the work, and if you find that the time given by the Court is insufficient you can make application for additional time. The Court is not going to be in any hurry about this matter because you gentlemen haven't been in any hurry up to this time. It has been about six years since this case was filed.

Is there anything further? If not, you may recess court.

(Hereupon the trial of the above and foregoing entitled cause was concluded.)

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VOLUME 3 OF THE TRANSCRIPT OF RECORD– CASE NO. 64 – IS TOO LARGE TO BE FILMED.

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1249

THE UNITED STATES OF AMERICA, APPELLANT

v.

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on October 24, 1946. A petition for appeal was filed on December 19, 1946, and is presented to the District Court herewith.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal to the judgment entered in this

740175—47——1

cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 805; 43 Stat. 938; 28 U. S. C. 345).

The following decision sustains the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *Crescent Amusement Co., et al.*, 323 U. S. 173.

STATUTES INVOLVED

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C., secs. 1 and 2):

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * * Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with

foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

THE ISSUES AND THE RULING BELOW

On April 28, 1939, the appellant filed its complaint charging the defendants with violating sections 1 and 2 of the Sherman Act by monopolizing and unreasonably restraining competition in the exhibition of films in towns in Oklahoma, Texas, and New Mexico. The exhibitor-defendants were four affiliated corporations engaged in operating motion-picture theatres and three individuals who were their principal officers and owners, one of whom died during the pendency of the litigation. They were charged with combining their theatres in licensing films from the major distributors for the purpose of unreasonably restricting the film licensing opportunities of independent exhibitors and obtaining monopolies in the communities where the defendants and others affiliated with them, for whom they bought films, operated theatres. The complaint prayed that this combination of exhibitors be declared illegal, that it be dissolved, and that the defendants be enjoined from continuing their illegal monopolies and from continuing to combine their theatres for the purpose of compelling licensing discriminations by major distributors against their competitors.

Trial of the case was begun on May 7, 1945, and the taking of evidence was concluded on October 2, 1945. The case was submitted on written briefs, the last of which was filed on August 16, 1946. On October 9, 1946, Judge Edgar S. Vaught, sitting in the Western District of Oklahoma, rendered a decision which found that the allegations of the complaint had not been sustained and concluded that all of the defendants were entitled to a decree of dismissal. A copy of the court's opinion is attached.

The issues raised by the complaint and the evidence presented substantially the same issues decided adversely to the defendants in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and *United States* v. *Schine Chain Theatres, Inc.*, 63 F. Supp. 229. Successive appeals (Nos. 571 and 572) from the judgments in the latter case were dismissed on December 16, 1946. In all three cases the charge against the defendants involved the illegal use of film buying power resulting from aggregating a large group of theatres into a so-called circuit for film buying purposes in order to secure to theatres of the circuit unreasonably competitive advantages over other theatres. In all three the Government's proof consisted principally of licensing agreements made between the defendants and the major film distributors which prevented competitors from playing upon subsequent runs the films exhibited by the defendants

and from competing with the defendants for the privilege of licensing the prior runs of films which the defendants chose to exhibit; the collective negotiation of such agreements by the defendants on behalf of themselves and others affiliated with them; and the actual effect of those agreements upon specific competitors in a substantial number of situations where independent exhibitors were attempting to compete with the circuit in operating theatres.

In the present case, the affiliation of the defendants with each other and with other exhibitors through stock ownership, common officers or directors, and so-called administration agreements which authorized one of the defendants to do the film buying for a fixed percentage of the gross receipts of the theatres, was proven by documentary evidence. The proof also showed a continuous growth of the circuit at the expense of independent competitors; division of operating territory among the defendants; and the elimination of particular competitors by such means as price-cutting, give-aways, pooling agreements, and outright acquisition of independent theatres accompanied by agreements which bound the sellers not to compete for a substantial period of time in the future in the respective areas where they had competed in the past and the acquisition and maintenance of closed theatres in such areas.

The complaining witnesses were permitted to testify as to what film product they were or were not able to obtain from the major distributors, but the court declined to permit them to testify as to the details of their negotiations with the major distributors. The court also rejected correspondence between these witnesses and distributors relating to such negotiations and memoranda found in the distributors' files relating to their film licensing negotiations, whether with the defendants or with independents. The complaining witnesses were permitted to give oral testimony concerning negotiations between them and the defendants relating to film licensing and the acquisition of their theatres by the latter.

The defendants' case consisted of testimony by the individual defendants and other officials and employees of the corporate defendants denying such parts of conversations with the independents as contained any threat or suggestion of economic coercion, and a general denial of any intent to suppress competition or create a monopoly by any of the transactions covered by the plaintiff's evidence. Representatives of the major distributors also made general denials of the same character with respect to their film licensing arrangements with the defendants. The court declined to receive memoranda signed or authorized by these witnesses which contradicted such testimony. The same witnesses also testified that the course

of business revealed by the plaintiff's evidence was a normal method of operation which benefited the public.

In general, the pattern of the evidence for both the plaintiff and the defendants was similar to that in the *Crescent* and *Schine* cases, except that in the instant case the plaintiff's evidence placed less emphasis on predatory or coercive local practices and more upon the written licensing agreements made between the defendants and the major distributors, which the Government contends are illegal *per se*. In the instant case the written agreements between the defendants and the major distributors and between such distributors and the defendants' competitors were received in evidence and were not in dispute. There was also no serious dispute as to the essential facts disclosed by the other documentary evidence or as to which major films the defendants' competitors were or were not permitted to license, or as to what was actually done by the defendants in the course of acquiring competitors' theatres. There was disputed testimony as to conversations between the independents and representatives of the defendants preceding such acquisitions, and the parties, of course, differed widely in their views as to the proper ultimate inferences to be drawn from the undisputed evidence.

While the appeal challenges most of the court's findings only as to comparatively minor matters

do its findings represent a resolution of testimonial conflicts. Each of the findings as to 25 separate competitive situations (findings 11–1 through –25) simply summarizes some of the applicable evidence and ends with the conclusion that the particular situation involved no unreasonable restraint of trade attributable to the defendants or monopolization or conspiracy to restrain or monopolize trade resulting from the combined activities of the defendants. The remaining findings set forth similar conclusions with respect to the defendants' maintenance of closed theatres (finding 13), their theatre acquisitions (findings 14 and 15), their partnership agreements (finding 17), their administration contracts (finding 18), their collective film licensing (findings 20–23), their price-cutting activities (finding 24), and their division of territory respecting theatre operation (finding 27). Thus, the court's findings, while in terms determining all of the ultimate facts against the Government, actually represent for the most part the court's conclusions with reference to evidentiary facts as to which there was no substantial conflict.

THE QUESTIONS ARE SUBSTANTIAL

The Government submits that, under the principles of law announced in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, evidence which is undisputed establishes as a matter of

law that the present defendants were guilty of violating the Sherman Act. If we are right in this view, it follows that the district court erred in failing so to rule. While the Government further believes that the court erred in excluding the evidence to which we have referred in our statement of the issues and the ruling below, this error is of relatively minor importance compared with that arising from the court's misapplication of Sherman Act principles to admitted evidence in the case which is uncontroverted.

Thus, the appeal presents the basic question of whether a course of conduct parallel to that proven in the *Crescent* and *Schine* cases, *supra*, is itself a violation of the Sherman Act or whether the decisions in the latter cases rest merely upon the drawing of inferences from such conduct which are discretionary with the particular district court which hears the case. We submit that the former view is correct and this appears to have been the interpretation of the *Crescent* case adopted by the district court in the *Schine* case.

The holding in the instant case, in approving "master agreements" between the Griffith circuit and the major distributors, is also in direct conflict with the decision of the three-judge expediting court in *United States* v. *Paramount Pictures, Inc.* (66 F. Supp. 323, 347 S. D. N. Y., June 11, 1946), where master agreements containing the same provisions, made between the same distrib-

utors and other circuits, were held to "unreasonably restrain competition."

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

(The exhibit hereto, a copy of the opinion, is omitted at this point as it appears elsewhere in the record.)

Endorsed: Filed in District Court on December 19, 1946.

OPINION

On April 28, 1939, the United States of America filed its complaint against the defendants Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., L. C. Griffith, H. J. Griffith, R. E. Griffith, Paramount Pictures, Inc., Metro-Goldyn-Mayer Distributing Corporation of Texas, Loew's Incorporated, RKO Radio Pictures, Inc., Vitagraph, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, Twentieth Century-Fox Film Corporation of Texas, United Artists Corporation, and Columbia Pictures Corporation, alleging violations of Sections 1 and 2 of Title 15 U. S. C. A., the Sherman Anti-Trust Act, and seeking relief under Section 4 thereof. Prior to the trial of the cause, the action was dismissed as to all of the defendants except Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex

Theatres, Inc., L. C. Griffith, H. J. Griffith, and R. E. Griffith. Defendant R. E. Griffith died in 1943 and the action was not revived against his personal representatives or his estate.

On motion of the plaintiff, paragraphs 44 to 48, inclusive, were stricken from the complaint leaving paragraphs 39, 40, 41, 42, 43, 49, and 50, which charge violations of the Sherman Anti-Trust Act. All of the defendants remaining in the case are what are known in the moving picture industry as exhibitors. The alleged violations follow:

> 39. For the past five years the defendant exhibitors have *continuously combined with each other and with each of the defendant distributors to unreasonably restrain interstate trade* and *commerce* in motion picture films and to *monopolize* and *attempt to monopolize* the *first* and *second run exhibition of feature pictures* and the *operation* of *first and second run theatres* in the Griffith Towns in violation of Sections 1 and 2 of the Sherman Act, in the following manner:
>
> 40. Said exhibitors have *refrained* from *competing with* each other in the acquisition and *operation* of motion picture theatres in said towns pursuant to *express or implied* agreements to allocate said territory between them.
>
> 41. During each of the past five years said exhibitors have *collectively contracted* with each of the *defendant distributors* for all of the feature pictures annually *re-*

quired for exhibition at all of the theatres operated by them in said towns, in *advance* of the *production* and *distribution* of such feature pictures and *before* such feature pictures or any of them, have been *offered* to any *other* exhibitor in said towns, with the *purpose* and *effect* of *controlling* and *monopolizing* the *supply* of feature pictures available for exhibition in said towns.

42. By said contracts said exhibitors have *combined* with each other to *compel each of the defendant distributors* to *grant* to all of them in all of said towns the following *exclusive privileges* during the entire time they have operated theatres in said towns: (a) The *exclusive* privilege of selecting from the feature pictures released by said distributors such feature pictures as said exhibitors deemed suitable for exhibition in said towns, as and when prints thereof became available, before said pictures were released to any other exhibitors in said towns. (b) The *exclusive privilege* of receiving clearance on said feature pictures over competing theatres in said towns.

43. The foregoing exclusive privileges have enabled the defendant exhibitors to *unreasonably restrain, suppress,* and *entirely eliminate the competition offered* by *other* theatre operators in said towns in the *licensing* and *exhibition* of feature pictures by: (a) *Preventing* them from *obtaining enough first-class pictures* for *exhibition* on *any run* to operate their theatres success-

fully. (b) *Forcing* them to maintain admission prices *higher* than those warranted by the quality of the entertainment they were able to offer; that is, feature pictures previously exhibited or rejected by the defendant exhibitors. (c) *Preventing* them from showing any feature pictures released by the defendant distributors with first-run clearance in any of said towns. (d) *Preventing* them from exhibiting any feature pictures released by the defendant distributors with second-run clearance in any of said towns where any of the defendant exhibitors operate one or more second-run theatres."

49. Each of the defendant exhibitors is what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres as hereinbefore alleged, the said exhibitors and each of them have obtained what is commonly referred to in the motion picture industry as *circuit buying power*. Said circuit buying power has *enabled* them and each of them to obtain the *exclusive privileges herein before recited* from the defendant distributors. Said circuit buying power has *further enabled* them and each of them to *demand* and *receive* from *all distributors* of motion pictures *more favorable rental* terms in licensing their motion pictures than can be obtained by competing individual exhibitors.

50. Said *circuit buying power* is now so great that its continued existence will tend to *subject* competing exhibitors in the Griffith Towns to *other and additional restraints* in violation of the Sherman Act, even if the foregoing restraints are enjoined, unless said circuit buying power is eliminated.

The defendants deny generally these allegations and upon the issues thus joined the cause was tried to the court.

The record is quite voluminous, containing close to 4,000 pages of testimony and many hundreds of exhibits, and exhaustive briefs were filed, which necessitates a much more lengthy opinion than in ordinary cases.

The production, distribution, and distribution of moving picture films comprise an industry that has arisen and developed during the past thirty years. In order that we may better understand the situation here, as it has been developed in the trial, it is appropriate to give a brief resume of the background of the development of the industry as it pertains to the defendants, as disclosed by the testimony.

During the thirty-year period immediately preceding the filing of the complaint in this cause, the motion picture industry has undergone marvelous changes and developments.

These changes have been very marked not only in the production and distribution of pictures, but

also in the exhibition of pictures. The showhouse or theater in the smaller towns and in many of the larger ones, at the beginning of this period, consisted ordinarily of a remodeled storeroom equipped, often poorly, for exhibition purposes. Those originally engaged in the exhibition of pictures were persons of little or no experience in the business and usually their methods were as crude and inefficient as the houses in which they operated. The production of better and more attractive pictures called for more efficient methods in their exhibition. All of these developments have required substantial capital for the construction of modern theaters, installation of sound equipment, more efficient personnel, and advertising and exhibiting the production.

In many of the situations in the territory in question, the pioneer exhibitors have been slow to respond to the public demand for better showhouses, more modern equipment and efficient service in the exhibition of pictures. This very positive progress in the development of the business not only has made the well-managed theater a good business proposition, but has resulted in an increased interest in the business by a more progressive element, willing to provide the capital and more efficient services to meet the public demand. In reviewing the evidence, the situations will be treated individually in order to determine whether or not the existing conditions are

the natural and logical result of the gradual changes suggested by the demands of the public and the opportunities from a business standpoint, and will be considered only as effecting the territory involved in this action.

The testimony discloses that the moving picture industry, as it pertained to the exhibition of pictures, from its early inception until about 1928 or 1929 consisted of the exhibition of what is known as "silent films". During this period, very little effort was made by the exhibitors to construct showhouses or theaters adequate to accommodate the public. The accommodations were unsanitary, poorly planned and constructed, and were known throughout the industry as the "storehouse" type of theater. Particularly was this true as to the states of Oklahoma, New Mexico and the outlying districts of Texas. In the principal cities in Texas, however, many modern theater buildings were constructed. In 1928 or 1929 what is known as "sound equipment" was perfected and since that time we have had what is termed "talking pictures." The cost of the construction and equipment of a modern de luxe type of theater with sound equipment and a seating capacity of 600 to 1,000 was approximately $75,000. The successful installation of sound equipment in old buildings that had been converted into theaters necessitated much and expensive remodelling, at an approximate cost of

$14,000. Stages in such buildings had to be reconstructed, ceilings raised or lowered, obstructions that would interfere with sound removed.

As the moving picture industry was so developing, the nation was experiencing what has been termed the "depression", with which all are familiar. Every line of business suffered and there were many failures due entirely to the depression. In order to supply the patronizing public with adequate and comfortable showhouses or theaters, those engaged in the business who kept abreast of the steady and continuing progress and scientific development of the industry sought to provide such houses of entertainment, until today there is scarcely a town of 3,500 population that does not have at least one or more modern theater buildings.

Three of the defendants, R. E. Griffith, L. C. Griffith, and H. J. Griffith (hereinafter referred to as the Griffith brothers), lived in the State of Texas. From 1915 to 1919, R. E. Griffith and L. C. Griffith were engaged as traveling salesmen for various distributors selling moving picture films to theater operators, except for about one year during the first World War when L. C. Griffith served as a soldier in the United States Army. As they traveled in the states of Texas, Oklahoma and New Mexico, they grew familiar with the theater situations throughout that territory. They became interested in the exhibition branch

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of the industry and acquired a lease on a building in San Marcos, Texas, and remodeled it into a theater. From that time forward their interest increased and from time to time they acquired, in whole or in part, other theaters. They financed their enterprises from what they could save from their salaries, supplemented with earnings from their ventures. The two brothers came to Oklahoma City, Oklahoma, in December 1919. At that time they had acquired an interest in the "film exchange" industry with W. G. Underwood of Dallas, Texas. They organized such an exchange business in Oklahoma City under the firm name of Oklahoma Specialty Film Exchange. This organization dealt in and distributed what was then known as "state rights" pictures and was a Griffith brothers enterprise. In this line of endeavor the two brothers traveled extensively throughout the state of Oklahoma and became familiar with the theater situation in the various towns and cities. They conceived the idea of establishing modern theaters with modern equipment in various towns, as opportunities presented. In 1924 or 1925 they acquired the Rialto theater in Oklahoma City and placed their younger brother, H. J. Griffith, in charge of it as operator, where he continued until 1926. During this time each brother developed certain individual qualities for business as he became better acquainted with the industry. R. E. Griffith grew skillful in buying and booking films for theaters, an increas-

ingly technical and difficult task. L. C. Griffith developed as an executive. H. J. Griffith became proficient in handling the problems involved in keeping the machinery in operating condition, and the buildings properly lighted, ventilated, equipped and repaired. They possessed in common the ability to recognize and appraise conditions in the industry. Up to 1926 they had worked together as a partnership and had acquired theaters and interests in theaters in several towns and cities. They were handicapped for finances in their endeavor to extend their holdings. An opportunity presented itself in 1926 which they believed would provide them with sufficient capital to carry out their desires of expansion. Consideration of this opportunity resulted in a contract with the Universal Chain Theatrical Enterprises, by the terms of which the Griffith brothers were to organize a corporation to be known as the Griffith Amusement Company. The Universal Chain was to own a series of Class B stock in Griffith Amusement Company and was from time to time to furnish funds to the new organization as loans with interest at ten percent per annum, for the purpose of acquiring theaters. The Griffith brothers were to have the actual management of the Griffith Amusement Company and the final decision relative to the acquisition of theaters. L. C. Griffith became president of the corporation and still retains that office. R. E. Griffith continued as buyer and

booker of films and H. J. Griffith continued in the capacity heretofore outlined. At the time of the organization of Griffith Amusement Company, the Griffith brothers owned fifteen theaters in various places in the territory, most of which were of the storehouse type. The contract with the Universal Chain continued in force and effect until sometime in 1928 when difficulty was encountered by Griffith Amusement Company in procuring advancement of funds from the Universal Chain, and the contract was terminated. The stock owned by the Universal Chain in the Griffith Amusement Company was purchased by the Griffith brothers.

Some of the stockholders of Griffith Amusement Company did not endorse the acquisition of additional theaters and the Griffith brothers organized another corporation, the Consolidated Theatres, Inc., and later changed to Griffith Consolidated Theatres, Inc. The latter corporation acquired theaters as advantageous opportunities permitted. L. C. Griffith later became president of Consolidated Theatres, Inc., and that organization occupied the same offices as Griffith Amusement Company, with the same clerical force and with one overhead expense.

Griffith Amusement Company organized a department to furnish administrative services to theaters throughout the territory, including those of Consolidated Theatres, Inc. It furnished such services as the buying and booking of films, book-

keeping and auditing services, an auto trailer pick-up service to deliver film reels, and various other services valuable to theater operators, at a fee of four percent of the annual gross receipts, under what were called administrative contracts.

In acquiring an interest less than the full ownership of a theater, the purchase contract provided that the Griffith interest would have "exclusive charge of the buying and booking of films."

In the purchase of a theater, the contract usually provided that the seller would not engage in the theater business, directly or indirectly, in that community for a specified period of time, as a part of the consideration for the purchase of the "good will" of the seller.

In 1931, R. E. Griffith left the organization as a regular salaried employee of Griffith Amusement Company and was never thereafter employed by Griffith Amusement Company or Consolidated Theatres, Inc., except as follows. Neither L. C. Griffith nor H. J. Griffith had acquired sufficient experience in buying and booking films to carry on such work successfully for their theaters. The corporations then employed R. E. Griffith to buy and book films for the theaters in which they were interested until the 1938–1939 season, when his services as such were discontinued. In the meantime, H. R. Falls assisted R. E. Griffith in such service until 1938 when Falls assumed such duties for Griffith Amusement Company and Consolidated. From 1938 until his death in 1943, R. E.

Griffith was in no way connected with buying and booking films for the two corporations.

At the time R. E. Griffith severed his connection with the organization in 1931, he exchanged his stock in Consolidated Theatres for three theaters owned by that corporation in New Mexico, but retained his stock in Griffith Amusement Company. He removed to New Mexico and formed two organizations through which he conducted the same character of business. One was incorporated December 23, 1931, as R. E. Griffith Theatres, Inc., and the other was incorporated March 27, 1936, as Westex Theatres, Inc.

The Griffith brothers are shown to have been exceptionally good theater operators, keeping constantly abreast of the development of a rapidly growing industry. Their accounts naturally were coveted by the producers and distributors of moving pictures.

The contentions of the Government, as stated in its brief, are: "that the defendants secured through acquisition of financial interests in competing theatres and by management agreements with them, a film purchasing power far greater than that possessed by any of its local competitors;" "that this power was used to secure contracts for exhibition rights to the films of the major distributors which gave the defendants an unreasonable control over the licensing of such film to others in numerous towns in the states

mentioned;" "that this control was used to absorb or otherwise eliminate a number of actual and potential competitors;" and, "that the acquisition of such power by concerted action, apart from its illegal use, constitutes a violation of the Sherman Act." The Government insists that the evidence justifies the conclusion as a matter of law that these contentions are sound, and stresses in its brief twenty-five theater situations to sustain its position. These situations are taken up in detail in the findings of fact filed herein.

There are three parties involved in the industry in the exhibition of moving picture films—the producer, the distributor, and the exhibitor. The producer and the distributor are closely allied, so much so that they are frequently one institution with two departments. The distributor has to rely upon the producer for product. The producer has to rely upon the distributor for the exploitation of the product. The production of moving picture films entails the expenditure of vast sums of money to meet weekly pay rolls, et cetera. It is the function and business of the distributor to contact the exhibitors throughout the territory where they desire to exhibit the films. In doing this, the distributor is concerned in securing the best returns for the product he can obtain that will insure a steady income to keep the industry moving. The exhibitor is interested in buying the product at the lowest possible cost and in keep-

ing a steady flow of the product for his theater, or theaters, of the kind and character he desires, at the times and places he desires to exhibit.

The product is copyrighted and is not sold to the exhibitor but is licensed to him for exhibition under certain terms and conditions. This practice has developed what is termed in the industry the "standard form" of contract, the provisions of which control except where they conflict with provisions in the "master" or basic contract. The evidence clearly discloses that the distributor selects his own customers and accounts and the exhibitor has no control over that phase of the industry. Many things are taken into consideration by the distributor in making that selection, such as the ability of the exhibitor to exploit the films in his community, his experience in exhibiting moving picture films, the facilities of his theater, his ability to pay for the product, and his integrity or lack of integrity.

In the development of the trade in the industry, the distributor endeavored to have his exhibitor license the product for a year in a contract called a season contract. The solicitation began about the latter part of July or the first of August in each year. At that time the distributor had determined the kind and character of product he would be able to supply the exhibitor for that season. In most instances, the films had not yet been produced and no one knew how successful

they would prove as box-office attractions, and in the season contract the exhibitor would be accorded the privilege of rejecting or eliminating a certain percent of the product during the season. Later, and during the time covered by the complaint, the distributor conceived the idea of licensing the product for a longer term than one season, and entered into a contract to license its product for a two, three or five-year period, which was called a franchise. This proved not to be advantageous to the distributor and has been discontinued by practically all of them. At the time the contracts were entered into between the distributors and the exhibitors, the terms and conditions were arrived at by "barter and trade."

Griffith Amusement Company, Consolidated Theatres, Inc., and the theaters with whom they had administrative contracts negotiated the licensing of films through R. E. Griffith, as their representative, until the 1938–1939 season. At the beginning of the season, as a matter of convenience, R. E. Griffith would go to the New York offices of the various major distributors, and it was the rule that all licensing contracts were required to have the approval of the New York office. There he would enter into negotiations with each distributor separately for the licensing of such of the output of films on hand, or to be produced, as he deemed would insure a supply which would reasonably meet the needs of the

various towns in which they were to be exhibited, at the times they were needed. Such negotiations called for considerable ability and skill, and frequently took weeks to conclude. The negotiations with each distributor would be reduced to a memorandum agreement and later covered by a contract for each theater. These contracts always provided that the exhibition of the films was to be governed by the general provisions of the standard form of contract unless it was provided otherwise in the memorandum agreement.

Beginning with the 1938–1939 season, the negotiating for the licensing of films was done by H. R. Falls, as representative, and in much the same manner as theretofore except as to the place of negotiation. Instead of Falls going to New York, the representatives, or the state or district managers, of the distributors carried on their negotiations with Falls either in Oklahoma City, Oklahoma, or Dallas, Texas.

The evidence discloses that in all the contracts with exhibitors, the films were licensed either at a "flat-rental" price or on a "percentage" basis. The contracts of the defendants Griffith Amusement Company, Consolidated Theatres, R. E. Griffith Theatres and Wextex Theatres are practically all on a flat rental basis, although there are some percentage deals. The competitors of the defendants, aside from those with whom there were administrative contracts, were inclined more often to deal on a percentage basis. On the flat rental

basis the exhibitor took a chance that he might lose on the deal, while on the percentage basis such chance was negligible. The testimony of all the major distributors is that in licensing the films, the Griffith theaters were treated the same as any other exhibitor.

As the industry developed the distributors began to license their films to be run for a second, third or even greater number of exhibitions, in towns and cities where they deemed it to be profitable. This caused some exhibitors to operate theaters for the exhibition of such runs almost exclusively. Such theaters are designated as second and third-run theaters. The second and third-run theaters supplement their product frequently by licensing films produced by other than the major producers, which are called "independents." The distributors alone determined in which localities second and third runs should be licensed and how much time should elapse between the first exhibition of a film and the second and succeeding runs of it.

All of the defendants, except R. E. Griffith, who is dead, together with their representatives who took part in and concluded the negotiations for licensing product with the distributors covering the period of time set out in the complaint, have testified that they had no agreement or understanding with such distributors to any manner control the exhibition of moving picture films in the various towns and theaters. They further testify that what was, or was not, to be licensed to

their competitors in the various situations was never discussed or taken into consideration in such negotiations. Their testimony is corroborated by the representatives of the distributors who were present and negotiating with them in the licensing of product. There is no evidence to the contrary. The representatives of the distributors who took part in those negotiations testify that the buying power of the defendants was not considered the controlling factor in their negotiations, and some of them specify towns in the territory where they have never licensed their product first-, second-, or third-run to the defendants but have always licensed the product to their competitors.

The defendants further testify that they did not combine or conspire to unreasonably restrain trade in the moving picture films, or to stifle competition in the product, or to create a monopoly in it in the various situations in which they exhibited the films.

This brings us squarely to the consideration of the following propositions and the law as declared by our courts governing such situations.

1. Are the acts and conduct of the defendants, as shown by the evidence, in the acquisition and operation of their theaters in connection with their buying power, and the provisions of their contracts with distributors, such as to justify the inference that a conspiracy or combination exists upon the part of the defendants to control the

exhibition of moving picture films, or to unreasonably restrain trade in such products, or to stifle competition in such product, or to create a monopoly in the exhibition of moving picture films in the towns in the territory covered by the complaint, in violation of the Sherman Act?

2. If the court would be justified in concluding that such an inference could be drawn, would the court be further justified in concluding that such inference should control over the positive and direct testimony of the witnesses to the contrary?

3. Is buying power alone, resulting from thrift, fair dealing, and industry, sufficient to justify the inference that a combination or conspiracy exists for the purpose of, and is being used in negotiations to, unreasonably restrain trade, stifle competition, or create a monopoly in a given product, or must it be established by a fair preponderance of the evidence that a combination or conspiracy exists and has for its purpose the use of such buying power to obtain those specific results?

In considering the first proposition it may be necessary to repeat statements contained in our preliminary discussion.

Section 1, Title 15, U. S. C. A., provides, so far as it pertains to the case at bar, as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *

Section 2 provides in part:

> Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a misdemeanor, * * *.

The Government contends that the defendants have by their acts and conduct in the territory and during the time set forth in its complaint violated the provisions of these sections. The Government assumes that the defendants were acting in unison and in a cohesive combination in their theater operations. The evidence does not sustain this contention.

The undisputed testimony is that the defendants, L. C. Griffith, R. E. Griffith, and H. J. Griffith, operated as a partnership in the business of acquiring, operating, and developing theaters until sometime in 1926. There was nothing unlawful or unreasonable in that line of endeavor and they are not charged with any irregular conduct in it. In 1926 they incorporated their business as Griffith Amusement Company. Since that time, the acts of the brothers were those of officers of corporate bodies and not those of individuals, except the services performed by R. E. Griffith as buyer and booker of films. In 1928 another corporation was organized by these brothers, known as Consolidated Theatres, Inc. While the evidence discloses

that these two corporations maintain their offices at the same place, it also shows that they are distinct entities and have had nothing in common with each other aside from the fact that, since their organization, both have engaged in the exhibition of moving-picture films. The uncontradicted evidence is that, in 1931, R. E. Griffith severed his business connection with both Griffith Amusement Company and Consolidated Theatres and has had nothing to do with the business policies or operation of those two organizations since that time aside from serving them as agent and representative in purchasing and booking films for a consideration agreeable to the parties, until the season of 1938–1939, when he ceased to function in that capacity.

Neither Griffith Amusement Company nor Consolidated Theatres had any control of any character over the operations of R. E. Griffith Theatres, Inc., or Westex Theatres, Inc. Nor did R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., have any control of any character over the operations of Griffith Amusement Company or Consolidated Theatres, Inc., during the time covered by the complaint, but each has been, and was at the time of this trial, a distinct entity from the date of its organization.

The Government contends that the four corporation defendants were combined into one circuit of theaters and refers to it as "the Circuit." The

evidence does not so disclose. It does disclose that each corporate defendant owned and operated a distinct circuit or chain of theaters.

The business or industry in which these defendants are engaged is competitive in many places. We are not concerned with those towns where there was no competition at the time of the filing of this complaint except any incidental bearing it might have upon competitive situations during the time covered by the complaint. "Competition," it has been said, "is the life of trade." The very law we have under consideration, the Sherman Act, has for its purpose the protection of competition. The law in every conceivable way has always favored it, when fairly conducted.

In *Sinclair Refining Company* v. *Federal Trade Commission*, 276 F. 686, 688 (CCA 7), the court said:

> Competition is not an unmixed good. It is a battle for something that only one can get; one competitor must necessarily lose. The weapons in competition are various. Superior energy, more extensive advertising, better articles, better terms as to time of delivery, place of delivery, time of credit, interest or no interest, freights, methods of packing, lower prices, more attractive and more convenient packages, superior service, and many others, are and always have been considered proper weapons. Expense attending the use of any weapon, the foolish-

ness of it, the fact that a method is uneconomical, or that the competitor cannot meet any method or scheme of competition because it will be ruinous to him to do so, have not, nor has either of them, ever been held unfair. Such things are a part of the strife inherent in competition. * * *

If the battle of competition is carried to its normal conclusion one competitor reaches a point of ascendency over the other, and the losing competitor naturally takes a secondary position or is completely vanquished. They both cannot occupy the same position in the contest at the same time. It is a competitive contest and there is no rule of law, economics, or business that can strike and maintain an even balance between the participants during its progress. In the business in which the individual defendants were engaged, the the exhibition of moving picture films, both competitors could not exhibit the same picture at the same time. The licensing of the film was the business of the distributor, and his choice of who should exhibit it and the terms and conditions under which he would license the film were matters that were wholly in his control. The distributor either had the film or was going to produce it; it was his article and was for license. The market was provided by the distributor; the various exhibitors knew where and from whom the article was to be licensed. The methods of the

distributor were known to all. The evidence shows that the exhibitor either could go to headquarters direct and bargain or could wait for some representative to call on him and bargain through the representative. If the exhibitor was content to wait for the representative, or depend upon correspondence, he took his chances on supply. If upon the other hand he cared to go to headquarters and bargain, it was possible to get a better choice of product, just as it is in any other line of endeavor where one is engaged in retailing to the trade goods that are provided by wholesale dealers.

The evidence discloses that the defendants took advantage of the opportunities afforded them in the ordinary course of dealing during the time covered by the complaint. That was their privilege and there was nothing illegal or immoral about it, merely because they represented large interests or were able to make large deals. The evidence shows that the licensing was all arrived at by barter and trade, and the exhibitors all placed upon the same footing.

The attitude of the Government is one of suspicion. Many of the normal and natural occurrences and situations are given a sinister meaning and argued from that standpoint. The proposition of what "could be done" or "might be done" under given situations is argued vigorously. But we are not concerned with that approach. Our

concern is what the evidence discloses was done, and any fair inferences we can gather from those acts regarding the intent of those who acted. A fair indication of this attitude can be gathered from the Government's brief (p. 14) which states:

> The ability of the defendant to withdraw from a particular major distributor the entire revenue from its closed towns was of course a major threat it possessed. When this is controlled by one individual negotiating with a distributor its effect is self evident.

The evidence fails to disclose that any threat was so made by R. E. Griffith or any other defendant in the negotiations for films, but to the contrary. The suggestion that any distributor on account of that ability was intimidated or compelled to sell films to the defendants is not supported by the evidence. If the mere ability to withdraw all purchases from a distributor in noncompetitive situations, unless the purchaser grants favors in competitive situations, is a threat then all exhibitors possessing two theaters, one in a competitive situation and one in a noncompetitive situation, violate the Sherman Act. Such argument is unsound and falls of its own weight.

The Government contends that "Section 1 of the Sherman Act was violated by unreasonable restraints on the interstate distribution of motion pictures resulting from: (a) each of the master deals and franchises between a distributor and the

Griffith Circuit; (b) each of the agreements between exhibitors for collective licensing; (c) each of the agreements between exhibitors by which one agreed not to compete with the other either by a pooling arrangement or by a sale of goodwill, and (d) unreasonable restraints resulting from implied agreements between defendants and distributors." These contentions will be considered in order.

The Government assumes a state of facts not supported by the evidence. There are no master deals or franchises between any distributor and the "Griffith Circuit" shown in the evidence. The master deals and franchises in their final analysis are between a distributor and each of the four corporate defendants, or between a distributor and some individual exhibitor who is not a party defendant here. They are separate deals negotiated by an agent for the exhibitors upon the one hand and the various distributors individually upon the other hand. There is no evidence that there was any agreement, conspiracy or combination between the negotiators of the deals that had for its object granting to the defendant exhibitors any advantage or concession for the purpose of stifling competition, monopolizing the industry, or occasioning or bringing about any unreasonable restraint in trade in the product in such territory. The undisputed testimony is that such matters were never at any time discussed between the parties.

The master deals consist of either a memorandum agreement at the close of the negotiations signed by the parties, or in some instances, a letter from one party setting forth the terms and accepted by letter by the other party. Later these were approved by the proper officials of the distributors, which were followed by contracts embodying the agreement with the individual theater exhibitor. *These* is nothing in the evidence that indicates anything abnormal or unusual in these agreements.

As to the franchises, the evidence is that prior to the time covered by the complaint, the distributors conceived the idea of licensing their films for a longer period that one season. They sought out the exhibitors and endeavored to license them for a term of years, which resulted in contracts that were called franchises. They not only sought out the exhibitors operating a circuit of theaters, but also the exhibitor operating one theater. Such licensing became a part of the ordinary method and many operators of theaters had franchises for a term of two, three and even five years. Later most of the distributors concluded that in practical operation, a franchise was not desirable and discontinued the practice.

That such franchises were considered as a part of the ordinary method of contracting for moving picture films by all the trade is borne out by Section IV of the Consent Decree which provides: "The provisions of this decree shall not apply to

any franchise which was signed prior to June 6, 1940."

The evidence discloses that the defendants entered into four of such franchise contracts. One executed May 8, 1930, for a term of five years, between Metro-Goldwyn-Mayer Distributing Corporation (now Loew's) and Griffith Amusement Company, Consolidated Theatres, Inc., and two other corporations not party defendants here. It was amended as to Griffith Amusement Company and Consolidated on April 20, 1933. At the time of the filing of the complaint it had practically one year to run. It was not renewed. One executed September 15, 1934, for a term of three years, between Paramount Pictures Distributing Company and Griffith Amusement Company, R. E. Griffith Theatres, Inc., Consolidated Theatres, and fifteen other organizations not parties to this action, all represented by R. E. Griffith, agent for such parties. This franchise was not renewed. One executed March 19, 1935, for a term of three years between RKO Distributing Corporation and Griffith Amusement Company, R. E. Griffith Theatres, Consolidated Theatres, and five other organizations not parties to this action, all represented by R. E. Griffith, as agent. This franchise was not renewed. One executed September 14, 1937, for a term of three years between Columbia Pictures Corporation and Consolidated Theatres, R. E. Griffith Theatres, Griffith Amusement Company and Westex Theatres,

by R. E. Griffith "authorized agent." This was not renewed.

During the time covered by the complaint, the defendants did not have franchises in effect with more than two distributors during any season. The franchises with Loew's (MGM) and Paramount were in effect during the 1934–1935 season. The franchises of Paramount and RKO were in effect in the 1935–1936 and 1936–1937 seasons. Franchises were in effect with RKO for the 1937–1938 season, and with Columbia for the 1938–1939 and 1939–1940 seasons. Thus at least six of what is termed the major distributors had no franchises with the defendants during any season covered by the complaint. In view of that situation we fail to see how the franchises held by the defendants could seriously restrain commerce in the films. Certainly they did not unreasonably restrain it, regardless of any of the provisions in the franchises that appear upon their face.

But counsel for the Government insist there are provisions in those franchises that would justify the conclusion that special privileges were given to the defendants, and that by reason thereof, it can be inferred that some kind of an agreement or conspiracy was in effect between the parties to the franchise to restrain commerce, control product, or monopolize.

Those provisions have been carefully considered. The argument is not based upon what has

been done under the provisions, but is chiefly based upon what *could* be done, or how the provisions *could* be interpreted. For instance, in the Government's brief (p. 66), counsel states:

> In the agreement with Columbia Pictures Corporation * * * the following clause appears, "It is agreed that the exhibitor can revise the schedule of allocation by towns, provided the total amount of money by picture, in each classification, for the Circuit, remains the same." * * * The effect on competition of such a right is too clear to require elucidation.

Then counsel proceeds to elucidate as follows:

> Under the terms of such contracts the Griffith Circuit could allocate the entire amount of rental to its most prosperous theatre and utilize all the others in the chain as fighting theatres to drive out the independent exhibitors in the other towns in which it exhibited the distributor's pictures. * * *

There is no evidence in the record that any such conduct was indulged in by the defendants, or that such sinister thoughts occurred to them. There is a vast difference between what *might have been done* and what *could have been done* and what *was done.*

Counsel argues further in the brief (p. 67):

> In the three-year franchise of Paramount Pictures, * * * the following clause appears, "Distributor agrees to release ex-

> hibitor from the obligation covering any individual town which the exhibitor may find it necessary to close permanently." The effect of such a clause is similar to that granted to allocate pictures between towns. It is also capable of the construction that a distributor may by entering into a pooling arrangement with a competitor decide to close his theatre in a particular town and thus restrain the interstate distribution of product.

This would be a strained construction of a simple and unambiguous clause in a contract, the ordinary and clear meaning of which is obvious.

Again counsel states (p. 67):

> In the contract between the RKO and the Griffith Circuit * * * this clause appears, "It is agreed that if the exhibitor shall during the term of this agreement open additional theatres in any of the towns covered herein, with the exception of Oklahoma City, that any of the feature photoplays and short subject photoplays may be exhibited therein in place of the theatres named herein." The effect of this clause is to arm Griffith with an assured franchise to license pictures in any theatre which he may desire to open even though he decided to open it solely for the purpose of destroying a competitor's business. It is difficult to conceive of greater relinquishment of control of its film distribution than this one and its inclusion in a master deal belies the protestations that each theatre was con-

sidered in arriving at the rental prices fixed in the master deals.

Under the terms of this clause, the Griffith Circuit was empowered to open the flimsiest kind of a converted store show immediately adjacent to its independent competitor and without fear of loss of product play the top pictures of the distributor.

This also is a strained construction. The clause is simple and plain and admits of no inference of a sinster or hidden meaning when the contract is considered as a whole. Counsel has overlooked many contingencies in arriving at such a construction. Here is a contract covering many towns. A theater may be destroyed by fire or storm; a lease may expire and cannot be renewed; local authorities may condemn a building for theater use. Any number of things might occur to cause an exhibitor to open another theater in a town covered by the contract. The exhibitor has provided himself by license with moving-picture films to operate his theaters in a town over a period of time. Thus with good foresight and business judgment he provides for such a contingency. The clause does not give the exhibitor any new or additional product. It simply permits him in such event to use product, that under his contract he has obligated himself to play and pay for, by exhibiting the same film in the same town in a location other than the one named in the contract. This gives him no unfair advantage over

his competitor, takes away none of his competitor's product, and certainly in no way unreasonably restrains commerce, nor can it be construed as an intent to monopolize.

Under proposition (b), "the agreements between exhibitors for collective licensing restrain competition and were an unreasonable restraint of trade," counsel for the Government argues as follow (p. 68):

> In some 48 instances, agreements were entered into under the terms of which booking of pictures would be handled by the Griffith Circuit. Each of these agreements pro tanto reduced the bargaining power of a major distributor and constituted a combination against him for the securing of the special privileges some of which have been discussed above. Moreover, they had the effect of preventing competition between the exhibitors entering into them for the booking was centrally controlled.

Again we have an assumption that all of the defendants were combined in one circuit which is far from being supported by the record. Counsel assumes this position from the fact that all of the defendants, until the 1938–1939 season, negotiated the purchase and booking of films through R. E. Griffith as agent for the parties involved in the deals.

There is no difference in principle in the instant case and the case of *Appalachian Coals, Inc., et al.* v. *United States*, 288 U. S. 344, 357,

359, 377, except in the case at bar it is contended the defendants were operating collectively by purchasing and booking through an exclusive buying agency and in the case cited an exclusive selling agency was under attack. In the discussion of it, Mr. Chief Justice Hughes said:

> The challenged combination lies in the creation by the defendant producers of an exclusive selling agency. * * *
>
> * * * * * *
>
> First: There is no question as to the test to be applied in determining the legality of the defendants' conduct. The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor. * * * The decisions establish, said this Court in *Nash* v. *United States*, 229 U. S. 373, 376, "that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade." [Citing numerous authorities.]
>
> In applying this test, a close and objective scrutiny of particular conditions and purposes is necessary in each case. Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves

is not enough to condemn it. "The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains." *Chicago Board of Trade* v. *United States, supra* (246 U. S. 231). The familiar illustrations of partnerships, and enterprises fairly integrated in the interest of the promotion of commerce, at once occur. The question of the application of the statute is one of intent and effect, and is not to be determined by arbitrary assumptions. * * *

* * * * * *

* * * The Anti-Trust Act aims at substance. Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge corporation bringing various independent units into one ownership. Either may be prompted by business exigencies, and the statute gives to neither a special privilege. The question in either case is whether there is an unreasonable restraint of trade or an attempt to monopolize. * * *

If the Act "aims at substance" and if "realities must dominate the judgment" and we apply these principles here, then it is apparent that a similar condition confronted the defendants Griffith Amusement Company and Consolidated Theatres, at the time R. E. Griffith severed his active

connection with them. It was good business judgment to procure his services for the corporations. He, by training and experience, was well fitted for it. What is abnormal about such an arrangement? But that is not all there is to the administrative agreements. Counsel apparently overlooks the fact that the agreements provide for many types of service, the buying and booking of films is only one incident, and that for all the services to be performed under it, a specified fee is to be charged.

The administrative contracts are of two general kinds or types. Counsel for defendants quite clearly describe them in their brief (pp. 70–71), as follows:

> One type is an agreement between one of the corporate defendants and a third party with whom it was jointly operating a theatre or theatres in a certain town, setting forth the terms of the partnership operation, the duties to be performed by each party, the compensation to be received by each party, the division of profits, and other details of the operating agreement.
>
> The second type of contract reflected in those exhibits is a contract between Griffith Amusement Company and Consolidated Theatres, Inc., or Consolidated Theatres, Inc., and its partner, as the owners and operators of theatres, whereby for an agreed percentage of the gross box office receipts Griffith Amusement Company

agreed to perform certain services, including the licensing and booking of pictures.

Suffice it to say the objectionable paragraph pointed out by the Government is not the controlling feature of the contracts but is merely incidental. The contracts must be considered as a whole, and when so considered, there is nothing abnormal about them and no hidden or sinister meaning in them. There is nothing in them that signifies any intent to unreasonable restrain trade, stifle competition or monopolize.

Proposition (c), the agreements between exhibitors by which one agreed not to compete with the other either by a pooling arrangement or by a sale of good will constituted unreasonable restraints of trade, calls for a consideration of the facts and circumstances surrounding these two characters of transaction.

The alleged pooling arrangements stressed by the Government are in the situations at Chickasha, Enid, and Stillwater, Oklahoma. The defendants designate them as partnership agreements. But regardless of their designations, they are agreements that affected local situations concerning economy, expense, and efficiency in operation that called for that character of agreement. In the Chickasha situation, no competition of the two circuits was affected in any manner, and the mere fact that an unprofitable and unsuitable theater was abandoned and one party to the contract

finally became the owner of the theater by a mutual and satisfactory sale does not condemn the transaction as monopolistic. In the Stillwater situation, under the circumstances surrounding the transaction, there is nothing sinister or abnormal about it. On account of the depression and the inexperience of Russ, the operator of the competing theater, it is apparent that his proposition to Griffith Amusement Company was reasonable, and the terms of the agreement had the effect of mutually assisting both organizations in the situation which was purely a local one. The Enid situation also was a purely local affair and there was nothing abnormal about the contract or its effect. All of these three contracts are shown by the evidence to have been brought about by efforts to economize and more efficiently operate, with no apparent desire to stifle competition, unreasonably restrain, or monopolize. "The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it." *Appalachian Coals, Inc.* v. *United States, supra.*

Under this contention, the Government stresses the restrictive covenant found in the contracts in the purchase of theaters. In these contracts, as a part of the consideration, it is provided that in purchasing the good will, the vendor is not to engage in the same business for a specified time and at a specified place. There is nothing abnormal or unusual in this character of contract.

What is known as good will, that has been built up by an owner of a business, is a valuable asset, and in the sale of that business he should be able to profit by it. This right has been so recognized and approved by our courts.

A great many of these contracts are Oklahoma contracts and are governed by state statute.

Section 217, Title 15 Okla. St. Ann, provides:

> Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

Section 218 of the same title provides:

> One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or part thereof, so long as the buyer, or any person deriving title to the good will from him carries on a like business therein.

After carefully considering the Oklahoma contracts in view of the state statutes and the decisions of the Supreme Court interpreting them, there can be no question as to their validity in that state. The contracts concern the sale of theaters, leases, equipment, et cetera, as well as good will. The covenants stressed by the Government are all based upon the purchase of the good will of the vendor. Whether they violate the Sherman

Act would depend upon the intent of the parties, or the results effected.

In *United States* v. *Addyston Pipe & Steel Company, et al.*, 85 F. 271, 280, in discussing the character of contract under consideration, the court said:

> The inhibition against restraints of trade at common law seems at first to have had no exception. See language of Justice Hull, Year Book, 2 Hen. V., folio 5 pl. 26. After a time it became apparent to the people and the courts that it was in the interest of trade that certain covenants in restraint of trade should be enforced. It was of importance as an incentive to industry and honest dealing in tradē, that, after a man had built up a business with an extensive good will, he should be able to sell his business and good will to the best advantage, and he could not do so unless he could bind himself by an enforceable contract not to engage in the same business in such a way as to prevent injury to that which he was about to sell. It was equally for the good of the public and trade, when partners dissolved, and one took the business, or they divided the business, that each partner might bind himself not to do anything in trade thereafter which would derogate from his grant of the interest conveyed to his former partner. Again, when two men became partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their cap-

> ital, enterprise, and energy to carry on a successful business, and one useful to the community. * * *

And again, in considering whether the contract effected an unreasonable restraint in trade, the court quoted with approval from the case of *Horner* v. *Graves*, 7 Bing. 735, as follows:

> We do not see how a better test can be applied to the question whether this is or not a reasonable restraint of trade than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party requires can be of no benefit to either. It can only be oppressive. It is, in the eye of the law, unreasonable. Whatever is injurious to the interests of the public is void on the ground of public policy.

In *Goldberg et al.* v. *Tri-States Theatre Corporation*, 127 F. 2d 26, 29 (C. C. A. 8) an injunction was sought based upon the violation of a restrictive clause in a contract similar to the one at bar. In passing upon the clause as to whether it effected a restraint in trade, the court said:

> The validity of the agreement, as a restraint upon trade, is not seriously open to question under the general contract law of Nebraska. An agreement which places a restriction upon the use of certain real

estate is not invalid in Nebraska, as being an unreasonable restraint of trade, where the restriction is purely ancillary to the acquiring of an interest in another piece of real estate for commercial purposes; where it places only a limited restraint as to period and manner of the use of such property; where it does not appear to be greater than reasonably to serve as a protection in accomplishing the legitimate commercial purpose for which the interest in the other real estate involved was acquired; and where it does not have as its primary object or as its direct result the fostering of some illegal monopoly.

And in summing up the transaction, the court said:

Under all the circumstances of the transaction, it must be held that the restrictive agreement was intended simply and fairly to protect the interests created by the new sublease and the purchase of the 99 year leasehold; that it was only such a reasonable protection as any purchaser in good faith would have required under the circumstances of the transaction; that the situation which prompted the deal and the relationship in which the parties dealt afford no sound basis for inferring that it was dominated by any purpose of fostering an illegal monopoly under a previous combination and conspiracy, if any such combination ever had existed, as appellants contend; and that, so far as the public

is concerned, it was not intended to and did not serve to achieve any such harmful or illegitimate result.

The situation involved in the Oklahoma contracts containing restrictive clauses could not be stated in more apt language. Under all the facts and circumstances surrounding the various Oklahoma contracts, they appear both valid and reasonable.

The Government particularly stresses the covenant in the contract of sale between A. M. Morgan and Jack Pickens, as agent for the Brady Amusement Company, Westex Theatres, and R. E. Griffith Theatres, in which Morgan sold the Ritz theater at Brady, Texas. The evidence clearly discloses that Morgan's purpose in acquiring theaters was not so much with the idea of operating the theater as it was to sell out to a competitor. Under the circumstances surrounding that sales transaction it is quite easy to understand why the purchaser might desire such a covenant in the contract of sale that was agreed upon, which was that Morgan "will not engage in the moving picture business or theatre business of any kind or character, directly or indirectly, in any town in the State of Texas, Oklahoma and New Mexico in which he might be in competition with Brady Amusement Company, Westex Theatres, Inc., or the R. E. Griffith Theatres, Inc., for a period of five years from this date. If the provisions in the contract were put to a test, it may be admitted that it

would be held to be valid as to the town of Brady, Texas, and invalid as to the other territory attempted to be covered. But so far as it affects the question before us, taking into consideration the facts and circumstances surrounding the transaction, there is nothing that would justify the conclusion that the parties defendant who were parties to this contract were in a conspiracy or combination to control the exhibition of moving picture films at Brady, Texas, or any other place, or that the restrictive covenant in the contract would justify the conclusion that there was an intent upon the part of those defendants to stifle competition in the exhibition of films, or to unreasonably restrain interstate trade or commerce in them, or that it had any such effect. The sale as it was ultimately closed was initiated by Morgan and was satisfactory to him. He was not unreasonably restrained in the town of Brady, Texas, and he makes no complaint that he was so restrained at any other place. The public was in no manner adversely affected by the transaction.

As to proposition (d), that the Sherman Act was violated by unreasonable restraints resulting from implied agreements between defendants and distributors. The court is not required to search for implied agreements in the face of the fact that the agreements are all written, signed by the parties, and are unambiguous in meaning. We are again called upon to speculate and guess at some hidden or concealed perfidy that does not

appear in the instruments themselves. Where a conspiracy is charged, it is the duty of the court to scrutinize and consider carefully any and all transactions that would throw any light upon the issue, and where the evidence consists of written agreements, those agreements and the circumstances surrounding their execution should be considered carefully. The purpose of the agreement, the object the parties had in mind and the results accomplished must all be considered. But when that is done and no serious fault found in the instruments, then it is not the duty of the court to speculate and guess as to what *could be done* or what *might be done,* or the effect that *might be accomplished* under the agreement when the possible purpose was totally foreign to what the parties expressed in the agreement.

The Government contends that "Section 2 of the Act was violated by the defendants monopolizing the business of operating theatres and the supply of major films." Under this contention, buying power and its effect are again emphasized. This question had consideration in discussing the previous contention. Suffice it to say here that the evidence fails to disclose that the defendant exhibitors in the buying and booking of moving picture films contracted for any greater supply of product than they believed was reasonably necessary to supply the demands of the public in the various situations. In the purchase of their product, the positive evidence is quite clear that there was no intent upon the

part of the defendants to control, stifle competition in or monopolize the industry in the territory, or to unreasonably restrain interstate distribution of moving picture films. For that reason it is not apparent how the case of *United States* v. *Aluminum Company of America et al.*, 148 F. 2d 416, relied upon by the plaintiff, applies here. The distinction is clear. Speaking of the Aluminum Company, the court said:

> * * * It was not inevitable that it should always anticipate increases in the demand for ingot and be prepared to supply them. *Nothing compelled it to keep doubling and redoubling its capacity* before others entered the field. * * * [Italics supplied.] Id. p. 431.

In the case at bar we have no such situation. There is a vast difference between ingots and moving picture films. Ingots of aluminum are a staple and fixed product. Moving picture films are a fluctuating and uncertain product. Until a film has been exhibited no one knows or can accurately estimate its value as a box-office attraction, either as a first-run exhibition or a subsequent run exhibition. What the demand for its exhibition may by the public is an unknown factor. The market in which it is procured by the exhibitor is a competitive one in which all exhibitors may enter and compete in compliance with the rules and customs of the industry, as they then exist, to obtain the product. Unless

some unfair or illegal advantages are taken by one competitor, his rival in business should not be heard to complain because he has been unsuccessful in procuring the product.

Second proposition: If the court would be justified in concluding that such an inference could be drawn, would the court be further justified in concluding that such an inference should control over the positive and direct testimony of witnesses to the contrary?

When conspiracy is one of the elements of the charge against a defendant, the very charge itself is of such a nature that circumstantial evidence may be the character of evidence that will be relied upon to sustain the charge. The law imposes upon the plaintiff the burden of sustaining the allegations of his complaint by a preponderence of the evidence. In a case such as we have here it is the duty of the court to determine whether or not the allegations of the complaint are so sustained. The court is entitled to have presented positive evidence when it is obtainable, and not be compelled to search the record for inferences that may be drawn.

The positive testimony concerning the transactions and conduct of the parties by those who were in a position to know, so far as the negotiations of the defendants and various distributors are concerned, is that no combination, understanding or agreement existed between them that had for its purpose the control of the exhibition

of moving picture films by any of the defendants, or any unreasonable restraint in trade in the product, or monopolization by the defendants of the product, or the stifling of competition upon the part of the defendant and the distributors. In fact they all state that the competitors of the defendants were never mentioned in the negotiations for film contracts. The Government, however, from testimony detailing trivial circumstances which in each case is positively denied by witnesses who appear to the court to be worthy of belief, in connection with the documentary evidence, assumes that the court must infer the existence of a combintaion and conspiracy.

The Government cites *United States* v. *Crescent Amusement Company et al.*, 323 U. S. 173, and *United States* v. *Schine Chain Theatres, Inc., et al.*, 63 F. Supp. 229 (D. C., N. Y., Oct. 8, 1945). When these two cases are analyzed they are easily distinguished from the case at bar. In the *Crescent Amusement Company* case, many of the things charged by the Government, which are similar to the charges here, the trial court found to be sustained by the evidence. Upon the appeal the only question before the court was whether there was evidence to sustain the lower court, and the court said:

> The crux of the government's case was the use of the buying power of the combi-

> nation for the purpose of eliminating competition with the exhibitors and acquiring a monopoly in the areas in question. There was ample evidence that the combination used its buying power for the purpose either of restricting the ability of its competitors to license films or of eliminating competition by acquiring the competitor's property or otherwise. For example, the defendants would insist that a distributor give them monopoly rights in towns where they had competition or else defendants would not give the distributor any business in the closed towns where they had no competition. * * *. Id. 181.
>
> * * * * * *
>
> * * * But the vice of this undertaking was the competition of several exhibitors in a plan of concerted action. They had unity of purpose and unity of action. They pooled their buying power for a common end. It will not do to analogize this to a case *where purchasing power is pooled so that the buyers may obtain more favorable terms.* The plan here was to crush competition and to build a circuit for the exhibitors. * * * [Italics supplied.] Id. 183.

Although the charge is similar to the charge in the instant case, the proof is not. In the case at bar there is no testimony by any witness to that effect, but the testimony is to the contrary.

The *Schine* Case, *supra,* is not applicable here for the same reason and is thus clearly distin-

guishable. It is true that the Government followed practically the same pattern in its charges in that case as in the instance case. But in the *Schine* Case it satisfied the court with ample proof to sustain the charges and in the case at bar it has wholly failed to sustain the charges by a fair preponderance of the evidence.

The Government also cites the case of *Interstate Circuit, Inc., et al.* v. *United States,* 306 U. S. 208, 213. This case is also easily distinguishable. There the court again was passing upon the sufficiency of the findings of fact to support the decision of the court and stated:

> The case is now before us on findings of the District Court specifically stating that appellants did in fact agree with each other to enter into and carry out the contracts, which the court found to result in unreasonable and therefore unlawful restraints of interstate commerce.
>
> * * * * *
>
> The trial court *drew the inference of agreement from the nature of the proposals made on behalf of Interstate and Consolidated;* from the manner in which they were made; from the substantial unanimity of action taken upon them by the distributors; *and from the fact that the appellants did not call as witnesses* any of the superior officials who negotiated the contracts with Interstate or any official who, in the normal course of business, would have had knowledge of the existence

or nonexistence of such an agreement among the distributors. This conclusion is challenged by appellants because not supported by subsidiary findings or by the evidence. We think this inference of the trial court was rightly drawn from the evidence. * * * Id. 221 [Italics supplied.]

And the court further amplified as follows:

* * * Taken together, the circumstances of the case which we have mentioned, *when uncontradicted and with no more explanation than the record affords,* justify the inference that the distributors acted in concert and in common agreement in imposing the restrictions upon their licenses in the four Texas cities.

This inference was supported and strengthened *when the distributors, with like unanimity, failed to tender the testimony, at their command,* of any officer or agent of a distributor who knew, or was in a position to know, whether in fact an agreement had been reached among them for concerted action. When the proof supported, as we think it did, the inference of such concert, the *burden rested on appellants of going forward with the evidence to explain away or contradict it.* They undertook to carry that burden by calling upon local managers of the distributors to testify that they had acted independently of the other distributors, and that they did not have conferences with or reach agreements with the other distributors or their

representatives. *The failure under the circumstances to call as witnesses those officers who did have authority to act for the distributors and who were in a position to know whether they had acted in pursuance of agreement is itself persuasive that their testimony, if given, would have been unfavorable to appellants.* The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. Citing authorities. [Italics supplied.] Id. 225.

Even if the court would be justified in inferring from the Government's evidence, consisting largely of a documentary character, that a combination or conspiracy existed upon the part of the defendants and distributors as alleged in the complaint, and the burden was thus cast upon the defendants to "explain away or contradict it," the defendants have met and discharged that burden to the thorough satisfaction of the court with positive evidence from those officers of the distributors who negotiated with the defendant exhibitors.

Third proposition: Is buying power alone, resulting from thrift, fair dealing and industry, sufficient to justify the inference that a combination or conspiracy exists for the purpose of, and is being used in negotiations to, unreasonably restrain trade, stifle competition, or create a monopoly in a given product, or must it be estab-

lished by a fair preponderance of the evidence that a combination or conspiracy exists and has for its purpose the use of such buying power to obtain those specific results?

When we come to consider this proposition, the law is well settled that the size of an institution, regardless of a power that might be exercised on account thereof, is not in itself an offense against the statute. The principle is well expressed in *United States* v. *International Harvester Company et al.*, 274 U. S. 693, 708, where the court said:

> * * * The law, however, does not make the mere size of a corporation, however impressive, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power. *United States* v. *Steel Corporation*, 251 U. S. 417, 451. * * *"

In *Federal Trade Commission* v. *Paramount Famous-Lasky Corporation et al.*, 57 F. 2d 152.157, the court said:

> * * * But the size alone does not give rise to a violation of the law. *United States* v. *International Harvester Co.*, 274 U. S. 693, 47 S. Ct. 748, 71 L. Ed. 1302; *United States* v. *U. S. Steel Corp.*, 251 U. S. 417, 40 S. Ct. 293, 64 L. Ed. 343, 8 A. L. R. 1121. * * *

In *United States* v. *United States Steel Corporation et al.*, 251 U. S. 417, 450–451, the court said:

* * * The Government, therefore, is reduced to the assertion that the size of the Corporation, *the power it may have, not the exertion of the power,* is an abhorrence to the law, or as the Government says, "the combination embodied in the Corporation unduly restrains competition by its *necessary effect* (the italics are the emphasis of the Government) and therefore is unlawful regardless of purpose." "A wrongful purpose," the Government adds, is "matter of aggravation." The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes should we be led. Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, *which regards power rather than its use* the determining consideration, seems to conduct. Certainly conducts we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor, for in ascendency there is the menace of monopoly.

We have pointed out that there are several of the Government's contentions which are difficult to represent or measure, and, the one we are now considering, that

is the power is "unlawful regardless of purpose," is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The regression is extreme, but short of it the Government cannot stop. The fallacy it conveys is manifest.

* * * The Corporation is undoubtedly of impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. *But we must adhere to the law and the law does not make mere size an offense or the existence of unexerted power an offense.* It, we repeat, requires *overt acts* and trusts to its prohibition of them and its power to repress and punish them. It does not *compel* competition nor require all that is possible." [Italics supplied.]

In *United States* v. *Standard Oil Company of New Jersey et al.*, 173 F. 177, 196, in discussing the principle of law under consideration here, Mr. Justice Sanborn said:

* * * On the other hand, Congress did not intend to impede legitimate commercial activity, nor put a limit to its fruits. The genius and industry of man, when kept to ethical standards, still have full play, and what he achieves is his; and this applies as well to a corporation, in which the energies of many are concen-

> trated under the authority of law in a single organization. A railroad company, for instance, which has extended its line across the continent and conquered the waste or wilderness, is not a monopoly within the statute merely because its capital is great and it alone serves the tributary country; and so of an industrial corporation, the wisdom and business sagacity of whose managers have foreseen and taken advantage of the natural tendencies of trade and caused it to outstrip all competition. Success and magnitude of business, the rewards of faith and honorable endeavor, were not among the evils which threatened the public welfare and attracted the attention of Congress. But when they have been attained by wrongful or unlawful methods, and competition has been crippled or destroyed, the elements of monopoly are present. * * *

The theories and contentions of the parties have been patiently followed by the court but there is nothing in the evidence to justify the conclusion that any buying power possessed by the defendants was ever exerted by the defendants to "secure contracts for exhibition rights to the films of the major distributors which gave the defendants an unreasonable control in licensing such film to others in the various towns in the territory covered by the complaint. There is nothing in the evidence that would justify the conclusion that the buying power of the defend-

ants was used to absorb or otherwise eliminate a number of actual and potential competitors, nor would that justify the conclusion that the possession of the power or the manner in which it was used is a violation of the Sherman Act.

The Government has failed to establish by a fair preponderance of the evidence that the defendants have purchased or contracted for more moving picture films than they believed were, or in fact were, reasonably necessary to supply their theaters. Competition was fair under the circumstances of each situation involved. The defendants went into the open market and bought their product from the distributors in the same manner as was open to all competitors. The defendants were alert and progressive and took such advantages only as were natural in the industry. There is nothing in the evidence to justify the conclusion that the distributors were overawed or overreached in their dealings with the defendants; or that the distributors were compelled or coerced into entering into any contract with the defendants by reason of the buying power of the defendants, or from any other cause. There is no evidence that would justify the conclusion that any combination or agreement of any character existed between the defendants and the distributors that had for its purpose the stifling of competition in, or monopolization of, the exhibition of moving picture films, or to unreasonably re-

strain trade or interstate commerce in such exhibition of moving picture films, that has been occasioned or brought about by the manner in which the defendants used any buying power they possessed.

Findings of fact and conclusions of law will be filed simultaneously with this opinion. A form of judgment consistent with this opinion and the findings of fact and conclusions of law may be submitted within fifteen days from this date.

EDGAR S. VAUGHT,
United States District Judge.

Dated this 9th day of October 1946.

Endorsed: Filed in District Court on October 9, 1946.

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No. 64

In the Supreme Court of the United States

OCTOBER TERM, 1947

THE UNITED STATES OF AMERICA, APPELLANT

v.

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES

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Statute:

Sherman Act of July 2, 1890, 26 Stat. 209, Secs. 1, 2, 4 as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167 and by the Act of August 17, 1937, 50 Stat. 693 (15 U. S. C. 1, 2, and 4) 2

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 64

THE UNITED STATES OF AMERICA, APPELLANT

v.

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 51–82) is reported in 68 F. Supp. 180.

JURISDICTION

The decree of the District Court was entered on October 24, 1946 (R. 129). A petition for appeal was filed on December 19, 1946, and was allowed on December 23, 1946 (R. 129–130, 133). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 15

U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. 345). Probable jurisdiction was noted on May 12, 1947.

QUESTION PRESENTED

The appellee motion picture exhibitors, by pooling their film-buying power, jointly negotiated film licensing agreements with the major film distributors. These agreements by their terms and in actual effect prevented other exhibitors from competing with the appellees in procuring feature films for either first or subsequent run exhibition. Simultaneously, the appellees eliminated competition by such means as acquiring the theatres of competing exhibitors under agreements binding them not to compete in the future. The question is whether such concerted action constituted a combination unreasonably to restrain trade and to monopolize or attempt to monopolize motion picture exhibition in the towns in which the appellees operated theatres.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209 (15 U. S. C. 1, *et seq.*), known as the Sherman Act, provides in part as follows:

> SEC. 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or

with foreign nations, is hereby declared to be illegal: * * *.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.

SEC. 4 [as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167]. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

I

SUMMARY OF FACTS AND ISSUES

This suit was filed on April 28, 1939, and charged the defendants with violating Sections 1 and 2 of the Sherman Act by monopolizing and unreasonably restraining competition in the exhibition of films in towns in Oklahoma, Texas, and New Mexico during the five years preceding the filing of the complaint (R. 1–10). The exhibitor-defendants were four affiliated corporations engaged in operating motion picture

theatres and three individuals who were their principal officers and owners, one of whom died during the pendency of the litigation. They were charged with combining their theatres in licensing films from the major distributors in order to restrict unreasonably the film licensing opportunities of independent exhibitors and to obtain monopolies in the communities where the defendants and others affiliated with them operated theatres. The complaint prayed that this combination of exhibitors be declared illegal, that it be dissolved, and that the defendants be enjoined from continuing their illegal monopolies and from continuing to combine their theatres for the purpose of compelling major distributors to discriminate against their competitors in granting film licenses.

The eight major film distributors were also named as defendants and were charged with conspiring with the exhibitor defendants and with each other to produce the competitive effects noted above. On November 27, 1940, as a result of the consent decree entered in *United States* v. *Paramount Pictures, Inc.*,[1] the charge that the film distributors had conspired with each other to produce these effects was eliminated but the charge that each of them had conspired with the exhibitor defendants to this end was retained

[1] See Nos. 79–84, this Term, which are here on appeal from the final decree entered in this case following expiration of the consent decree.

(R. 50). Pursuant to the same agreement, the five theatre-owning majors, Fox, Loew, Paramount, RKO, and Warner, were also dismissed as defendants by stipulation (R. 49). The plaintiff later concluded that relief against the remaining distributor defendants (Columbia, United Artists, and Universal) might more appropriately be obtained in the *Paramount* case and these distributors were therefore also dismissed as defendants in the instant case (R. 50).

The issues raised by the complaint and by the evidence are substantially those decided adversely to the defendants in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and *United States* v. *Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.).[2] In all three cases, the charge against the defendants involved the illegal use of film buying power resulting from combining a large group of theatres into a so-called circuit for film buying purposes, in order to secure to theatres of the circuit unreasonable competive advantage over other theatres. In all three the Government's proof consisted principally of licensing agreements made between the defendants and the major film distributors which prevented the defendants' competitors from playing, upon subsequent runs, the films exhibited by the defendants and from competing with the defendants for the privilege of licensing prior runs of films which the de-

[2] Appeal to this Court is now pending, No. 10, this Term.

fendants chose to exhibit; the collective negotiation of such agreements by the defendants on behalf of themselves and others affiliated with them; and the unreasonable effect of those agreements, in numerous instances, upon specific exhibitors attempting to compete with the defendants' theatre circuit.

The undisputed facts of this case may be summarized as follows: The appellees, Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc., owned and operated chains of motion picture theatres in various cities and towns in Oklahoma, Texas, and New Mexico. In many communities, theatres operated by the appellees had no competition, while in others appellees were competing with independent theatre operators. During the years 1934–1939, both inclusive, the appellee corporations pooled their film buying power by jointly contracting with major film distributors for the feature films to be exhibited in appellees' theatres and other theatres affiliated with them. The affiliated theatres were parties to "administration" agreements by which appellees undertook to procure films for them in return for a percentage of their gross revenue. The master licensing agreements with the distributors provided for the payment of a blanket rental for the entire circuit and the administration agreements gave the

appellees the right to allocate this rental among their theatres and those of their affiliates as they saw fit. Such pooling of film requirements, for both the competitive and non-competitive theatres operated by the appellees and for the "administered" theatres, provided the inducement for the major film distributors to enter into master licensing agreements which, by their terms, prevented independent exhibitors from competing with appellees in procuring feature films for exhibition, whether for first or subsequent runs. These master agreements differed from the standard form of licensing agreements by which films were licensed to independent exhibitors in respects which, on their face, were intended to enable appellees to eliminate or restrain trade and to monopolize the exhibition of motion picture films in the towns in which appellees operated theatres. It is the Government's contention that each such master agreement between the appellees and a major film distributor constitutes a violation of Section 1 of the Sherman Act.

By reason of the master agreements obtained by the appellees, numerous independent exhibitors operating theatres in towns covered by such agreements found it impossible to obtain a sufficient number of major films upon early runs to compete effectively with the circuit theatres. As a result, appellees were enabled to buy out many such competitors' theatres under agreements

which bound the former operators and owners not to compete further in such towns, or to acquire a financial interest in their theatres and take over their film buying. As the total number of towns in which the appellees operated, the number of towns in which they operated without competition and the number of theatres for which they bought films thus increased, their film-buying power was correspondingly enhanced at the expense of their remaining independent competitors.

However, the trial court's findings of fact were in form adverse to the Government. It concluded, for example, that the appelles had employed a joint agent in licensing films for purposes of economy and efficiency only, that they did not condition the licensing of films in non-competitive situations upon the licensing of films in competitive situations, that the appellees did not conspire or combine with each other or with the distributors "for the purpose or with the effect to unreasonably restrain or restrict the terms upon which feature pictures were to be, or were, distributed by such distributors, or made available for exhibition in theatres competing with the defendants" (F. 10, 12, 20; R. 87, 123, 125). Similarly, the lower court found "The evidence does not establish the existence of any agreement, express or implied, between the defendants, or any of them, and any distributor which unreasonably restrains interstate commerce in moving

picture films, and the licensing agreements between the defendants and the several distributors contain no agreement, privilege or concession which unreasonably restrains interstate commerce in moving picture films in the territory covered by the complaint." (F. 21, R. 125). The Government contends that these conclusions as to the ultimate issues cannot stand against the substantially undiputed evidence. Specifically it contends that the composition and growth of the appellees' circuit, the operating methods of the major film distributors, the existence and nature of the master agreements which the circuit made with major film distributors, and the effect of such agreements and franchises upon competition were established by documentary evidence and by uncontroverted oral testimony.

Thus, our assignment of errors has been limited to those findings in which the trial court, by ignoring material facts established by undisputed evidence, has arrived at adverse conclusions on the ultimate issues. Insofar as the findings state facts of an evidentiary character, they have generally been accepted as correct for the purposes of this appeal. Therefore, in the following statement, we have set forth evidentiary facts as found by the trial court together with relevant and largely undisputed facts in the record which were not reflected in the findings.

II

THE UNDISPUTED FACTS

A. THE GRIFFITH CIRCUIT

There are four corporate appellees, all engaged in the ownership and operation of motion picture theatres, Griffith Amusement Co., Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc. The surviving individual appellees are H. J. Griffith and L. C. Griffith, whose brother R. E. Griffith, died in November, 1943 (R. 51, 1575). The organization and growth of the four appellee corporations were summarized as follows in the trial court's Findings 1 to 5, except where otherwise indicated.

As of 1926, the brothers L. C. Griffith, R. E. Griffith and H. J. Griffith were operating as partners 15 theatres in 8 towns in Oklahoma and Texas. The Griffith brothers owned a 100% interest in 7 of these theatres and a 50% interest in the remaining 8. In that year, they organized the Griffith Amusement Company, a corporation, and transferred to it their theatre holdings. All of the Company's Class A stock was issued to the three Griffith brothers, while the Class B was issued to Universal Chain Theatrical Enterprises which agreed to lend to the Company funds for the purchase and equipping of additional theatres, the trial court finding that "the acquisition of such theatres was to be dictated by Griffith Amusement Company." Upon organization of

the Griffith Amusement Company, L. C. Griffith became president and chief managing officer and continued as such during the period involved in this case, R. E. Griffith took charge of procuring films from the film distributors and H. J. Griffith became responsible for the mechanical problems of the theatres. On April 28, 1939, the date of the commencement of this action, Griffith Amusement Company owned a 100 per cent interest in 23 theatres in 10 towns and owned a financial interest with various other parties in 35 theatres in 12 towns. (F. 1, R. 83–84.)

Consolidated Theatres, Inc., was organized in 1929 by the three Griffith brothers for the purpose of acquiring additional theatres, because "the Griffith brothers desired to continue to acquire additional theatres, but some of the stockholders of Griffith Amusement Company were unwilling to make further acquisitions." The court also found that at all times since the organization of Consolidated Theatres, Inc., L. C. Griffith owned a majority of its outstanding stock, was its active managing officer, and, since 1934, its president. Most of the remaining stock was issued to R. E. Griffith and H. J. Griffith, with the former disposing of his stock in 1931. Thereafter, R. E. Griffith's connection with Consolidated was limited to buying its films, until the 1938–39 season, in the manner to be discussed hereafter. H. J. Griffith continued as stockholder, officer and director of Consolidated from 1929 until after

the filing of this suit. The theatres acquired and operated by Consolidated were located in different towns from those in which the Griffith Amusement Company operated theatres, except in Oklahoma City where each operated theatres. The trial court also found that on April 28, 1939, when this action was begun, Consolidated Theatres, Inc., owned a 100 percent interest in 14 theatres in 6 towns and a financial interest with various parties in 54 theatres in 25 towns, which included 3 theatres in Lubbock, Texas, owned by Lindsey Theatres, Inc., 50 percent of whose stock is owned by Consolidated. Also included in the number are 8 theatres in Cuero, New Braunfels, Refugio and Uvalde, Texas, owned by Jack Pickens Theatres, Inc., in which organization Consolidated owns 50 percent of the stock, but for which it neither operates theatres nor licenses pictures. And included in the number are 9 theatres in Alvin, Bay City, El Campo, Texas City, Victoria and Wharton, Texas, in which Consolidated Theaters, Inc., owns a 25 percent interest,[3] but does not license pictures for them[4] (F. 2, R. 84; R. 419).

In 1931, R. E. Griffith exchanged his Consolidated stock for three of that corporation's

[3] Another 25 percent interest was owned by the appellee Westex Theatres, Inc. (F. 4, R. 85).

[4] They were included in master agreements negotiated by R. E. Griffith for Westex Theatres, Inc., and R. E. Griffith Theatres, Inc. (R. 2280–1, 2451, 2493).

theatres in New Mexico, and moved his residence there.[5] Shortly afterward, he acquired three more theatres in different New Mexico towns and, in December, 1931, he organized R. E. Griffith Theatres, Inc., and transferred the six theatres to it. Until his death in 1943, R. E. Griffith owned the controlling stock interest in this corporation and was its active managing officer. The trial court found that L. C. Griffith had no interest in R. E. Griffith Theatres, Inc., at any time nor did he act as an officer or director, and that H. J. Griffith owned a small stock interest, but was not a director, officer, or employee. It further found that "on April 28, 1939, at the time this suit was filed, R. E. Griffith Theatres, Inc., owned a 100 per cent. interest in 11 theatres in 6 towns and a financial interest with various other individuals and corporations[6] in 12 theatres in 7 towns" (F. 3, R. 85).

Westex Theatres, Inc. was organized on March 27, 1936, as a subsidiary of R. E. Griffith Theatres, Inc., which has at all times owned a majority of its stock. R. E. Griffith was in active management of Westex and no other corporate defendant aside from R. E. Griffith Theatres "had anything to do with the acquisition of theatre

[5] At the same time, R. E. Griffith resigned as an officer of Griffith Amusement Company, but he remained a director and owner of 44% of that Company's Class A stock during all of the period involved in this case (R. 412–413).

[6] Including the defendant Consolidated Theatres, Inc.

interests or properties by Westex Theatres."[1] "On April 29, 1939, Westex Theatres, Inc., owned a 100 per cent. interest in 4 theatres in 2 towns and a financial interest in 40 theatres in 23 towns. Included in the list of partly owned interests is a 25 per cent. interest in 9 theatres in the towns of Alvin, Bay City, Texas City, El Campo, Victoria and Wharton, Texas, in which Consolidated Theatres, Inc., owns a 25 per cent. interest." (F. 4, R. 85.)

The trial court found that since its organization, Griffith Amusement Company has maintained its headquarters and offices in Oklahoma City, Oklahoma, and that since the organization of Consolidated Theatres, Inc., the latter organization has maintained its headquarters and offices in the same office with the Griffith Amusement Company, "which have been common headquarters for both corporations, using a common office force, a common agent for licensing and booking moving picture films, and a common administrative service." The trial court concluded that "the two corporations have at all times been separate entities. The management, control and ownership of theatres and income therefrom have been en-

[1] This finding necessarily refers only to negotiations for such acquisitions, since the evidence is undisputed that throughout the period of its expansion the theatres of Westex were combined with the theatres of the other corporate defendants as well as R. E. Griffith Theatres, Inc. in negotiating film licenses, until the 1938–39 season.

tirely separate and distinct, and neither corporation has in any manner been connected with R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., except as above stated.[8] The maintenance of a common office and administrative service of the two corporations, Griffith Amusement Company and Consolidated Theatres, Inc., was for convenience, efficiency and economy of administration alone and for no other purpose." The trial court further found that "At no time since their organization have Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc., constituted a single entity in any manner, but have been four distinct entities." (F. 5, 6, R. 85–86.)[9]

[8] The Government assigned error to the "finding that the defendants Griffith Amusement Company and Consolidated Theatres, Inc. combined their film licensing activities "for convenience, efficiency and economy of administration alone and for no other purpose'," and to the "finding that the defendants had no interest in each other's theatre acquisitions except as stockholders." (R. 130). The assignment was thus limited merely because the only relationship between the appellees which is relied upon in this case is the pooling of their film buying power. However, since the effectiveness of such film buying power was measured by the total number of theatres included in the combination, we do not concede that any appellee corporation had no interest in the number of theatres managed or controlled by the other appellees.

[9] The undisputed record of facts with respect to the relationship between the four corporate appellees are as follows: The period covered by the complaint was the five years April 28, 1934 to April 28, 1939. During these five years,

B. THE MAJOR FILM DISTRIBUTORS

The eight major film distributors, Fox, Loew,[10] Paramount, RKO, Warner,[11] Columbia, Universal, and United Artists, between them distribute substantially all first-class feature films.[12] Accordingly, exhibitors in the area in which the appellees

all three Griffith brothers continued as directors and principal Class A stockholders of Griffith Amusement Company (R. 412–413). In 1938–39, R. E. Griffith Theatres, Inc. acquired 211 Class B shares of Griffith Amusement Company (R. 414). L. C. and H. J. Griffith continued as controlling stockholders and members of Consolidated Theatres, Inc. (R. 419). Although in 1931, R. E. Griffith exchanged for theatres his stock in Consolidated, in 1936 R. E. Griffith Theatres, Inc., acquired by original issue 250 shares of Consolidated common stock (R. 420). Similarly, H. J. Griffith and Consolidated Theatres, Inc., held minority stock interests (totaling 375 shares) in R. E. Griffith Theatres, Inc. (R. 424). A different but intimate relationship existed between Consolidated (controlled by L. C. and H. J. Griffith) and Westex (controlled by R. E. Griffith) in that each had a 25 per cent interest in each of 9 theatres in Texas towns (F. 2–4, R. 84–85). Finally during each of the years 1935–1939, both inclusive, R. E. Griffith Theatres, Inc., incurred an indebtedness in the nature of a running account to Griffith Amusement Company for supplies, maintenance and services (R. 415). These varied and intimate relationships between the appellees certainly suggest that the concerted action later discussed had its roots in a long-standing community of interests among the appelles, rather than in a coincidental meeting of strangers.

[10] The terms "Metro" or "M–G–M" are also used to refer to films distributed by Loew (R. 1559).

[11] Vitagraph, Inc. was a wholly-owned distributor subsidiary of Warner (R. 1488).

[12] A feature film is any motion picture, regardless of topic, the length of which exceeds 4,000 feet in length.

operate found that they must rely upon the eight major distributors for a supply of such films, since those available from other distributors were generally not a satisfactory substitute (R. 469, 942, 1774–6). In fact, this situation prevailed throughout the United States during the years in question, as evidenced by *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *United States* v. *Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.); and *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), the latter two cases now pending on appeal to this Court.

Each of the eight major film distributors, except United Artists, distributed from 40 to 60 feature films a year. United Artists distributed a smaller number. Motion picture films are copyrighted, and are exhibited pursuant to licensing agreements between the distributors and the exhibitors. Prior to the 1941–1942 season,[13] all of the feature films which each distributor expected to release during a single season were usually offered for license before they were made, and were licensed to exhibitors under contracts covering the distributor's entire output for the season.[14]

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[13] The season was a one-year period generally commencing about September 1 of each year.

[14] The consent decree entered in *United States* v. *Paramount Pictures, Inc.* required that all features released by the consenting defendants (Fox, Loew, Paramount, RKO, and Warner) be completed and trade shown before being

The eight major distributors' methods of distributing and licensing films are similar. All have their principal sales offices in New York City and maintain branch offices in substantially the same locations. The physical distribution of the films is accomplished by sending prints to branches known as exchanges, from which they are made available to the exhibitors in accordance with the license contracts. The exchanges which serve Oklahoma, Texas and New Mexico are located in Oklahoma City, Oklahoma; Dallas, Texas; Denver, Colorado, Kansas City, Missouri, and Los Angeles, California. Generally, in the distributors' organizations, the chain of sales authority above the exchange manager consists of a district manager supervising several exchanges, a division manager responsible for sales over a larger territory, and, at the top, the chief domestic sales executive in New York City.

Initial negotiations for the licensing of films to exhibitors were usually carried on by the manager and salesmen of the particular distributors' local exchange who were acquainted with the exhibitors involved, although no licensing contract could

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licensed, and no more than five could be offered in any one block. Columbia (R. 1532) and Universal (R. 1540) still continued their former practice. United Artists has always released fewer films and licensed them in smaller groups (R. 1982-3).

be completed without the approval of the principal sales office in New York City.[15] Thus, while the exchange employees have no general authority to enter into final licensing contracts, they necessarily determine what proposed contracts, if any, will be submitted to the New York office for approval. The normal course of their negotiations with an exhibitor is to discuss and agree upon terms, fill out a license form embodying these terms, secure the exhibitor's signature thereon, and transmit the proposed contract to the New York office for approval. The license, when signed only by the exhibitor, is treated as an application which does not become a binding agreement until approved by the New York office. Independent exhibitors competing with the defendants normally transact their business through the salesmen or branch managers, depending on the importance of the exhibitor (R. 1490–1, 1527, 1536, 1540–1). R. E. Griffith acted for all theatres in which any of the corporate or individual defendants had a financial interest (known as the Griffith circuit) during the period 1933–38, in making the defendants' deals with district or divisional managers at New York City (R. 2310–12, 2329, 2434–6, 2469, 2477, 2485, 2526–7, 2531–2, 2538–9, 2544–5, 2660).

[15] In the case of United Artists, the approval of the producer of the film was also required (R. 1983).

Contracts licensing exhibitors to play feature films were normally made on the distributors' printed license agreement forms, a typical sample of which is set forth as Appendix B of this brief. While the conditions of the printed license agreements varied slightly as between the major distributors and from year to year, they ordinarly specified the season covered (p. 137), the number of feature films licensed for exhibition and the number which the exhibitor is required to play (pp. 137–141), the name of the theatre in which the films are to be played (p. 137), the rental or license fee for each film usually expressed as a combination of percentage of gross receipts and a guaranteed minimum rental (pp. 139–141), the minimum admission prices to be charged by the exhibitor for evenings, matinees, children and adults (p. 137), the run, i. e., whether the first or a subsequent playing of the films in a specified area, and the clearance[16] applicable to the run and theatre in question (p. 142). These standard license agreements also

[16] "Run" and "clearance" are here used as defined by the Court in *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 33, 333, as follows:

"Runs—The successive exhibitions of a motion picture in a given area, first-run being the first exhibition in that area, second-run being the next subsequent, and so on."

"Clearance—The period of time, usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres."

provided that the exhibitor's continued enjoyment of the clearance and run privileges granted is dependent upon the exhibitor's maintenance of the specified minimum admission prices (p. 133). A further provision required the exhibitor to play the licensed films in the order of their release as prints are made available by the distributor (pp. 115, 141). This is essential procedure if subsequent runs of the films are to be licensed to other exhibitors (R. 1511–1512). *This was the form of licensing agreement by which feature films were licensed by the eight major film distributors to the appellees' independent competitors.*

The licensing agreements (contracts) are performed by the distributor notifying the exhibitor as the features licensed became available for exhibition under the contract, setting a specific date for its exhibition in the theatres licensed (known as "booking"), and delivering a positive print to the theatre in time for exhibition on the date set. The exhibitor performs by exhibiting the films in accordance with whatever commitments his contract imposes on him and by paying the rentals. If a film is licensed for a percentage of the gross receipts, the exhibitor reports the gross business done on the engagement.

Each exchange supervises the performance of the contracts made for the theatres in the area served by it and is charged with the responsibility

of making bookings and delivering the prints. After each run, the print is returned to the exchange for repairs and for delivery to some other exhibitor.

C. THE MASTER AGREEMENTS

The trial court's specific findings with respect to the pooling of the appellees' film buying power and the express terms and necessary effect of the master licensing agreements which they negotiated with the major distributors, were limited to the following: Finding 10—"The defendant corporation employed a joint agent in licensing motion picture films to secure economy and efficiency and to obtain the lawful advantages which normally flow from such co-operative effort. * * *" (R. 87); Finding 12—"The defendants did not condition the licensing of moving picture films in any competitive situation upon the licensing of such films in any other situation, or in any non-competitive situation upon the licensing of such films in any competitive situation" (R. 123). There is summarized hereafter the undisputed evidence as to the extent of the appellees' film buying power, the manner in which it was combined by the appellees, the scope of the master agreements and franchises, and their terms in contrast with the terms upon which appellees' competitors were able to license films from the same distributors.

1. *The purchasing power of the circuit.*— On April 29, 1934, the beginning of the five year period, the appellee corporations owned financial interests in theatres in 37 towns; in 1939, five years later, they owned financial interests in theatres in 85 towns.[17] During this same period, which is the period during which the master agreements and franchises were employed, the number of closed towns (those in which one of the appellees operated without competition) increased from 19 to 53. That is, during the five-year period, while the total number of towns in which appellees operated increased 125 per cent, the number of its closed towns increased by ap-

	Total towns	Competitive towns	Closed towns	Percent closed towns to total towns
April 29, 1934				
R. E. Griffith and Westex (Plf. Ex. 381, R. 1100-13)	8	2	6	75
Griffith Amusement	20 (R. 415-7)	10 (Def. Ex. 108, R. 2702).	10	50
Consolidated	9 (R. 421-2)	6 (Def. Ex. 109, R. 2703).	3	37
Total circuit	37	18	19	53
April 29, 1939				
R. E. Griffith and Westex (Plf. Ex. 381, R. 1100-13)	*31	5	26	84
Griffith Amusement	23 (R. 415-7)	14 (Def. Ex. 108, R. 2702).	9	39
Consolidated	22 (R. 413-2)	13 (Def. Ex. 109, R. 2703).	9	39
Total circuit	85	32	53	62

*Excludes six towns in which Consolidated also had an interest which are listed for that defendant. They are Alvin, Bay City, El Campo, Texas City, Victoria, and Wharton, Tex. (R. 1110-12).

proximately 300 per cent. Thus, the master agreements always combined theatres in competitive towns with theatres in closed towns, and included theatres operated by exhibitors affiliated with the appellees only by administrative agreements under which the appellees procured films for such exhibtors.

A sample master agreement by which this pooled film buying power was made effective is the one which R. E. Griffith, on behalf of the four appellee corporations and affiliated exhibitors, signed with Columbia Pictures Corporation for the 1936–37 season, and which is set forth as Appendix A herein (pp. 104–108). This master agreement involved the purchase of film for 53 theatres in 23 towns operated by Griffith Amusement Company, for 33 theatres in 14 towns operated by Consolidated Theatres, Inc., for 15 theatres in 8 towns operated by R. E. Griffith Theatres, Inc., for 34 theatres in 21 towns operated by Westex Theatres, Inc., and for 14 theatres in 6 towns operated by other exhibitors; a total of 149 theatres in 71 towns in Oklahoma, New Mexico and Texas. With respect to the theatres operated by the appellees, it appears that this agreement covers theatres in 40 towns where appellees had

[11] The growth of the circuit in terms of competitive and closed towns during the five years preceding the complaint is shown in the following tabulation, which excludes Oklahoma City, as that town was excluded from plaintiff's claims of illegal restraint (R. 142).

no competition and 24 towns where there was competition.[18] The Agreement covered Columbia's expected output of pictures to be released during that season, consisting of 66 feature films and 126 short subjects, for which Columbia was guaranteed a minimum circuit film rental of $65,000.00. For the 1937–38 season, the minimum commitments made by the circuit to each of the major distributors, except United Artists, ranged from $50,000 (R. 2484) to $265,000 (R. 2264–71), and totaled about $1,200,000 (R. 2160, 2219, 2264, 2329, 2430, 2484, 2542). The film rentals received from the circuit by the Oklahoma City film exchanges of Fox, Loew, Paramount, RKO and Warner, amounted to about 30 per cent. of the total revenues of such exchanges during the seasons 1935–36 to 1938–39, inclusive (R. 1119–20).

[18] Griffith Amusement Company towns, exclusive of Oklahoma City, in which there was then competition were Ada, Elk City, Enid, Hobart, Norman, Okmulgee, Shawnee, Stillwater, and Duncan (R. 1573–74, 1577–79). The Consolidated Theatres towns, exclusive of Oklahoma City, in which the record shows there was then competition were Lubbock and Sapulpa (*supra*, pp. 43, 56). The record discloses that there was competition at the time of the trial in Chickasha, Cleburne, and Clinton (R. 1596–97) and the above computation assumes that such competition existed on August 31, 1936, although the record is silent as to what the competitive situation was in those towns at that date. Of the R. E. Griffith towns there was competition in Gallup and Hobbs, and of the Westex towns there was competition in Ballinger, Brady, Georgetown, Odessa, Plainview, and Stamford (R. 1101–13).

2. *The negotiation of the appellees' agreements with the major distributors.*—The film buying power of the appellees and of the theatres affiliated with them was combined by means of the master agreements and franchises[19] which R. E. Griffith negotiated with the major film producers for the licensing of feature films from such distributors for all of the theatres operated by the appellee corporations and for the affiliated theatres. As in the 1936–37 master agreement with Columbia (set out in Appendix A), R. E. Griffith, with the assistance of Horace Falls, negotiated such master agreements and franchises in New York and signed them on behalf of all four appellee corporations and the affiliated theatres until the 1938–39 season. For that season R. E. Griffith negotiated in New York for R. E. Griffith Theatres, Inc. and Westex Theatres, Inc. (sometimes referred to as the Texas defendants) and Horace Falls negotiated in Oklahoma City for Griffith Amusement Company and Consolidated Theatres, Inc. (sometimes referred to as the Oklahoma defendants). (R. 1760.) Each half of the circuit represented in these latter negotiations was nearly as large or larger than the entire circuit in 1935.

3. *The express terms of the circuit's special licensing agreements.*—The master agreements were in the form of contracts for the exhibition in

[19] A franchise is a master agreement covering films to be released during more than one season.

the theatres of the Griffith circuit of all the films to be released by a major distributor during an entire season, specifying the number of feature films involved, the theatres in which they could be played, the number and sequence of the runs on which they could be exhibited, and a minimum total film rental to be paid by the circuit. Some of the agreements provided that the appellees should be jointly and severally liable for the entire minimum rental for the circuit. The making of these master agreements was sometimes followed by the execution of individual contracts for each town involved on the distributor's standard form of license agreement. However, the master agreements contained provisions which were inconsistent with, and specifically superseded, some of the standard form provisions.

These master agreements had the following characteristics in common, most of which are illustrated by the master agreement with Columbia for the 1936–37 season (Appendix A, *infra*, pp. 104–108).

1. The master agreements and franchises were negotiated by and on behalf of two or more of the appellees plus the affiliated theatres for which they procured films under administration agreements.

2. They generally licensed the first-run exhibition of substantially all of the films to be released by the particular major distributor during a

period of at least one year, in substantially all of the theatres in which the appellees had a financial interest. In addition, they specified the towns for which second runs were licensed for exhibition by the appellees. These blanket agreements included in every case towns in which there were no competing theatres and a lesser number of towns where there were competing theatres.

3. They obligated the circuit as a whole to pay a total minimum rental based upon the use of the films throughout the circuit, although for accounting purposes the circuit rental was later allocated by the appellees among those theatres covered by the master agreements at which the films were actually exhibited.

4. They did not require the playing of any specified film in any specified theatre at any specified time. The time within which the films licensed were to be exhibited was generally a period of at least twelve months, commencing a few months after the commencement of the season in question. In some cases the circuit was required to play and/or pay for one fourth of its total film rental obligation during each quarter of the year, or one fifty-second upon a weekly basis. They expressly permitted playing the films licensed out of order of release, in contrast to the standard forms of agreement requiring the exhibitor to play the films as released by the distributor.

5. They frequently contained no provision specifying minimum admission prices for appellees' theatres, although this was a usual condition of the standard license forms.

6. They superseded the provisions of the standard license forms as to all conflicting provisions.

The form and method of negotiation of such agreements necessarily prevented consideration of competitive offers to license based upon a consideration of the merits of competing exhibitors for a particular run at a particular theatre. As the appellees' witness Sears, sales manager of Warner, testified, in negotiating such a deal the "overall revenue from the entire transaction" is considered rather than what a single theatre can pay (R. 1504). The appellees' witness McCarthy, Universal's sales manager, admitted that even those independents who paid him more film rental than Griffith had paid in those towns were given no opportunity to negotiate for a continuance of their runs when Universal negotiated its 1936–37 deal with the circuit (R. 1546).

The master agreements, in giving the circuit the privilege of playing films "out of order of release", superseded elaborate provisions in the standard licensing forms intended to compel the exhibitor to play the distributor's films as they were released and made available (App., pp. 115–17, 119–20, 125–27, 139, 141). Since the appellees were given periods of one year or more

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in which to liquidate these master agreements, this privilege meant that films which the circuit did not use need not be made available to others until they had ceased to be current entertainment. In his 1938–39 negotiations with Universal, R. E. Griffith refused to agree to a clause requiring unused pictures to be released for exhibition by others within sixty days after they were made available to the circuit (R. 1552). During prior seasons, such a clause appears only in the Paramount franchise, as a part of a modification of a second run option (R. 2318–21) made after a complaint to the Department of Justice by an exhibitor at Plainview, who was unable to obtain second run product (R. 293–4).

This privilege of playing the licensed prior runs without regard to the order in which films were released [20] also tended to prevent competitors from licensing a regular run of films following the prior run exhibition in the appellees' theatres, since there was no assurance that the prior runs would actually be played in the order in which the films were released. As Warners' sales manager pointed out, the normal practice was to insist upon performance of the standard contract provisions as to playing in order of release "so that the normal runs could follow", but if "there

[20] The extent to which this and other special privileges inconsistent with the normal licensing practices expressed in the standard forms were incorporated in these master agreements is set forth in Appendix C, *infra*, pp. 143–7.

were no subsequent runs that were being held back by reason of the playing out of order of release" the exhibitor was given considerable leeway in this respect (R. 1510–11). Since control of the sequence in which their films were to be played had been thus surrendered by most of the major distributors to the circuit, the competitors of the circuit had no opportunity to deal with the distributors for films not used at all by the circuit or for subsequent runs of films played by the circuit on a prior run, except as the circuit should decide to make such films available to them. Even the Warner agreements, which contained no provision expressly authorizing playing out of order of release, but simply provided for completion of the runs licensed prior to a fixed date (Par. 5, R. 2509; Par. 6, R. 2526; Par. 5, R. 2531; Par. 5, R. 2537; Par. 5, R. 2543), gave no assurance that any particular film would play in any particular town at any particular time (R. 1498–99); what pictures a following run obtained within a reasonable time after release was entirely determined by how Griffith determined to play the first run (R. 1500).

The privilege of playing second runs in certain situations without additional rental liability was, in effect, an express agreement to protect the appellees from second run competition without compelling them to play or pay for such a run themselves. But in any event, no sale of a second run to an opposition theatre was contemplated.

In the course of negotiating these agreements, it was never suggested to the appellees' film buyer Falls that a second run might be sold to an opposition theatre if he did not license such run (R. 1816).

A first-run exhibitor is ordinarily required to charge a higher admission price than a subsequent run (R. 1513–14). Since the competing independents procured films on a standard form of license which required maintenance of a fixed minimum admission, the omission of such a requirement in the deals made with the circuit had the effect of giving it express permission to reduce prices on its prior runs to a price equal to or below that charged by a competitor for a later, less desirable run.

D. EXTENT OF APPELLEES' CONTROL OF AVAILABLE FILM PURSUANT TO MASTER AGREEMENTS AND FRANCHISES

A franchise agreement was made by the appellees with Loew covering the five seasons 1930–31 to 1934–35, inclusive, and one-year master agreements were made thereafter covering each of the ensuing four seasons. Paramount was unplayed by the circuit during the 1933–34 season, but a franchise was made with Paramount covering the three seasons 1934–35 through 1936–37 and one-year master agreements were made thereafter for each of the ensuing two seasons. RKO was unplayed by the circuit during the 1934–35 season but a franchise was made with RKO covering the three seasons 1935–36 through 1937–38. In

1938–39 only the Texas defendants made a master agreement with RKO. A franchise agreement was made with Columbia covering the three seasons 1937–38 through 1939–40. In each of the three preceding seasons a one-year master agreement was made with Columbia. One year master agreements were made with Fox and Warner for each of the years 1934–35 through 1938–39, and with Universal for each of these years, except 1935–36, when that distributor's films were unplayed by the circuit. Master agreements with United Artists were made for the seasons 1937–38 and 1938–39.[xx] (See tabulation of master agreements and franchises in Appendix C to this brief, pp. 143–147).

The appellees' control over major film product through master agreements during the five seasons immediately preceding the complaint may be summarized as follows: They had such agreements with Fox, Loew, Paramount, Warner, Universal, and Columbia for 1934–35; with Fox, Loew, Paramount, Warner, Columbia, and RKO

[xx] United Artists during the preceding three seasons was not regarded as "good enough" for many of these towns by one witness (R. 998), and was ranked by another as the least desirable of the eight majors (R. 947). Griffith's master agreements with other distributors invariably contained a special provision excluding foreign productions and its blanket deals with United Artists covered only the pictures of domestic producers, although a substantial part of the total product released by United Artists during the seasons 1934–35 through 1937–38 was foreign made (R. 1983).

for 1935-36; with Fox, Loew, Paramount, Warner, Columbia, Universal, and RKO for 1936-37; with all eight of the major defendants for 1937-38. The same situation prevailed in 1938-39, the season during which the suit was filed, except that RKO had no agreement with the Oklahoma defendants.

B. THE EFFECT ON COMPETITION

The effect of the master agreements upon the appellees' competitors, and the manner in which the appellees simultaneously expanded their theatre interests, is illustrated by the trial court's findings as to what occurred in 17 towns in Oklahoma, Texas and New Mexico (F. 11-1 to 11-25, R. 87-123), coupled in some instances with undisputed evidence which the court ignored.[21] The following discussion departs from the order of the trial court's findings so as to arrange the towns as, first, towns where an independent exhibitor bought or built a theatre in opposition to the appellees, and, second, the towns in which the appellees built or bought a theatre in opposition to an independent operator.

1. *Towns in which an independent exhibitor built or bought a theatre in opposition to the appellees.*

[21] While the trial court's findings relate to 25 towns, which comprise most of the competitive towns, it seemed sufficient to set forth here the facts with respect to 17 of the towns.

Ada, Oklahoma

The court found that in this town of 15,000 Griffith Amusement Company bought a 60 per cent. interest in three theatres from Foster McSwain in 1932, one of which was closed; that E. H. Kyser, who died in 1936 and his sister, Nona, successively, operated the Strand from 1933 until 1941, when she closed it, and the Ada, built and opened by her in 1936 and operated ever since; that Griffith reopened its closed theatre in 1935 and has operated three theatres there ever since. The court further found that Miss Kyser testified that E. R. Slocum, a representative of Griffith, called on her twice to persuade her to sell her theatres and each time told her that Griffith did not want competition in Ada, and that Slocum admitted the calls but denied that he said Griffith did not want competition in Ada (R. 88). It made no finding as to where the truth lay.

The finding relating to Miss Kyser's testimony as to her negotiations with the major film distributors, was that she "complains that she was unable to buy or procure the pictures of her choice from major distributors" (R. 88). Her undisputed testimony was that the Strand had been the first-run account in this town for Paramount during the 1933–34 season (R. 931) and for RKO during the 1934–35 season (R. 933). Exhibits P–1 (R. 2317) and RKO–44 (R. 2422) show that she lost each of these runs to

Griffith in the succeeding seasons by reason of the franchise deals which the circuit made with these companies in 1934 and 1935. She also had Universal on first-run in 1935–36, but lost all except the inferior films in the succeeding season, when the circuit made a master agreement with Universal for "the twenty top allocated pictures" (Ex. U–2–B, R. 2476). Griffith never played a third run in Ada of Fox, Paramount, or Warner films (R. 953), nor did its master agreements expressly cover such a run. Miss Kyser tried to buy such a run on their better pictures, following Griffith's first and second runs, from 1936 through 1938, but during this period none of them would even take an application from her (R. 936).*

The court concluded that Miss Kyser's failure to procure film for her theatres was not occasioned by any illegal acts of the appellees, apparently because "the Ada has operated at a profit and that the Strand, while not operating at much of a profit, had been able at all times to operate until she voluntarily closed it." Since she was not entirely eliminated from

* Kupper, Fox's sales manager, admitted that his company's failure to sell Miss Kyser was due to a desire to protect "our first-run revenue" (R. 1363) and that this policy was changed when "we were ordered, you might say, to sell some run" (R. 1363) by the consent decree in *United States v. Paramount Pictures, Inc.* Even before the decree was entered the policy was modified in response to complaints forwarded by the Justice Department when "we saw the writing on the wall" (R. 1363–4).

the business, the concerted use of the appellees' film buying power to deprive her of films was merely "the ordinary problems attendant upon the business in which she was engaged" (R. 88, 89).

Altus, Oklahoma

The court found that this town had a population of about 9,000 in 1936; that at that time Consolidated owned a half interest in three theatres operated by W. T. Spears, who owned the other half, one of which theatres had been operated only part time and was abandoned that year; that C. C. Hamm then came into the town and remodeled a store into a theatre, called the Ritz, which he operated for about a year until he sold out to Spears in 1937 and agreed not to operate a theatre there for the next ten years. The court's findings as to Hamm's film negotiations consist of the statement that Hamm "found there was no product available of the major distributors for the 1936–1937 season except Universal which he obtained and played" (R. 89). While this product was played by him during the 1936–37 season, it consisted of Universal's 1935–36 releases (R. 752). Griffith and Spears were playing no regular second run of any major distributors' films at Altus (R. 753), although their master agreements with Fox, Loew, Paramount, and Warner gave them the privilege of a second run there without additional film rental (Ex. F–5, R. 2213; Ex. L–5, R. 2262; Ex. P–3,

R. 2326, 2332; Ex. W-7, R. 2540). Hamm had operated a second run theatre at Vernon, Texas (population 9,137), since 1939. Columbia, Fox, Loew, Paramount, RKO, and Warner all refused him a second run at Altus (R. 752), although four of them had sold him second run at Vernon since 1933 (R. 763–4). Consolidated and Spears each acquired a half interest in Hamm's theatre (R. 1747) and operated it as a second-run theatre (R. 1596). Hamm agreed "not to come into Altus" for ten years (R. 1750, Def. Ex. 162).

The court concluded that this situation was not the result of any of the unlawful acts charged in the complaint. The apparent basis for this conclusion was that the sale was "voluntary and mutually satisfactory" (R. 89). The court also said that Hamm and his brother "had left a trail of unplayed pictures of many major distributors which they had contracted to play" (R. 89). No distributor representative testified that this was the reason why Hamm could not buy a second run in Altus nor could any of those who were selling him in Vernon have plausibly made such a statement. Also, that court's rulings prohibited the complaining witnesses from testifying as to the reasons asigned by the distributor representatives for their refusals to sell (R. 228).

In any event, the optional second run provided in the appellees' master agreements was an obvious bar to a sale of second run to Hamm during the season he operated, even though

Griffith did not play or pay for such a run. These agreements thus prevented Hamm from becoming an effective second run competitor during the year he operated. His potential competition was eliminated by the purchase of his theatre and the accompanying agreement not to compete in the future.

Blackwell, Oklahoma

The court found that Blackwell had about 10,000 population; that in 1938 Griffith Amusement Company was operating two well-equipped theatres there of 400 and 700 seats, respectively, and that the Bays, owned and operated by Laham Theatre, Inc., was a well-equipped theater seating 1,200; that Griffith's theatres were playing Fox, Paramount, Columbia, Universal, Warner, and Loew on first run and that the Bays could not make deals with Fox, Paramount, Columbia, Warner, or Loew for second run; that during the 1938–39 season it got first and second run from RKO and some second run Metro (Loew); that in the spring of 1939 Griffith opened a third theatre and played second run pictures of Fox, Paramount, Columbia, Warner, and Loew and that in October, 1939, the Bays was sold to Griffith, operated for a time, and then closed (R. 90).

Although the Bays was larger than the two Griffith houses combined, and although the defendants' master agreements for the 1938–39 season enabled Griffith to tie up all major first run

product, except RKO, for that season and necessarily resulted in the refusal of these distributors to license the Bays on second run (even though Griffith neither played nor paid for such a run), the court concluded that there was nothing illegal in the situation at Blackwell.

Brady, Texas

The court found that in this town of 5,000, Aubrey Morgan bought the Ritz Theatre in December, 1935, and operated it until November, 1936, when he sold it to "Jack Pickens, agent for Brady Amusement Company, Westex Theatres and R. E. Griffith Theatres, Inc."; that Westex operated the other theatre in the town, the Palace, and that Stocker of Westex told Morgan in October or November, 1936, that Westex had bought Universal (which Morgan had played during the 1935–36 season) for the 1936–37 season; that Pickens then approached him and the sale of his theatre was concluded about six weeks later (R. 91). The court concluded that there was nothing unlawful in this situation, noting with respect to film licensing restraints only that Morgan was "a speculator" who complained that he was unable to buy from major distributors the pictures he desired to exhibit. His specific complaint was that Universal "sold away" from him to Westex without giving him a chance even to negotiate for the product (R. 1032–34), and this testimony was undisputed.

Apparently because he was a "speculator" who might make competitive trouble for the circuit elsewhere, when Morgan sold out he had to agree not to engage in the theatre business anywhere in Oklahoma, Texas, and New Mexico for five years (Ex. 133, R. 2052). His theatre was operated for a short time after its purchase by the defendants and then closed permanently (R. 1105).

Duncan, Oklahoma

The court found that in this town of 9,000, J. D. Guest opened the Ritz Theatre in 1930 and enlarged it in 1932 to a capacity of 365; and that Griffith Amusement Company operated the Palace and the Folly and played first run pictures of major distributors. The court further found that Guest played first run and second run pictures of many of the major distributors and that he contended that he could not obtain from some major distributors the films of his choice or any at all, but that his testimony was unsatisfactory as he was not inclined to be positive; that his father, James H. Guest, testified that in 1933 or 1934 he was accosted by a man who said he was one of the Griffith brothers and who inquired if he wanted to sell the Ritz, take a few hundred dollars, and move to a new location, but that the witness could not identify any of the defendants as the man to whom he talked and was quite vague (R. 95). The court concluded that "if J. D. Guest has had any difficulty in securing

product for the Ritz theater" it was not occasioned by any combination among the defendants to control the exhibition of motion picture films (R. 96).

License contracts in evidence (R. 774, 776) showed that Guest's theatre had the Paramount and RKO films during the seasons immediately preceding the incorporation of this town in the franchises jointly negotiated and executed by the appellees with these distributors and that he had the Universal product during the 1935–36 season first and second run (R. 777), the year preceding that in which Duncan was incorporated in the master agreement made by the appellees with Universal.

Guest tried to buy a second run from Paramount, Warner, Metro, Fox and RKO during the period 1933–34 through 1938–39 (R. 778), but was never able to induce them even to submit a deal to their home offices on any terms (R. 779), although Griffith did not use their product second run in this town. The master agreements made with Fox, Loew, and Warner during the same period had express provisions calculated to prevent a sale of a second run to any competitor of Griffith, as noted in the tabulation of them in Appendix C. Whether Guest's testimony as to his negotiations with the major distributors is regarded as vague or precise, there is no dispute in the record about the fact that he operated a theatre in the

town of Duncan during the period 1933–34 through 1938–39, that he was a potential user of second run films from these four companies, and that he got no such films from them until April, 1941 (R. 779). Section VI of the consent decree of November 20, 1940, to which these distributors were parties, required them to discontinue the practice of refusing to sell a run as a means of protecting the revenue of a prior-run exhibitor.

Lubbock, Texas

The court found this to be a town of about 30,000, aside from Tech College, which had about 5,000 students; that in June, 1936, Bearden and Smith opened a theatre called the Tech, near the college campus, a mile and a half from downtown Lubbock; that Consolidated owned 50 percent of three theatres operated by Lindsey Theatres, Inc., for which it bought and booked the films, and that two other theatres were operated by an independent named Mauldin; that in 1938 Lindsey Theatres bought a building site near the college and erected a sign saying "Home of New Campus Theatre"; that the lot was not zoned for business; that a later attempt to have it so zoned failed; that representatives of Lindsey Theatres tried to buy the Tech without success and then built a theatre near the campus in 1940 which was called the Tower, shortly after having bought out Mauldin in 1939. The court recited contradictory testimony of Bearden and Smith

on the one side, and the defendants' representatives on the other, concerning alleged threats, but made no finding as to where the truth lay. It did find "nothing in the situation at Lubbock as to leases, sales or contemplated sales that was brought about or occasioned by coercion or threats upon the part of any of the defendants" (R. 105–109).

The testimony with respect to film licensing was disposed of by the finding that "it seems to have been a controversy with reference to the decision of some of the distributors that having licensed their product for Lubbock, they could not also license the same product to the Tech theatre. Bearden and Smith contended that an exception should be made as to the territory in which they operated. Upon this controversy they could not agree" (R. 109).

Bearden's undisputed testimony was simply that while they could not even submit an application for a better run at the Tech (R. 483), when the Tower opened it was immediately permitted to play on second run, 100 to 120 days ahead of the Tech (R. 484). The Tech, charging 25 cents admission, was also compelled to follow the defendants' Texas, charging 20 cents, during 1938–39 and 1939–40 (R. 486–7).

Phillips, Texas

The court found that Phillips was a town of about 6,000, which is one and a half or two miles from the business district of Borger, a town of

12,000; that in December, 1939, Bearden and Smith leased some property in Phillips and began the construction of a theatre in January, 1940, which they opened on March 12, 1940, as the Phillips Theatre; that at the time they made the lease they made a season deal with Warner first run to play 30 days after the Griffith theatres first run in Borger, a part-season deal with Metro, and were offered no product from any other major distributors; that after construction of the Phillips began the appellees began the erection of a theatre called the "66", which they opened in Phillips a week before the Phillips; that the Phillips closed after six-months' operation, was repaired and reopened and later almost completely destroyed by fire in 1941, when it was abandoned by Smith and Bearden; that Griffith then abandoned the "66" as a result of expansion of the Phillips Refinery, and bought and rebuilt the Phillips, which it now operates under the name "66"; that there was a meeting between the defendants and Bearden and Smith about "buying or selling" while the two theatres were in operation, but nothing came of it. The court then noted that the evidence related to transactions occurring after the suit was filed, but added that there was nothing in the situation to warrant a finding of law violations at Phillips, in any event (R. 112–113).

The evidence was undisputed that the Phillips was much larger than the "66" (R. 726) and

yet could not secure more than one current major product first run in Phillips at a time when the only opposition was the Griffith Theatres in Borger (R. 725–6). The evidence is also undisputed that the Metro product referred to by the court was the lower half of its 1939–40 releases (R. 726) and that the current Warner product in most instances was not available to the Phillips until it had played both the Griffith first and second run theatres in Borger (R. 726).

Plainview, Texas

The court found this to be a town of 8,834 in 1930 and 8,236 in 1940; that Dennis Scaling opened the Fair Theatre in January 1936 and operated it for 42 weeks, playing the 1935–36 product of Universal and some of United Artists'; that the Granada and the Texas were operated by R. E. Griffith interests, which played the "product of the large distributors"; that the Granada was an "A" theatre of 1,100 seats, the Fair, next in size and equipment with 650 seats, and the Texas, a "B" house seating 450; that after the Fair was sold to the R. E. Griffith interests in October, 1936, all theatres in Plainview have been operated by Westex Theatres, Inc. (R. 113–114). As part of the sales agreement, the operators of the Fair covenanted to stay out of the theatre business in Plainview for an unlimited period of time (Ex. 3, R. 2001). The court made no findings as to Scaling's negotiations

with the major distributors but found that the sale was not brought about by any unlawful restraints in Plainview (R. 116).

There was undisputed evidence that Griffith did not play its major first run product on second run in this town (R. 241) and that Sealing had tried without success to license second run from the major companies (R. 232-3). His correspondence with them in this connection was excluded (R. 232-3), as was his statement of why they would not license it (R. 296). There was also undisputed evidence that Sealing had no opportunity to renew his first run contract with Universal for the 1936-37 season. He was orally offered half the pictures, but was never given an opportunity to sign an application (R. 235).

Stillwater, Oklahoma

The court found this to be a town of about 6,000 aside from Oklahoma A & M College, which had a student body of about 2,500 in 1923; that at the time of the trial the population was about 10,000 and the student body about 4,500; that Ray Russ took over the Camera Theatre in 1928 with no prior experience as an exhibitor, and operated it in opposition to Griffith Amusement Company's Mecca and Aggie theatres until 1931, when it was pooled with the Mecca on a 50-50 basis and the Mecca was then closed; that after 20 months of this arrangement Russ became dissatisfied and bought

certain product[*] over the objection of the Griffith interests, which resulted in dissolution of the partnership; that Griffith built the Campus in 1939, a model theatre seating 432, which played A and B pictures second run; that Griffith's Aggie, with 710 seats, plays "A" pictures first run and Griffith's Mecca, with 432 seats, plays "B" pictures first run, and that Russ' Camera, seating 432, plays "A" and "B" pictures subsequent run (R. 121–122). There are no findings as to Russ' attempts to buy films in opposition to Griffith except the general conclusion that nothing done by the appellees' at Stillwater violated the law.

The evidence is undisputed that Russ lost Paramount to Griffith when the franchise (Ex. P–1, 3, R. 2299) was made, and that he lost the best Universal product to Griffith when the 1936–37 master agreement (Ex. U–2, 3, R. 2475, 2477) was made. Russ contracted for all of Universal's 1935–36 feature productions (Pltf. Ex. 346, R. 833). For the 1936–37 season, Griffith's master agreement with Universal committed Griffith to play only 20 features first run in Stillwater (Ex. U–2, 3, R. 2475, 2477). Universal offered Russ a first run contract for lower quality product, exhibition not to start until February 1, 1937, and also to be played at 10 cents and 25 cents (Pltf. Ex. 347, R. 834). This contract provided that

[*] He bought Paramount while Paramount was out of the Griffith circuit (R. 827).

Universal could eliminate any 12 features and Russ was to play the remaining 24. The 12 pictures eliminated from Russ' contract were the best, or the "A" pictures. They played at the Griffith theatres and Russ got the "B" and "C" pictures (R. 834).

2. *Towns in which appellees built or bought a theatre in opposition to an independent exhibitor:*

Gallup, New Mexico

The court found that Gallup had a 1930 population of about 6,000; that William Nagle was then operating the El Morro Theatre there in opposition to the Cairo and Rex; that El Morro was a modern, deluxe theatre with 877 seats, and that when it opened in 1928 Nagle was able to secure pictures of his choice from most of the major distributors; that in 1930 R. E. Griffith Theatres, Inc. entered Gallup by purchasing the Cairo and that in 1936 it converted a store building into another theatre which "exhibited largely second-run pictures." These two theatres each had a seating capacity of 800. The court found that Nagle testified that after R. E. Griffith Theatres, Inc., entered Gallup he was unable to buy or procure pictures of his choice from major distributors, except MGM and Paramount, but the court found that he was from time to time able to procure RKO and Universal (R. 99–100).

Nagle's undisputed testimony was that he had the best theatre in the town (R. 746) and that

after Griffith came in he was not even allowed to sign an application with Fox or Warner (R. 743), whose pictures he had previously used (R. 741); that he had RKO in 1934–35, but RKO was sold away from him the succeeding season when Griffith made its franchise with that company; that Nagle did not even receive a reply to a letter he wrote the RKO home office about buying the 1935–36 product (R. 743–4); that he had Universal for 1935–36, which he lost to Griffith for 1936–37, notwithstanding a trip to Los Angeles in an effort to retain it (R. 744–5). During the 1938–39 season he had only Paramount and Loew of the eight major distributors, while Griffith, with its inferior theatres, had the other six (R. 745).

Hobart, Oklahoma

The court found that Charles Mahone entered this town of 5,000 in 1918, operating two theatres with no competition for ten years; that in 1928 and 1929 competing theatres were operated by other independents; that Mahone sold his theatres to Consolidated Amusement Company in 1930, which later defaulted on the notes given to Mahone for the purchase of his theatres; that Mahone then took over operation of the Oklahoman as agent for a receiver. In 1932 Griffith Amusement Company acquired the Kiowa from the receiver and Mahone bought the Oklahoman in August, 1935. On March 22, 1936 Mahone

acquired the Palace from an independent competitor, but closed it in 1943 (R. 101-2).

As to Mahone's complaint that he was unable to procure the character of product he desired to play, the court said that "he always has had good and sufficient product, and is still operating the Oklahoman" (R. 102). Mahone's undisputed testimony concerning his film negotiations with the major distributors was that he had bought and played RKO first run for the 1933-34, 1934-35, and 1935-36 seasons (R. 983), and that he was given no opportunity to negotiate for it for the 1936-37 season (R. 985, 988); that in November, 1935, he wrote to Depinet, vice president of RKO in charge of distribution (Ex. RKO-21A, R. 2636), but received no reply (R. 988). This product had been sold to Griffith by the RKO franchise (Ex. RKO-44, R. 2423, 2435) on March 19, 1935. Mahone was apparently able to play RKO for the 1935-36 season only because his contract for that year (Ex. 357) was approved in March, 1934 (R. 2091).

The court's finding that Mahone always had good and sufficient product for the Oklahoman was apparently based on his having three of the eight major companies; which was more than any other independent opposing a Griffith theatre had except Moulder at Sapulpa. Mahone's testimony that he had no major first run product except Fox, Metro, and Universal after the 1935-36

season for his two theatres (R. 999) was undisputed.

Hominy, Oklahoma

The court found this to be a town with a population of 3,267 in 1940 and that the Pettit Theatre, seating 1,000, was the only theatre there until 1934, when a Mr. McLain converted a store building into a 390 seat theatre; that both theatres were operated by independents and played the product of major distributors; that on June 15, 1936, McLain sold out to Consolidated Theatres, Inc., and that Vincent, operator of the Pettit, talked to H. J. Griffith about a sale of the Pettit late in 1937; that negotiations dragged on until July or August, 1938, when Vincent told Griffith he would accept his offer to buy but that the deal was not consummated until February 8, 1940 (R. 103–5). When he sold, Vincent agreed not to compete or invest money in a theatre in Hominy or in Osage County for ten years (Ex. 262).

The court's only findings as to Vincent's film buying negotations after Consolidated entered the town was that after Vincent expressed concern to L. C. Griffith about procuring product for the Pettit, and Griffith had advised him in substance that he would talk to his buyer, H. R. Falls, and see what could be done for him, Falls asked him if he would be satisfied with Columbia and United Artists product; that later a certain group of approximately 20 pictures was released by Consolidated Theatres, Inc., and the distributor licensed

the group to Vincent (R. 104). Vincent's 1,000 seat theatre obviously needed more than two major products, but the appellees' 390 seat theatre had tied up six majors through the master agreements for the circuit then in effect. The court's assumption that it was proper and natural for Consolidated's competitor to go to Consolidated rather than a major distributor for the right to play the films of the latter course meant that a finding of no restraint of trade in this and every other competitive situation where the circuit controlled the supply of major films would follow as a matter of course.

Mangum, Oklahoma

The court found that Mangum had 4,806 population in 1930 and 4,193 in 1940; that Pat Duffy operated the only threatres there from 1933 until 1937, when Consolidated reconverted an old theatre which had been used as a mercantile building into a theatre called the Greer; that representatives of the appellees had persuaded Duffy to execute a 30-day option to sell his theatres for $22,000 shortly before this, which the defendants did not exercise because Duffy's lease on one of them could not be renewed at the existing rental; and that Duffy finally sold his theatres to Consolidated for $12,000 in April 1939 (R. 109–110). By the bill of sale (Pltf's Ex. 40, R. 2029), Duffy and his family agreed not to "become interested in any motion picture or vaudeville enterprise" in Man-

gum or Greer County for ten years. The finding recites contradictory testimony regarding threats made to Duffy during the course of the negotiations to buy him out and concludes that the financial pressure which made Duffy sell was caused by bad economic conditions rather than by the defendants (R. 110–11). But there is no dispute that the opening of a third theatre in this town scarcely large enough for two theatres, resulted in the defendants paying $10,000 less for Duffy's theatres than they had been willing to pay before the third theatre opened (R. 110). After Duffy sold out the defendants operated only two theatres in Mangum (R. 1616, 1696).

Norman, Oklahoma

The court found that this town of about 10,000 was the seat of the State university, which, during the time involved in the finding, had a student body of between three and four thousand; that Ray Berry and his widow, Juanita Berry, successively, operated the Campus Theatre there until 1936, when her lease was not renewed and it was leased to Griffith Amusement Company; that it was then closed, but was remodeled and reopened in 1940 by Griffith; that during that same period Mrs. Berry also operated the Oklahoma Theatre and Griffith operated the Sooner and the University, both about twice as large as her theatres, and that in 1937 it remodeled a closed theatre and reopened it as the Varsity (R. 111–12). The court disposed of Mrs. Berry's

situation by characterizing her testimony as a complaint that the Campus was "leased out from under her" and that her inability to secure pictures was "in some manner the fault of her competitors in controlling the exhibition of moving picture films" (R. 111-112). The court then concluded that the acquisition of the Campus lease by Griffith was not "brought about or occasioned by any coercion or threats" and that there was no unreasonable restraint of trade at Norman (R. 112).

The testimony is undisputed that until the 1937-38 season Griffith played no second run at Norman (R. 656-7) and that in 1935-36 none of the seven majors which were then selling Griffith first run there would sell Mrs. Berry a second run (R. 660-61); that in the 1936-37 season only Universal and United Artists would sell her a second run (R. 659-60); that she got some of the Class "A" major pictures on second run in 1937-38, but that after Griffith opened the Varsity such pictures were exhibited on second run by Griffith (R. 662, 669). She had successively lost a first run of Paramount, RKO, and part of Universal to Griffith in 1934-35 (R. 657-8), 1935-36 (R. 658), and 1936-37 (R. 659-60), when franchises or master agreements were made with Griffith. The only major first run product she was left with was part of United Artists in 1937-38 (R. 666-7) and in 1938-39 she lost that but acquired RKO (R. 669), which was left out of the

Oklahoma defendants' half of the circuit that year.

Sapulpa, Oklahoma

The court found this to be a town with 12,249 population in 1940, where Alexander Moulder has operated moving picture theatres since 1909, always with competition; that he has operated the Criterion, a 1,200 seat theater, since 1931, and that in 1931 or 1932 Griffith Amusement Company acquired an interest in the Yale, the 750 seat opposition house; that Griffith began construction of a second theatre after this suit was filed and opened it on a second run policy (R. 116-17). There was no finding covering Moulder's film buying except that in 1931 and 1932 he was playing "in the Criterion and the Empress [closed in 1932] first-run pictures of Fox, Paramount, MGM, United Artists and a few from Columbia" (R. 116), and that at the time of the trial he had first run of Columbia, Fox, Paramount, United Artists and some independents (R. 117).

There was undisputed evidence that although Moulder had played Loew films "ever since they have been in business" (R. 629), he was unable to negotiate with Loew for the 1932-33 product (R. 630), which was sold to Griffith for the Yale (R. 630). He and his attorney then called on D. T. Johnston, Griffith's attorney (R. 972), who "released" Columbia pictures to him (R. 631-32). Columbia's films were not as valuable a box-office attraction as Loew's (R. 645) and

Loew has never offered its films to Moulder since the 1932-33 season (R. 633).

The court's finding also recited contradictory testimony concerning threats made to Moulder by representatives of Griffith in the course of negotiations for the acquisition of his theatre or an interest in it, including a threat to cut admission prices (R. 116, 117). The evidence is undisputed that after Moulder was approached by representatives of Griffith about selling his Criterion theatre to them, the admission price at Griffith's Yale was reduced to 15 cents and two-for-one nights were put into effect for a time (R. 636), and that Griffith later opened a second theatre on a second run policy in 1940 at 15 cents admission (R. 636).

Seminole, Oklahoma

The court found this to be a town of between 10,000 and 11,000 population where Joe Love opened the Chief Theatre, 562 seats, in October, 1936, "as a first-run house"; that Griffith Amusement Company was then operating the Seminole, playing "A" pictures first run of "many of the major distributors", the Rialto, second run of the "A" pictures, and the State with first run "B" pictures; that before going into Seminole "Love learned that of the major distributors only Universal first runs for the season had not been sold"; that the evidence didn't show why he couldn't obtain these pictures at that time; and that after Love opened the Chief a price war developed, for

which Love was equally responsible with Griffith (R. 117–18). The court further found that although no third runs were being shown when Love entered the town and he was unable to procure them from the major distributors "for some time", later the distributors did make sales of such films to Love and Griffith (R. 118).

The evidence is undisputed that in October, 1936, Universal took Love's application for its 1935–36 releases on first run, which Griffith had not bought since it was out of the circuit that season, and that it did not approve the application until October, 1937, by which time these films were two years old (R. 881–2). The record also shows that Universal came back into the Griffith circuit for the 1936–37 season by a master agreement (Ex. U-2) made in August, 1936 (R. 2475).

After failing to secure first run films for his theatre, Love tried to buy third runs from all the majors, but they would not even discuss terms with him (R. 882–3). It is also undisputed that he got none until June, 1940 (R. 883). The "some time" referred to by the court was thus the seasons 1936–37 through 1939–40. The court's conclusion that Love's inability to get product results from no unlawful act of the defendants ignores the express terms of the master agreements in effect during the 1936–37, 1937–38, and 1938–39 seasons, which effectively prevented the sale of a run following Griffith.

Shawnee, Oklahoma

The court found this to be a town of 22,053 in 1940, where Jake Jones had begun operating the Cozy Theatre in 1914; that in 1926 he sold this theatre to the Griffith brothers and in 1929 he leased the Criterion, constructed by him in 1927, to the Griffith Amusement Company for ten years at a rental of $561.51 per month, which was reduced in 1931 to $500 a month and again in 1932 to $400 a month for the next two years; that in 1927 Griffith Amusement had also built a deluxe theatre, the Bison, and on May 1, 1933, opened the Victory, which it had acquired in 1931 but kept closed; that prior to Jones' sale of the Cozy to the Griffiths, he had three theatres in opposition to him operated by others (R. 118-121). The evidence as to film licensing is covered by the following statement:

> During the time Griffith Amusement Company was operating the theaters it had leased from Jake Jones, the distributors sold Griffith Amusement Company the film product they had formerly sold to Jones. Jones complains that some of these accounts he was never able to recover when he again engaged in the business (R. 121).

The circumstances under which Jones again engaged in the business were as follows:

When Griffith's lease on the Cozy (renamed the Ritz by them) expired in 1931, Jones again took over its operation (R. 299). In 1936, Seminole Amusement Company, a corporation in which he

and his son Johnny were interested, acquired the State (R. 534). Since 1931 they have been Griffith's only competitor in the town.

There was no dispute about the fact that after Griffith opened the Victory in 1933 it played Metro product there on second run and that Jones had been previously playing it at the Ritz. Although Jones had it for the 1931–32 season (R. 302), he was not offered the 1932–33 pictures, which were sold to Griffith for exhibition at the Rex (R. 303). There was a dispute as to whether or not Griffith had threatened to open another theatre and deprive the Ritz of film product unless Jones made a further reduction in the Criterion rental. The request for a reduction in rental was admitted, but the threat attributed to R. E. Griffith was denied and the court found it was not made (R. 120). There is also no dispute that the request for a further rental reduction was not granted, a closed theatre was then reopened by Griffith, and the second run Metro product was then taken away from Jones.

The effect of the Paramount and RKO franchises on Jones' business was also undisputed. When Jones tried to find out from Paramount why they had sold the 1934–35 product away from him he received the following reply from Agnew, the general sales manager (Ex. 120, R. 2051), dated October 2, 1934:

> * * * In the instance of our sale to the Griffith Amusement Co. it was simply a matter of bettering our income from the

territory as a whole so materially that I could not conscientiously, in the best interest of the stockholders and other people who have their money in this company, refuse to sell them. * * *

I do not quite see how Mr. Dugger could have promised you our product for three years in Bartlesville and Shawnee because such a promise would amount to a franchise and it is against the company's policy at this time to write franchises.

The franchise with Griffith (Ex. P–1, R. 2298, *et seq.*) had been made less than a month before.

When Jones acquired the State in 1936 it was charging 35 cents for adults and 10 cents for children, with a stage show. It reduced its price to 15 cents and 10 cents when it played straight pictures (R. 535). Jones' Ritz was charging 15 cents for adults and 10 cents for children, except on the Sunday, Monday, or Tuesday change, when it would sometimes charge 25 cents. It was exhibiting second or third run, except for a few United Artists pictures first run (R. 535). Price restrictions were generally written into their contracts (R. 536).

Griffith's Avon Theatre played Fox ahead of Jones' State at a 10 cent matinee price while the State continued to play Fox at 15 cents (R. 538). On April 29, 1938, Seminole Amusement Company entered into a contract with Griffith Amusement Company whereby the equipment of the Criterion and State Theatres was sold to Griffith and the Seminole Amusement Company agreed

to close the State Theatre and covenanted that it would not be used as a theatre for a period of 25 years. Seminole also agreed to make a new lease on the Criterion to Griffith at the reduced rate of $300 a month (Ex. 273, R. 538–9).

F. THE TRIAL COURT'S CONCLUSIONS

Findings 12 through 15 are conclusions to the effect that the appellees did not condition the licensing of films in one situation upon another, that they did not acquire or maintain closed theatres for the purpose of discouraging or eliminating competition, that they were guilty of no predatory practices, and that they acquired no theatres by virtue of any combination or conspiracy in restraint of trade (R. 123–4).

Finding 16 states that all agreements not to compete made with the appellees[24] were reasonable, except that relating to Brady, Texas, as to

[24] The number and scope of these agreements is set forth below in the following table:

Ex. No.	Official and Received	Location	Time
3	R. 638, 639	Plainview, Tex.	Unlimited.
122	R. 649, 649	Brady and all towns in New Mexico, Oklahoma and Texas where Griffith operates.	5 years.
15	R. 467, 468	Blackwell, or Kay County, Okla.	10 years.
19	R. 473, 473	Drumright, Creek County, Okla.	10 years.
20	R. 473, 473	Drumright, Creek County, Okla.	10 years.
26	R. 474, 474	El Reno, and Canadian County, Okla.	10 years.
31	R. 474, 474	Enid, and Garfield County, Okla.	10 years.
262	R. 513, 513	Hominy, or Osage County, Okla.	10 years.
39	R. 646, 646	Kingfisher, Okla.	10 years.
40	R. 646, 646	Mangum, and Greer County, Okla.	10 years.
42	R. 646, 646	Ponca City, and Kay County, Okla.	10 years.
12	R. 472, 472	Bartlesville, and Washington County, Okla.	10 years.
273	R. 539, 539	Shawnee, Okla.	25 years.
Def. 162	R. 1730, 1730	Altus, Okla.	10 years.

which the court found, "In the contract of sale in Brady, Texas, the territory covered was unreasonable and the contract was void as to all territory covered except Brady, Texas. As to the time limit and the territory consisting of Brady, Texas, the clause in the contract was reasonable" (R. 124). The court evidently overlooked the agreement in Plainview (Ex. 3, R. 2001) which contains no time limitation, but all of the agreements, except those two, apparently complied with applicable state law when individually considered. They were offered simply as evidence that the appellees wanted to prevent and did repeatedly prevent any future competition from the competitors they bought out by express agreement.

Finding 17 is that the defendants' pooling agreements were lawful (R. 124), and finding 18, that the so-called administration contracts under which they bought and booked films for their theatre-operating affiliates, were lawful (R. 124–5). A sample administration contract, which covers Altus, Oklahoma, is Pltf. Ex. 10, which is printed in full at R. 2007–10, and provides for the payment of four percent of the theatres gross in return for management service and the buying and booking of films by the defendant Griffith Amusement Company. These agreements expressly contemplate the purchase of films under master contracts fixing blanket rentals for the circuit and that such rentals shall be allocated proportionately "solely at the discretion" of the

purchasing defendant. A sample pooling agreement is Pltf. Ex. 30, which is printed in full at R. 2019-24, under which four theatres in Enid were brought under common management and the profits and losses divided between the defendants Griffith Amusement Co. and Texas-Oklahoma Enterprises, Inc. Such agreements, by their express terms, eliminated all actual and potential competition among the parties in licensing films and operating motion-picture theatres.

Finding 19 states that the defendants did not compel or attempt to compel the distributors named in the complaint to give them any substantial advantages over their competitors (R. 125), and finding 20, that none of them conspired or combined with each other, their operating associates or the distributors to unreasonably restrain the terms on which films were made available by their competitors (R. 125).

Finding 21 states that there was no agreement, express or implied, between the appellees and any distributor which unreasonably restrained interstate commerce in motion-picture films, and that the master licensing agreements did not do so. Finding 22 states that there was no agreement to restrain unreasonably the licensing of films not used by the defendants (R. 126), and finding 23, that they did not monopolize or attempt to monopolize first, second, or subsequent run films in any situation (R. 126). The fact that by their master agreements they habitually controlled the

prior runs of six, seven, or all of the eight major distributors in substantially every town in which they operated was undisputed. The remaining seven "findings of fact" simply reiterate in different form the court's ultimate conclusion that there was no unlawful agreement or conspiracy among the defendants or between them and the major distributors and that the defendants had committed no unlawful acts of any description (R. 126–7).

c. THE EXCLUDED EVIDENCE

1. *Conversations.*—The court excluded conversations between the complaining witnesses and sales representatives of major distributors which amplified or supported admitted evidence. Thus, the court permitted Scaling to testify that he could not license on second run at Plainview, Texas, major film product which the appellee Westex Theatres, Inc., was playing on first run during the 1935–36 season (R. 232), but excluded his testimony that their representatives told him to see R. E. Griffith about securing the right to play such product (R. 296). The Paramount franchise (Ex. P–3), on its face, gave Griffith a subsequent run without any additional charge in any town except Oklahoma City, "where requested" (R. 2326). This established in express form a restriction which otherwise might have been inferred from the excluded testimony. The master agreements with the other majors which

gave Griffith first run of their films in Plainview during this season did not, however, expressly grant such a subsequent run option in this town, although their tendency was to accomplish this result, since all contained special provisions inconsistent with the sale of such a run to Griffith's opposition in any town.

Columbia, Fox, Loew, and RKO all permitted Griffith to play out of order of release and required no minimum price to be charged for first run (Exs. C-4, R. 2126; F-3, R. 2206; L-4, R. 2250; RKO-44, R. 2423, 2430). The admitted testimony established the basic fact that Scaling could not license second run films from these distributors, that he requested R. E. Griffith to release such runs for his use, and that Griffith refused to do so (R. 229). The exclusion of Scaling's conversations with these distributors merely excluded an explicit affirmance of a conclusion compelled by the admitted evidence but which the court was apparently unwilling to draw.

2. *Correspondence and memoranda.*—The excluded correspondence between complainants and the major distributors was written evidence of the same nature as the excluded oral negotiations. Its weight might be regarded as greater since its contents were not dependent upon any act of recollection, but its relevance was precisely the same. The competence of the correspondence subpoened from the distributors was also

supported by the fact that it had been retained in their files as part of their business records. To the extent that it was written or received by persons who testified at the trial, it also had a cross-examination value, partially recognized by the court.

Plaintiff's Exhibit 120, the letter from Neil Agnew, general sales manager of Paramount, to Jake Jones, a Shawnee exhibitor, explaining why Paramount's first run films had been taken from Jones and given to Griffith, heretofore quoted at p. 60), was admitted on Agnew's cross-examination (R. 1915-16). However, *inter-office* correspondence written by such witnesses, which would qualify or impeach their testimony, was excluded. Thus, Kupper, sales manager of Fox, was permitted to testify that he made his decision as to whom to sell in Lubbock, Texas, without asking "anybody's opinion as to what we did" (R. 1373). Yet the following exchange of letters (Ex. F-19-CC, R. 2597; Ex. F-19-CC, 2598) between Kupper and his branch manager at Dallas was offered and excluded during his cross-examination (R. 1395, 1396):

October 6, 1937.

Mr. W. J. Kupper,
New York City.

Dear Mr. Kupper: I believe it was your suggestion that in the event we got together with R. E. Griffith for his circuit, we would sell subsequent run contracts in Lubbock.

I anticipate leaving here next Tuesday or Wednesday and make a trip thru Northwest Texas, at which time, I am going to contact Mr. Mauldin and endeavor to secure the proper deal, based on the admission prices charged in his theatres.

It is my understanding that Mauldin does charge 25¢ and he has also given me to understand that he is willing to follow a Griffith second run on some of the pictures, for which Griffith is now charging 20¢.

Unless I hear from you to the contrary, I will make this trip and forward contracts to you thru the regular channel.

Kindest regards.

Yours very truly,

/s/ H. R. Beiersdorf.

October 7, 1937.

Mr. H. R. Beiersdorf,
Dallas, Texas.

Dear Mr. Beiersdorf: Regarding your letter of October 6th relative to selling subsequent runs in Lubbock, see no reason why you cannot sell Mr. Mauldin's theatre, provided he charges a respectable admission price.

Griffith was up here and complained bitterly about some account you are supposed to be selling out at the College in Lubbock who charges a very cheap admission price, runs double bills, etc.

If this is the same account that you are referring to here, we don't want it. How-

over, if you can get a satisfactory contract with the proper set-up as to playing time, etc. it will be all right.

Very truly yours,

/s/ W. J. Kupfer (Italics ours).

In addition to business correspondence or memoranda signed by a witness, similar writings by other representatives of his company which tended to rebut his testimony, were excluded. Thus, Rodgers, general sales manager of Loew, and the only witness called for that distributor, testified that he knew of no agreement with the appellees not to licence a second or subsequent run to any of their competitors (R. 1560). He admittedly had had no direct contact with the negotiation or operation of any license agreement with the appellees (R. 1561). His southern district manager, Kessnich, and Oklahoma City manager, Zoellner, who did have such contact (R. 1561), had expressed themselves in the following manner in memoranda kept in the files of this distribution, all of which were offered (R. 1069) and excluded (R. 1084).

Zoellner, Loew's Oklahoma City manager, wrote to Connors, his superior at New York, on May 13, 1935 (Ex. L–109, R. 2629):

> You will recall that some six years ago in our discussion with R. A. Griffith we agreed not to sell second run in any of the Griffith towns having a population of less than 10,000 people. Naturally Griffith will

not like it when we sell our product second run in this or any other town, but on the other hand they should not have any objection, because the theatre will be operated on a strictly 15¢ minimum adult admission price, while Griffith charges 25¢ in the A houses and 15¢ in the B house.

Kessnich, Loew's southern district manager, wrote to Connors at New York, on May 16, 1935, re Zoellner's letter (Ex. L–110, R. 2630):

I don't see any reason why we shouldn't sell Mr. Jones our product, second run, except that we did have an arrangement with Griffith whereby we did not sell this type of operation since we felt it affected our first run returns, which returns come to us through our straight percentage arrangement.

Zoellner wrote to Connors on March 17, 1936 (Ex. L–114A, R. 2631):

The reason we have not sold second run against Griffith in the past was because they quite rightfully claimed that a second run naturally hurts the first run theatre. However after Griffith themselves have used our product second run in a town like Chickasha, or Shawnee, or Enid, Oklahoma, I do not see how a third run could hurt them—especially when the theatre is willing to charge the same admission as they themselves charge second run for our pictures third run.

Zoellner wrote to Connors on August 12, 1935 (Ex. L-54, R. 2626):

> A new theatre recently opened in Enid, Oklahoma, the "Gray" theatre. It is charging an admission of ten cents for children and fifteen cents for adults, matinee and night, does not use double programs—in other words, on a legitimate basis. The exhibitor, Mr. Gray, desires to buy all the third run product we are willing to sell him, including shorts. However, Griffith Brothers have taken the attitude that inasmuch as there was no previous third run in Enid we should not sell our product third run against them.
>
> As you know, Griffith have been using our product first and second run in Enid—the second run contract being on a flat rental basis. In selling third run after the completion of Griffith's second run, Griffith cannot claim this would hurt our first run because they, themselves, are using our pictures second run at ten and fifteen cents admission and, if anything hurts our first run, it would be the second run.

Zoellner wrote to Connors on August 3, 1937 (Ex. L-68, R. 2627):

> The writer has always maintained that we should sell our product third run to Mr. Gray, who is running a very nice theatre, is willing to pay a fair price for our product and charges the same admission that Griffith is charging second run. I shall not

approach Mr. Gray however until you have made a deal with Griffith for the 1937-38 product.

In this connection, there are two other towns of considerable size in this territory where we should sell our product third run—one is Chickasha, Oklahoma, where Southwestern Theatres (Moran and Isley), who are buying our product 100% in their four Tulsa houses, Ficher, Oklahoma, and Missouri out of the Kansas City office, are operating the Midwest and Ismo theaters. These people are not a fly-by-night outfit and it is very hard to explain why we refuse to sell them our product third run after Griffith uses it second run, when they are willing to charge the same admission prices third run that Griffith is charging second run for our product.

Another town is Ada, Oklahoma, where Mrs. Kyser is operating a very beautiful modern theatre. Ada in the last two years has had a tremendous oil boom and the town today must have a population of 30,000 and we should sell our product third run in this situation—especially, as in the case of Enid and Chickasha, this exhibitor is also willing to charge the same admission prices third run as Griffith is charging second run for our product.

Zoellner wrote to Connors on February 21, 1939 (Ex. L-91, R. 2628):

Mr. G. S. Pinnell, operating the New Bays theatre in Blackwell, Oklahoma,

called on the writer and wanted to buy our product second run in Blackwell, Oklahoma. He wants to charge ten cents for children and fifteen cents for adults.

We are selling all our first-run product to the Griffith Amusement Company and we have never sold second-run product in this town of 9,500 population.

Griffith contends that if we sell our product second run in Blackwell it will hurt his first-run business.

Similarly, McCarthy, Southern and Canadian sales manager of Universal (R. 1537), the sole witness called for that distributor, was permitted to testify that there was no agreement by Universal with the appellees that Universal would not license second run to competitors of the appellees during the period 1933–34 up to 1945 (R. 1545), while the following letter from Olsmith, Universal's manager at Dallas (R. 1547), to its Oklahoma City manager, dated November 5, 1936 (Ex. U–39, R. 2669), was excluded (R. 1099, 1100):

Replying to your letter of November 3, I was afraid you were going to have some difficulties with Falls over the second run setup in Norman as it was not in line with our agreement.

The understanding with reference to the sale of second run Universal product is that we are not to sell second run pictures in any town where they themselves do not

operate a second-run theatre; their contention being that if the town is capable of supporting a second run theatre they will put it in themselves.

There may be one or two situations where they are probably wrong in their contentions; however, I am sure you will agree with me without any question that most of their towns could hardly justify a second run theatre and at the same time allow us to take out first run revenue.

Correspondence between the major distributors and exhibitors competing with Griffith such as that between Fox and Jones threatening to cancel Jones' bookings at Shawnee as a result of Griffith's complaints about his admission prices (Exs. 270–272, R. 2585–87), while Griffith played Fox pictures on a prior run at lower admission prices (R. 536–38), and between Universal and Vincent (R. 503) explaining that a booking in his theatre at Hominy must be canceled because Griffith had bought the picture for its circuit (Ex. 265, R. 2581) and then reconfirming his date by permission of Horace Falls (Ex. 266, R. 2582), are other examples of excluded evidence which tended to rebut assertions by the appellees' witnesses which were accepted by the court.

Other excluded competent evidence directly contradicted the court's findings of fact. The court found that the appellees did not condition

the licensing of films in any competitive situation upon the licensing of such films in any other situation (R. 123), yet excluded (R. 1069, 1070) exhibit RKO–21E (R. 2640), a telegram from RKO's branch sales executive to the home office stating, "As part of circuit deal it was necessary to include Hobart Griffith franchise. * * *" The franchise is exhibit RKO–44, and Hobart is the town where Mahone had been playing RKO on first run in opposition to Griffith. Examination of the franchise itself, coupled with Mahone's testimony that he was given no opportunity to negotiate for the continuance of his run (R. 988) should have compelled the conclusion expressly stated in this telegram in any event, and the exclusion of this evidence was in that sense merely a cumulative error. Its exclusion was, however, a striking example of the court's refusal to relate the agreements in evidence between the appellees and the major film distributors to the admitted evidence of the independents' inability to negotiate on a competitive basis, even where the relationship was made explicit in the distributors' own business records.

The court also found that there was no agreement between the defendants and any distributors which unreasonably prevented, restricted, or restrained the licensing of feature pictures which were not used by the defendants (R. 126), yet excluded (R. 1069–70) exhibit L–123 (R. 2634),

an inter-office letter from the Loew office manager, dated May 29, 1938, stating:

> The second run features for the Griffith Amusement Company are set-up on our records as "No Charge"—the film rental for same being included in the price for first run. At the present time we have approximately fifty (50) features under contract second run which Griffith advises they will not use.
>
> We have repeatedly asked them that if they do not intend to use them to please give us a letter to that effect. They will not consent to give us a letter because they do not want the pictures cancelled from their contract, knowing that it would give us the right to sell some of them second run to their opposition.
>
> There is no way for us to clear our records of these features or for the Booker to receive credit for them in the Bookers' Standings unless it would be permissible for us to put through "No Charge B. N. U." Billings.
>
> Will you please let us know whether or not this would be permissible?

The excluded evidence on this point was merely cumulative, since the court had admitted (R. 1806–1810) exhibits RKO–17, 18, 19, and 20 (R. 2394–2414), an exchange of correspondence between RKO and Griffith from which it appeared that this distributor could not secure from Griffith the privilege of licensing films un-

used by the circuit but covered by its franchise, to other exhibitors until the films in question were from one to two years old. The court apparently concluded that this course of conduct was reasonable because under a construction of the franchise argued by the appellees' counsel (R. 1812–14) the distributor might have forced the release of these features at an earlier date. The fact that the parties themselves construed it differently in actual operation was disregarded. The excluded Loew exhibit would apparently also have had no effect on the trial court's conclusions, since it merely recorded the actual course of dealings under the Loew master agreement (Ex. L–6, R. 2264–5). Its exclusion is only a further example of the court's rejection of proven unreasonable competitive effects of the appellees' agreements with the major distributors, in favor of the appellees' testimonial protestations that such results were unintended, in determining their legality.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In failing to hold that each of the master agreements made between the appellees and the major film distributors was a violation of section 1 of the Sherman Act on its face (Nos. 14 and 15, R. 131).

2. In failing to hold that the appellees were a combination in unreasonable restraint of trade,

which monopolized theatre operations in violation of Sections 1 and 2 of the Sherman Act (Nos. 1–13, R. 130–31; Nos. 16–22, R. 131–32).

3. In excluding competent oral and written evidence which tended to contradict the court's findings of fact (Nos. 23, 24, 26, and 27, R. 132).

SUMMARY OF ARGUMENT

I

The method of negotiation and the express terms of the master agreements and franchises by which the appellees licensed feature films from the major film distributors so restrained the ability of the appellees' competitors to procure films as to violate Section 1 of the Sherman Act. The mere fact that the appellees, by combining their film-buying power, were able to contract for the first run exhibition in their theatres of substantially all of a major film distributor's output of films for one or more seasons, precluded their independent competitors from licensing such films on a competitive basis. Furthermore, the unique provision in the master agreements authorizing appellees to play the licensed films out of order of release was on its face substantially effective in preventing the appellees' competitors from licensing the second run exhibition of the films covered by the agreements while such films were current entertainment.

The master agreements, their collective negotiation by the appellees to include the film re-

quirements of both competitive and non-competitive towns, the actual effect of the agreements upon the appellees' competitors, and their use to expand the circuit by absorption of such competitors, bring the case squarely within the rule of *United States* v. *Crescent Amusement Co.*, 323 U. S. 173. Upon the admitted and substantially undisputed evidence, the trial court should have entered judgment for the Government. The trial court excluded from evidence testimony of independent exhibitors as to their conversations with representatives of the distributors, and inter-office correspondence between officers and representatives of the distributors, which was clearly admissible under established rules of evidence, but the evidence which was received clearly establishes that the appellees violated the Sherman Act. Accordingly, judgment should be entered for the appellant without retrial of the issues in the light of the improperly excluded evidence.

II

The offenses here involved are so similar to those dealt with in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and *United States* v. *Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.), that the relief granted in those cases should control the relief to be granted here. The appellees' film-buying combination should be dissolved and the negotiation of film licensing agreements such as were employed by the appel-

lees should be enjoined. Also, as in those cases, an effective decree should include a provision for the divestiture of a sufficient number of theatres or stock interests to restore theatre operating competition in the areas now controlled by the appellees and contain a similar prohibition against further acquisitions by the appellees. While the precise extent and nature of such relief may well be left to the trial court's discretion, the necessity for such relief has been demonstrated by the record now before this Court and its mandate should so state, in order to assure the entry of an adequate judgment.

ARGUMENT

I

THE COURT'S FINDINGS AND UNDISPUTED EVIDENCE ESTABLISH THAT THE APPELLEES VIOLATED THE SHERMAN ACT

The complaint in this case is substantially the same as the complaints in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and *United States* v. *Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.). Each charges a group of affiliated motion picture exhibitors with restraining trade in motion pictures by combining their theatres into a single unit for the purpose of obtaining film licenses from the major film distributors. In each case, the defendants are charged with conspiring with each other and with

each of the eight major distributors unreasonably to restrain the film licensing opportunities of their independent competitors, that is to say, persons operating theatres in opposition to members of the combination. In each case, they are also charged with conspiring in the same way to monopolize the motion picture business in the areas in which the defendants and their affiliates operate theatres. The charges and the evidence in all three of these cases involve the same distributors and the effect upon their distribution practices of what is called circuit buying power, a shorthand description of the power over the film supply which results from combining into a single buying unit, called a circuit, a large number of theatres in so-called closed towns where there is no theatre-operating competition with a number of theatres in towns where there is such competition. The charges and the evidence in *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), also present the same problem, among many others, in terms of what relief may be had against the same major distributors to prevent unreasonable competitive restraints in the licensing of their films resulting from circuit buying power.

The principal difference between the record made in this case and in the *Schine* and *Crescent* cases is that, in the latter cases, exercise of circuit buying power had to be partially inferred from the circumstance of common control and similar

licensing practices of the various exhibitor corporations involved, while here the concerted action of the appellees and their theatre-operating affiliates in licensing major films was conclusively established by the express agreements they made with the major distributors.

A. THE MASTER AGREEMENTS THEMSELVES RESULTED IN SERIOUS AND UNREASONABLE RESTRAINTS ON COMPETITION

During the motion picture seasons 1934–35 through 1937–38, the appellees' film deals with the major distributors were negotiated on behalf of all four corporate appellees and other exhibition companies in which they had a financial interest by R. E. Griffith, assisted by Horace Falls, a film buyer and booker employed by the Oklahoma appellees (R. 2310–12, 2329, 2434–6, 2469, 2472, 2485, 2526–7, 2531–2, 2538–9, 2544–5, 2660). In each season where a deal was made with any distributor it involved all of the appellees. The so-called master agreements with these distributors, which reduced these deals to written form, were generally executed by R. E. Griffith on behalf of each of the four corporate appellees and the other affiliated corporations composing the circuit when these deals were made. There is no dispute about the fact that all of these corporations acted in concert in either dealing or not dealing with the major distributors during this period (F. 9–10, R. 87). In the 1938–39 season and since, the Texas appellees have negotiated separately

from the Oklahoma appellees, but each of the agreements which the two groups respectively made for that year included the theatres of a substantial number of affiliated corporations. By that time, the original circuit had expanded to the point where splitting it in half still left each half almost as large or larger than the entire circuit had been at the beginning of the period (see fn. 17, at p. 23, *supra*).

These agreements, in form a letter or typewritten memorandum signed by R. E. Griffith on behalf of the exhibitors and with an acceptance noted by a sales representative of the distributor, generally covered all of the films to be released, that is to say, made available for exhibition, by the distributor during a one-year period following the making of the agreement. In some cases, franchises covering from three to five year periods were made, but these franchises were similar in substance to the one-year master agreements, except for the period of time covered. They all provided for the exhibition of the films licensed in all of the towns listed in a schedule accompanying the agreement upon first run, except in Oklahoma City, where the appellees operated only two subsequent run theatres.[25] The agreements also generally provided for a second run of the same

[25] The charges of the complaint were limited to the other towns in which the circuit operated, which were smaller communities with a population of about five to twenty-five thousand.

films or a lesser number to be selected from those played first run in certain specified towns. A blanket minimum annual film rental was fixed for the use of all of the films licensed in all of the towns named, on all runs used, which was payable in equal weekly or quarterly installments. The blanket rental was in most cases later allocated for bookkeeping purposes among the individual theatres and runs licensed, and individual license agreements for the individual towns covered were frequently later executed. But the rental obligation was an obligation of the circuit as a whole and the circuit was not committed to play any particular film on any particular run at any particular theatre on any specified date. In fact, most of these agreements expressly granted to the appellees the privilege of playing the films out of the order of their release by the distributor.

1. *The master agreements prevented the prompt exhibition by competitors of films not exhibited by appellees.*—The freedom of booking which these agreements gave the appellees was in sharp contrast to the standard printed form of agreement under which the distributors did business with the independent theatres operating in opposition to the circuit. The standard form provides for exhibition at a specific theatre on a specific run in the order in which the films are released by the distributor. The purpose of such an agreement, of course, is to insure that films licensed are ac-

tually played by the licensee or made available to others for playing as they are released, and that a following run may be licensed with some assurance that the films will be available to the subsequent run theatre in a predictable sequence. While the provisions of the standard form were expressly made a part of these master agreements by reference, the master agreements also expressly provided that wherever the master agreement was inconsistent with the standard form, the standard form provisions were superseded.

Some of the appellees' witnesses claimed that the provisions of the standard form were not in fact superseded by the master agreements and that the distributors had the right to compel the exhibitor to play the films in the order of release, notwithstanding express provisions to the contrary in the master agreement. There was no claim, however, that in actual practice the appellees had been compelled to forego this extraordinary privilege of playing the films licensed when it suited their convenience rather than in the order of release, as their competitors were compelled to play them. In fact, there was undisputed evidence that in actual operation the appellees had refused to release, for playing by other exhibitors, films covered by their licenses which they had not used, while those films were current entertainment; and that the major distributors did not in fact exercise the privilege which some of their executives asserted they had of compelling Griffith to

play or release films which were unused during the season in which they were released. The result was that independent competitors of the circuit had no opportunity to license for exhibition in their theatres even the films released by these distributors which the appellees did not exhibit until long after those films had become stale attractions.

2. *The master agreements prevented the subsequent exhibition by competitors of films exhibited by the appellees on prior runs.*—Another unreasonable effect of these master agreements was to prevent the exhibition of films which the circuit theatres played on prior runs by competitors who sought to play them on a following run. The failure of the master agreements to require the appellees to play films in the order of release, of course, itself tends to prevent the licensing of a subsequent run to a competing theatre, since the distributor could never give the subsequent run theatre assurance as to when the licensed film would be available to him, control over the time of first run exhibition having been completely surrendered to Griffith. But another provision of these agreements which more directly and completly prevented the licensing of a second run to the opposition was the optional second run privileges which were contained in the master agreements. In many of the agreements, the circuit contracted for a second run privilege, the run to be furnished without any additional rental charge. This in actual effect meant that Griffith could and did

effectively tie up the second run privilege in particular communities where competitors sought such a run without itself using a second run or paying for it.

These second run provisions were similar to the second run options granted by the same distributors to the Crescent circuit and condemned by this Court in *United States* v. *Crescent Amusement Co., supra,* at p. 183, with the difference that the Crescent option required the Crescent defendants to pay a film rental for the additional runs they used, whereas the playing of a second run by Griffith involved no additional rental liability whatsoever. One of these options, that contained in the Paramount franchise, was modified after complaints to the Department of Justice by exhibitors who were unable to license a second run against Griffith, but the modification still required no rental payment by Griffith, although it did in terms require the release of unused films by Griffith within 60 days after they were made available. The release provision applied only to second run films.[26]

[26] None of these master agreements prior to the 1938–39 season, with the exception just noted, contained any provision requiring Griffith to play or release, as the films became available, the films licensed to them on any run. Such a release provision was, of course, essential to any competitive distribution of films as between the circuit theatres and theatres attempting to compete with them. R. E. Griffith, who had conducted the negotiations for all defendants in prior seasons, in negotiating with Universal on behalf of the Texas defendants for the 1938–39 season, flatly declined to

3. *The joint negotiation of the master agreements prevented any competition between a circuit theatre and an opposition theatre for the privilege of exhibiting a specific film on a specific run.*—The foregoing unreasonable effects of the terms of the master agreements themselves are apparent on their face, as well as in the context of their actual effect upon competitors. They prevented, by their express terms, a normal competitive disposition of both the films the circuit did use and those it did not use. However, the basically unreasonable character of these agreements lies in the fact that their method of negotiation gave no opportunity for any comparison or consideration of competitive offers by a particular independent theatre for any particular run at any time. Witnesses called by the appellees conceded that in making these deals, the over-all revenue obtainable from the circuit was decisive, so that even where an independent in a particular town had actually paid and was willing to continue to pay more money for a distributor's product for exhibition in that town on first run than Griffith was willing to pay in that situation, the product was taken away from the independent and licensed to Griffith (R. 1504, 1546).

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agree even to such a 60-day provision, although the Oklahoma defendants yielded this point in their negotiations that year with that distributor (R. 1552). The standard form provides that the exhibitor must designate a playing date for the films licensed within 14 days of availability (App. B, par. Sixth).

This inequitable competitive result was implicit in the very nature of the master agreements themselves and was recognized as such in the *Paramount* case. There agreements of the same character made with other circuits were introduced in evidence to show the characteristic methods by which the distributor-defendants licensed films to large circuits. The expediting court there expressly held that circuit deals of this kind, which on their face gave no opportunity for the matching of competitive offers by theatres in opposition to the circuit against offers made by individual circuit theatres, were in themselves an unreasonable restraint of trade. It held that the franchises were unreasonable restraints since they committed a distributor's films to the circuit for an unreasonable length of time, but its decision stands for the further proposition that licensing even one film for exhibition in a circuit theatre as part of a circuit deal is also unreasonable since the commitment is the result of blanket terms negotiated for an entire circuit with no consideration whatsoever being given to the claims of competing theatres on their individual merits. In that case, this holding was based simply upon a consideration of the terms of such agreements themselves. *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 346–7 (S. D. N. Y.). In the instant case, as in the *Schine* and *Crescent* cases, extensive evidence was offered and received showing what the actual com-

petitive effects of this method of licensing were in specific local situations. Thus the conclusion that the expediting court drew from the fact of the master agreements in the *Paramount* case was buttressed here by proof that the agreements in operation had exactly the unreasonable effects on competition which might otherwise be predicted from a careful consideration of their terms and method of negotiation.

B. THE FACTS FOUND BY THE TRIAL COURT AND UNDISPUTED EVIDENCE UNNOTICED IN ITS FINDINGS CONCLUSIVELY ESTABLISHED VIOLATIONS OF THE SHERMAN ACT CONDEMNED BY THE *CRESCENT* CASE

There is no serious dispute as to what actually happened to appellees' competitors in the specific situations as to which evidence was offered, except as to the substance of certain conversations between representatives of the appellees and complaining witnesses involving verbal threats. In many cases, the court did not attempt to resolve these conflicts in express terms, but simply recited the evidence establishing such a conflict and added its invariable conclusion that there was no evidence relating to the competitive situation in question which could justify a finding of any form of antitrust violation. This form of finding followed from the trial court's refusal to view the evidence as a whole in determining the appellees' liability. The Government had not charged that the events occurring

in any local situation constituted, by themselves, an unreasonable restraint of trade; but there was charged and proved collective action in unreasonable restraint of trade throughout the area in which the appellees and the interests affiliated with them operated theatres, and that they had effectively monopolized the motion picture business in numerous towns."

The fact that representatives of the appellees approached competitors about selling their theatres at a time when the latter were faced with difficulties in licensing films caused by the master agreements which the members of the Griffith circuit had collectively negotiated with the major film distributors is undisputed; equally undisputed is the fact that a number of independent exhibitors sold their theatres to the circuit after

[27] Some of the towns in which the defendants actually succeeded in monopolizing the entire motion picture theatre business in a town by acquiring a competitors' theatres are Altus (p. 36), Blackwell (p. 38), Brady (p. 39), Phillips (p. 44), Plainview (p. 46), Hominy (p. 51), and Mangum (p. 53). Others in which the defendants actually monopolized the major film product on first and second run, although independent opposition continued to exist, largely with inferior product, are Ada (p. 34), Duncan (p. 41), Lubbock (p. 43), Stillwater (p. 47), Norman (p. 54), Seminole (p. 57), and Shawnee (p. 58). In Gallup (p. 49), Hobart (p. 50), and Sapulpa (p. 56), where the independents were all established with superior theatres before Griffith acquired an interest in the town, the independents lost only one or two major companies to Griffith, but in each of these towns Griffith was able to control the major share of the major product.

experiencing such difficulties, and further agreed not to compete in the future. The fact that such agreements were not taken for the customary purpose of protecting the goodwill of the acquired theatres is conclusively established by the sweeping terms of the agreements made in the Brady, Plainview and Shawnee situations (*supra*, pp. 39, 46, 61–2). Regardless of whether the appellees or their representatives added the threatening language attributed to them by numerous complaining witnesses, these invitations to sell out were an aggressive step, frequently successful, toward securing complete control of the towns in question. In some cases, instead of purchasing a theatre outright and disposing of the operator's future potential competition by an express agreement not to compete, the appellees accomplished the same result by acquiring a partial interest in the competitor's theatre under an arrangement whereby they took over the film buying and the local partner continued to operate the theatre, with the profits split between them and a percentage of the gross paid to the appellees in compensation for their film buying and other administrative services. In either case, the elimination of competition in licensing films and operating theatres in the towns in question was complete.

The decision of the trial court in this case as to the validity of the appellees' franchises and

master agreements, their effect upon competition, and their use, as an instrument for monopolization, was not based upon any critical analysis of the prior opinions, either of this Court in *United States* v. *Crescent Amusement Co., supra,* or of other federal courts in the *Schine* and *Paramount* cases, all of which dealt with substantially the same evidence, but reached an opposite result. The decision here was reached only by ignoring applicable legal precedents as well as the terms of the agreements which the court pronounced valid. The trial court, perhaps because it failed to analyze the character of the master agreements, refused to recognize the restraining effects on competition of the appellees' collective activity considered as a whole. Instead, the trial court substituted as the decisive consideration the appellees' asserted lack of intent to injure or destroy their competitors.

As in *Crescent,* we are told "that the independents were eliminated by the normal processes of competition; that their theatres were less attractive; that their service was inferior; that they were not as efficient business men as the defendants." But, as this Court replied in the *Crescent* case (at p. 183):

> * * * the vice of this undertaking was the combination of several exhibitors in a plan of concerted action. They had unity of purpose and unity of action. They pooled their buying power for a common

> end. It will not do to analogize this to a case where purchasing power is pooled so that the buyers may obtain more favorable terms. The plan here was to crush competition and to build a circuit for the exhibitors.

In citing the above language in its opinion, the trial court underlined the phrase "where purchasing power is pooled so that the buyers may obtain more favorable terms" (R. 78), indicating that in its view the instant case was such a case. The trial court then says, with respect to the conclusion in the *Crescent* opinion that the plan there "was to crush competition and to build a circuit for the exhibitors," that "although the charge is similar to the charge in the instant case, the proof is not. In the case at bar there is no testimony by any witness to that effect, but the testimony is to the contrary" (R. 78).

The District Court evidently thought that proof of a plan to crush competition and build a circuit had to be made by express testimony to that effect and that if the appellees' witnesses denied any such plan or purpose, that was conclusive in the absence of contrary statements by other witnesses. Of course, the appellees' intention, not only to obtain more favorable terms for themselves but to expand their circuit at the expense of independent competitors was not proved in the *Schine* or *Crescent* cases, or in this case, by explicit testimony of witnesses that this was the

plan and purpose of the combination. The proof of such intention was made there and here, and as it necessarily is in most antitrust cases, by showing what the appellees did and what the necessary effects of that conduct proved to be.

There was no dispute about the fact that the appellees consciously made these master agreements with the major film distributors which unreasonably restricted their competitors in obtaining major films, which in turn frequently led to the acquisition by them of the competitor's theatre or a financial interest in it, and that by such acquisitions they eliminated all theatre-operating competition in a substantial number of towns. The close interrelationship between this expansion of the circuit by elimination of competitors and the making of these agreements was primarily a matter for judicial observation rather than oral testimony. It would seem obvious that the more widespread the coverage of these master agreements became, the less chance competitors would have to survive, and that a progressive elimination of competing theatres would automatically intensify the circuit's buying power. The making of the agreements and the elimination of the circuit's competition were thus inseparable in any realistic view of the appellees' business.

In this case, as in the *Schine* and *Crescent* cases, the defendants' witnesses were permitted

to testify that they did not intend to produce the adverse competitive effects which occurred but were only interested in promoting their own business in a normal fashion, and that they never coerced or threatened anyone, etc. However, that kind of testimony was not thought by those courts to override evidence as to what actually occurred with respect to restraint or nonrestraint of competition, in appraising the intent of defendants for Sherman Act purposes. The failure of the district court to reach the same result here as the district courts reached in *Crescent, Schine,* and *Paramount* and which this Court reached in the *Crescent* case, was simply a refusal to accept the basic Sherman Act premise that antitrust defendants are conclusively regarded as intending to produce the effects on competition which are a necessary consequence of what they consciously do. *United States* v. *Patten,* 226 U. S. 525, 543.

The trial court's rulings on the admissibility of evidence which we have also assigned as error merely illustrate its refusal to appraise the appellees' intentions in terms of actual conduct during the period under review, rather than protestations at the trial that they did not intend by such conduct to work competitive injury. For example, the court excluded (R. 1069–70) an office memorandum taken from the files of the distributor Loew, which states that Loew is unable to license to other exhibitors 50 second run features which the circuit was not going to use because

Griffith would not release them (Ex. L–123, R. 2634). The trial court relied for its findings of no unreasonable restraint upon testimony of Loew's general sales manager Rodgers that there was no agreement between Loew and the defendants to restrict the terms of its dealings with competitors of Griffith (F. 30, R. 127). This testimony was admitted and relied on notwithstanding that Rodgers had never negotiated a deal with the appellees or had anything to do with the performance of the agreements his company made with the appellees (R. 1561). The court also excluded memoranda kept in the Loew files and written by the Loew executives who did negotiate and supervise these agreements, to the effect that Loew had actually refused to license runs following Griffith to its competitors as the result of agreements made with the appellees not to do so (*supra*, pp. 69–73).

While it is true that the grounds on which these exhibits were excluded was not lack of relevance but alleged incompetence because they were hearsay statements made outside the presence of the appellees, the rejection of such evidence in favor of pure opinion testimony by an interested witness, who did not even have the requisite experience or connection with the matter at issue to express an opinion of any probative value, does suggest a flat refusal to give objective evidence of actual conduct the weight which it is entitled to receive in Sherman Act cases.

The trial court's rejection of evidence of this kind was, of course, error in itself, since it plainly came within the business records exception to the hearsay rule and was of the same class of material that is customarily admitted under the Federal statute expressly liberalizing the business records exception. *Cornes* v. *United States,* 119 F. 2d 127, 129 (C. C. A. 9); *Harper* v. *United States,* 143 F. 2d 795, 805 (C. C. A. 8); *United States* v. *General Motors Corp.,* 121 F. 2d 376, 409 (C. C. A. 7), certiorari denied, 314 U. S. 618. It was also admissible under the exception for statements of motive and purpose, since it related directly to the distributors' reasons for refusing to license films to the appellees' competitors. *Lawlor* v. *Loewe,* 235 U. S. 522, 536; *Greater New York Live Poultry C. of C.* v. *United States,* 47 F. 2d 156 (C. C. A. 2); *Johnson* v. *J. H. Yost Lumber Co.,* 117 F. 2d 53, 60 (C. C. A. 8); *American Cooperative Serum Ass'n* v. *Anchor Serum Co.,* 153 F. 2d, 907, 912 (C. C. A. 7). It should have been admitted, even if the court's finding of no illegal combination between the exhibitors and the major distributors were accepted as correct. The court's failure to admit it under the coconspiracy rule (*Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229) was, of course, simply another consequence of its failure to find a conpiracy. It followed from the court's refusal to consider the restrictions imposed by the express agreements made with the major distribu-

tors because the appellees' witnesses testified there was no agreement to impose such restrictions.

However, the court's errors in excluding evidence do not require a retrial of the case, since the rejected evidence merely tended to confirm conclusions which must necessarily be drawn from the admitted evidence. The express agreements which the appellees made, plus the court's own findings and undisputed testimony as to what occurred in specific competitive situations covered by the agreements, compel a finding of liability in any event.

Under similar circumstances in *United States* v. *Crescent Amusement Company, supra,* this Court found it unnecessary to decide whether or not the evidence established a conspiracy between the major distributors and the exhibitor-defendants there involved. Evidence of conversations and correspondence between complaining independents and the major film distributors, in proof of the unreasonable effects of the defendants' use of their film buying power, was admitted and was relied upon both in the district court and in this Court. On appeal, the *Crescent* defendants contended that inter-office memoranda taken from the major distributors' files "stating reasons why the distributor was discriminating against an independent in favor of the defendants," had been improperly admitted, but this Court found it unnecessary to pass upon the claim by the United

States that these documents were admissible as declarations of coconspirators. It said (p. 184):

> The other evidence established the position of the distributors and their relations to the theatres involved, what the distributors in fact did, the combination of the defendants, the character and extent of their buying power, and how it was in fact used. This other evidence was sufficient to establish the restraints of trade and monopolistic practices; the purpose, character, and extent of the combination are inferable from it alone.

In the present case, likewise, the excluded evidence might be regarded as mere surplusage since the admitted evidence was sufficient to establish liability. The exclusion of this evidence becomes significant only because the court in its findings accepted the exculpatory statements of appellees' witnesses without subjecting them to the test of comparison with their own contemporaneous records. The sharp contrast between the factual statements made by employees of the major film distributors, which the court excluded, and the testimony of their superiors, which the court admitted and made the basis for its determination of the ultimate issues before it (R. 1560, 1545, 1496, 1524, 1534), alone deprives the trial court's ultimate conclusions of the weight which they would otherwise have. But the basic error

of the trial court lies in its rejection of the substantive doctrine of the *Crescent* case. We respectfully submit that the application of that doctrine to the undisputed admitted evidence requires the entry of a judgment in favor of the Government in this case.

II

THIS COURT SHOULD DIRECT THE ENTRY OF A DECREE WHICH WILL BE EFFECTIVE TO RESTORE COMPETITION

We have shown that, upon the basis of the admitted evidence, the appellant is entitled to a decree adjudging the appellees guilty of violating the Sherman Act. Since the case is ripe for the entry of an appropriate decree, a retrial for the purpose of receiving evidence improperly excluded would be an unnecessary burden. Furthermore, the offenses of the present appellees are so similar to those of the defendants in the *Crescent* and *Schine* cases that a serious injustice would be done if the appellees in this case are not subjected to a decree comparable in scope to those imposed upon the Crescent and Schine defendants.

Injunctive relief is obviously necessary to prevent the appellees from continuing to combine and use their film-buying power to license films in the manner and with the effect revealed in this case. Toward this end, nothing less than the injunctive relief approved by this Court in the

Crescent case will be effective. *United States* v. *Crescent Amusement Co., supra,* p. 187. Mere injunctive relief, however, will do nothing to restore the competitive conditions which the appellees have destroyed. Thus, the most significant relief which can be granted in the instant case is divestiture of theatres and theatre interests and a curb on future acquisition of theatres and theatre interests, such as was ordered in the *Crescent* and *Schine* situations, sufficient to restore competition in the areas now monopolized by the appellees. Accordingly, we urge that the mandate to the trial court contain an express instruction[28] to enter a decree granting relief comparable to that already approved by this Court in the *Crescent* case and to the relief which this Court may find appropriate in the *Schine* case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed and the case remanded to the district court, with directions to enter a decree which will not only grant injunctive relief adequate to end the appellees' illegal combination, but will provide affirmatively for the revival of competition

[28] *United States* v. *St. Louis Terminal*, 224 U. S. 383, 411–412, is illustrative of the specific instructions as to the content of a decree which this Court has given upon reversal in appropriate cases.

in the exhibition of motion picture films in the areas involved.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
ROBERT L. WRIGHT,
MILTON A. KALLIS,
ROBERT W. GINNANE,
Special Assistants to the Attorney General.

DECEMBER 1947.

APPENDIX A

(Ex. C–5, R. 2143–46)

AGREEMENT made and entered into this 31st day of August, 1936, by and between COLUMBIA PICTURES CORPORATION, hereinafter called "Distributor" and CONSOLIDATED THEATRES, INC. and R. E. GRIFFITH THEATRES, INC. and GRIFFITH AMUSEMENT COMPANY, WESTEX THEATRES INC., and Associated companies and theatres, hereinafter known as the Exhibitor operating the following theatres in designated towns:

"Exhibit A"—designated towns

No. days	Town and State	Theatre	Run
	GRIFFITH AMUSEMENT COMPANY		
1-3	Ada, Oklahoma	McSwain-Kiva-Ritz	1st & 2d.
1-4	Bartlesville, Oklahoma	Odeon-Lyric-Rex-Liberty	1st & 2d.
1-3	Blackwell, Oklahoma	Palace-Midwest	1st.
1-3	Borger, Texas	Rig-Rex-Circle	1st & 2d.
1-3	Chandler, Oklahoma	H & S-Odeon	1st.
1-3	Elk City, Oklahoma	Elk	1st.
1-4	Enid, Oklahoma	Aztec-Criterion-Arcadia-Mecca	1st & 2d.
1-3	Guthrie, Oklahoma	Melba-State-Guthrie	1st.
1-3	Henryetta, Oklahoma	Morgan-Blaine	1st.
1-3	Hobart, Oklahoma	Kiowa	1st.
1-3	Hugo, Oklahoma	Erie-Ritz	1st.
1-3	Kermit, Texas	Kermit	1st.
1-3	Maud, Oklahoma	Arcadia	1st.
1-3	Norman, Oklahoma	Sooner-University	1st.
1-3	Oklahoma City, Oklahoma	Rialto	4th.
1-4	Okmulgee, Oklahoma	Orpheum-Yale-Rex	1st & 2d.
1-4	Pampa, Texas	LaNora-Rex-State	1st & 2d.
1-3	Seminole, Oklahoma	Rex-State-Rialto-Ritz	1st & 2d.
1-4	Shawnee, Oklahoma	Bison-Criterion-Avon	1st & 2d.
1-3	Stillwater, Oklahoma	Aggie-Mecca	1st.
1-3	Duncan, Oklahoma	Folly-Palace	1st.
1-3	Wellington, Texas	Ritz-Texan	1st.
1-3	Wink, Texas	Rig-Rex	1st.
	R. E. GRIFFITH THEATRES, INC.		
1-3	Alamogordo, New Mexico	Alamento-Adobie	1st.
1-3	Carlsbad, New Mexico	Cactus-Cavern	1st.
1-3	Clovis, New Mexico	Lyceum-Mesa	1st.
1-3	Eunice, New Mexico	Lea	1st.
1-3	Gallup, New Mexico	Chief-Navajo	1st.
1-3	Hobbs, New Mexico	Reel-Rig	1st.
1-3	Jal, New Mexico	Rex	1st.
1-3	Roswell, New Mexico	Yucca-Princess-N. M. M. I.	1st & 2d.

"Exhibit A"—designated towns—Continued

No. days	Town and State	Theatre	Run
	CONSOLIDATED THEATRES, INC.		
1-3	Altus, Oklahoma	Empire-Rex-Paramount	1st.
1-3	Chickasha, Oklahoma	Washita-Rialto-Ritz	1st & 2d.
1-3	Claremore, Oklahoma	Yale-Palace	1st.
1-3	Cleburne, Texas	Yale-Palace	1st.
1-3	Clinton, Oklahoma	Del Rio-Rialto-Rex	1st.
1-3	Cushing, Oklahoma	Dunkin-Paramount-American	1st.
1-3	Holdenville, Oklahoma	Grand-Dixie-Liberty	1st.
1-4	Lubbock, Texas	Palace-Lindsey-Texan	1st.
1-3	Midland, Texas	Yucca-Ritz	1st.
1-3	Oklahoma City, Oklahoma	Reno (Sub)	8th run.
1-3	Sapulpa, Oklahoma	Yale-Empress	1st.
1-3	Sayre, Oklahoma	Rio-New	1st.
1-3	Vinita, Oklahoma	Lyric-Astec	1st.
1-3	Drumright, Oklahoma	Rita-Midwest	1st.
	WESTEX THEATRES, INC.		
1-3	Ballinger, Texas	Texas-Palace	1st.
1-3	Belton, Texas	Baltonian-Belitex	1st.
1-3	Brady, Texas	Brady-Palace	1st.
1-3	Clarksville, Texas	State-Colonial	1st.
1-3	Decatur, Texas	Majestic-Ritz	1st.
1-3	Georgetown, Texas	Palace-Ritz	1st.
1-3	Hereford, Texas	Star	1st.
1-3	Lampasas, Texas	Le Roy-Le Roy, Jr	1st.
1-3	Merkel, Texas	Queen	1st.
1-3	Odessa, Texas	Lyric-State	1st.
1-3	Olney, Texas	Westex-Olney-Princess	1st.
1-3	Plainview, Texas	Granada-Texas	1st.
1-3	Portales, New Mexico	Yam	1st.
1-3	Post, Texas	Garza	1st.
1-3	San Saba, Texas	Palace	1st.
1-3	Spur, Texas	Palace	1st.
1-3	Stamford, Texas	Grand-Ritz	1st.
1-3	Winters, Texas	Queen-Lyric	1st.
1-3	Luling, Texas	Princess	1st.
1-3	Gonzales, Texas	Crystal	1st.
1-3	Lockhart, Texas	Baker	1st.
	LOWENSTEIN THEATRES		
1-4	Ardmore, Okla	Tivoli-Rita-Paramount-Rex	1st & 2d.
	WALMUR AMUSEMENT CO.		
1-3	Bristow, Okla	Princess-Walmur	1st.
	W. J. MOORE THEATRES		
1-3	Fairfax, Okla	Tall Chief	1st.
	GAINESVILLE THEATRES		
1-3	Gainesville, Texas	Majestic-Plaza-Texan	1st.
	COLEMAN INTERESTS		
1-3	Miami, Oklahoma	Coleman-Glory B	1st.
	W. R. WILLIAMS INTEREST		
1-3	Tonkawa, Oklahoma	Ray-Rialto	1st.

It is understood and agreed that COLUMBIA PICTURES CORPORATION, the Distributor and the Exhibitor agrees as follows: That the output of

COLUMBIA pictures to be released during the season of 1936–37, shall be exhibited in the above named theatres and paid for under the following arrangements. (All Columbia product is excluded from Sapulpa, Oklahoma, except the eight Tim McCoy reissues and eight Fighting Ranger Westerns, and eight Peter B. Kyne Westerns.)

(a) The Exhibitor agrees to pay the Distributor as a minimum guarantee sixty-five thousand dollars for pictures to be played and paid for in the named theatres within the period from November 1st, 1936, to December 31st, 1937, on terms for theatres and towns and runs that will be broken down and allocated from the following list of groups of pictures, which stipulates the total price per picture in each group for the towns, runs and theatres designated in "Exhibit A":

2—Special Productions—allocated at $5,000.00 each.

2—Specials—allocated at $3,100.00 each—Columbia Specials.

6—Pictures—allocated at $1,750.00 each—Columbia Product.

12—Pictures—allocated at $1,400.00 each—Columbia Product.

20—Pictures—allocated at $1,000.00 each—Columbia Product.

8—Pictures—allocated at $1,175.00 each—Peter B. Kyne Pictures.

8—Pictures—allocated at $1,050.00 each—Fighting Rangers Westerns.

8—Pictures—allocated at $950.00 each—Tim McCoy re-issues.

SHORT SUBJECT PRODUCT

100 Single Reels—$147.50 each.
26 Two-Reelers—$299.50 each.

In the Rialto, Oklahoma City, the Distributor agrees to serve product fourteen (14) days following third run Standard Theatres.

In the Reno, Oklahoma City, the Distributor agrees to serve product seven (7) days following Rialto or Grand Avenue run.

(b) Preceding each town, the number of days is set out, being namely 1–3 in some towns and 1–4 in others. It is also understood that the Exhibitor has the privilege to preview all product in all towns.

(c) The Exhibitor is not obligated to play any foreign made pictures.

(d) The Exhibitor is not required to play pictures in the order in which they are released.

(e) IT IS UNDERSTOOD AND AGREED that the two Special Productions allocated at $5,000.00 each must be CAPRA PRODUCTIONS and that all such CAPRA PRODUCTIONS delivered under this contract in addition to two other specials to be designated to play at $3,100.00 each must play in each and every town with the exception of SAPULPA, OKLAHOMA.

It is also understood that the first Special Production subject to be delivered shall be "LOST HORIZON".

(f) The Exhibitor is obligated to deliver to the Distributor, immediately after receiving approval of this contract, detailed allocations on all Columbia feature and short subject product enumerated in this agreement, as previously outlined.

(g) The Distributor agrees to serve the R. E. Griffith Theatres, Inc. located in Texas and New Mexico from the Dallas, Texas branch.

(h) It is further mutually agreed and understood that the Standard form of exhibition contract herewith attached is to become a part and parcel of this agreement and that the physical operation is to be governed by the terms of the attached Columbia form of exhibition contract, and in case of any conflict between this and said printed form, the provisions herein shall control.

(i) The Distributor and Exhibitor agree to jointly designate pictures for various groups, CAPRAS and WESTERNS excepted.

IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed this 31st day of August 1936.

COLUMBIA PICTURES CORPORATION

Approved, Columbia Pictures Corp. Sept. 1, 1936.

By /s/ RUBE JACKTER,
Asst. General Sales Manager.

GRIFFITH AMUSEMENT COMPANY &
CONSOLIDATED THEATRES, INC. &
R. E. GRIFFITH THEATRES, INC. &
WESTEX THEATRES INC. & ASSOCIATED THEATRES,

By /s/ R. E. GRIFFITH, *Authorized Agent.*

APPENDIX B

COLUMBIA—1936-37—PRINTED FORM

Form S-14-A

LICENSE AGREEMENT

Branch_____ Date_____ Contract No_____

Salesman Name_____ Exhibitor's Name_____

COLUMBIA PICTURES CORPORATION

AGREEMENT of license under copyright made in one or more counterparts between COLUMBIA PICTURES CORPORATION, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part, as follows:

LICENSE

FIRST: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures embraced in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the num-

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ber of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion picture a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

TERM AND WARRANTY

SECOND: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded

sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs, and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

DAMAGES FAILURE TO DELIVER

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

PAYMENT

THIRD: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

PERCENTAGE BOOKINGS

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibtion of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Ex-

hibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor makes certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purposes any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant.

LIQUIDATED DAMAGES—PERCENTAGE BOOKINGS

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or re-

fuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) per cent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

(d) If the rental of any such motion pictures is to be determined upon the admission receipts but with a minimum guaranteed rental, then the Exhibitor agrees to pay such minimum guaranteed rental in accordance with the provision of

Subdivision (a) hereof. Any additional monies to be paid to Distributor as a percentage of the admission receipts shall be paid by the Exhibitor to Distributor in accordance with Sub-division (b) hereof.

DELIVERY AND RETURN OF PRINTS

FOURTH: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture, but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or

clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty-day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order

of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers, from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used

by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

LOSS AND DAMAGE TO PRINTS

FIFTH: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction

occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

SELECTION OF PLAYDATES

SIXTH: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by

the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

CLEARANCE AND RUN

SEVENTH: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

DESCRIPTION OF PICTURES

EIGHTH: The Distributor warrants that none of said motion pictures are reissues of old negatives, or old negatives retitled excepting those specifically specified as such in the Schedule.

ADVERTISING PRIOR TO FIRST RUN

NINTH: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group, but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of

such notice the license of such motion picture shall terminate and revert to the Distributor.

ACCEPTANCE BY DISTRIBUTOR

TENTH: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

CHANGES IN WRITING

ELEVENTH: This license agreement is complete and all promises, representations, understandings, and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing, but only by the representative of

the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

ASSIGNMENT OF CONTRACT

TWELFTH: In the event the Exhibitor sells said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor shall have the right to assign this license to the Purchaser of the theatre or of such interest without the written consent of the Distributor provided the Exhibitor or such assignee shall deliver to the Distributor, in form acceptable to Distributor, a written assumption of all the obligations of the Exhibitor hereunder duly executed by the assignee. Any such assignment, however, shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Except as herein provided, the Exhibitor shall have no right to assign this agreement. The Exhibitor agrees that Distributor shall have the right to assign this agreement to any person, firm or corporation without the written consent of the Exhibitor.

TAXES

THIRTEENTH: The Exhibitor shall pay to the Distributor upon demand a tax fee or any other charge, now and/or hereafter levied, imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums

payable under this license by the Exhibitor to Distributor and/or the rental of the rights herein granted by Distributor to Exhibitor hereunder and/or any other reason whatsoever. In the event the Exhibitor fails or refuses to pay upon demand such tax fee or charge, then the Distributor shall have the right at its option to C. O. D. delivery of any print of the motion pictures licensed hereunder and include the amount of such tax fee or other charge in said C. O. D.

In the event such tax shall be declared invalid by final judicial decree, the Distributor shall not be liable to the Exhibitor for the return of such taxes, fees or other charges paid by Exhibitor to Distributor if the Distributor shall have paid same over to the governmental agency designated to receive or collect same. If such taxes, fees or other charges shall not have been paid over to such governmental agency and said tax shall be declared invalid by final judicial decree, then the Distributor agrees to return to Exhibitor such sum or sums as Distributor shall have received from Exhibitor but not paid over to such governmental agency.

PREVENTION OF PERFORMANCE

FOURTEENTH: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable

written notice of such termination and the cause thereof is given.

FIRST RUN EXHIBITIONS

FIFTEENTH: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to

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exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

SECOND RUN EXHIBITIONS

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

SUBSEQUENT RUNS EXHIBITIONS

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and

any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen-day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

EXTENDED RUNS

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be accepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

EXHIBITION AFTER REVOCATION OF RUN AND CLEARANCE

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b), or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

REMEDIES

SIXTEENTH: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor

shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

CUTTING OR ALTERATION OF PRINTS

SEVENTEENTH: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor.

ROADSHOWS

EIGHTEENTH: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any

such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed

available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion hereinbefore provided terminate and revert to the Distributor.

MIDNIGHT SHOWS

NINETEENTH: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked

date of exhibition without securing express written permission hereunder.

ADMISSION PRICES

TWENTIETH: The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the prices listed in the Schedule.

If during any such period less than said admission prices listed in the Schedule is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "Clearance to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

BREACH OF OTHER AGREEMENTS

TWENTY-FIRST: If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with or subsequent to the making of this agreement, then any such breach under such agreement shall be deemed to be a breach and a default under this agreement and in any such case the Distributor shall have all the rights and remedies herein provided as well as those at Law, in Equity or otherwise, to the same full force and to the same extent as if such breach had been committed hereunder.

RIGHT TO C. O. D.

TWENTY-SECOND: It is agreed that the Distributor may at its option deliver to the Exhibitor C. O. D. any motion picture deliverable hereunder and may add to said C. O. D. the amount of any past indebtedness owing under this or any other agreement by the Exhibitor to the Distributor. Such indebtedness may include monies due from the Exhibitor to the Distributor for unplayed pictures, played pictures or for any other indebtedness whatsoever.

MONEYS IN TRUST

TWENTY-THIRD: Where this agreement calls for the payment of a fixed and definite rental for any motion picture (that is to say, not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of any such motion picture and credit is extended to the Exhibitor, in consideration therefor, the

Exhibitor agrees that the Distributor shall receive its rental for any such motion picture with respect to which credit has been so extended, out of the first admission receipts from the patrons paying admissions during the exhibition of any such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust fund by the Distributor shall not be questioned whether the moneys are physically segregated or not and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee and/or rental due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount due and payable to the Distributor after the moneys kept in trust for the Distributor shall have been paid to the Distributor.

In the event any motion picture herein embraced is based upon a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion picture the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor; and the ownership of said trust fund by the Distributor shall not be ques-

tioned whether the moneys are physically segregated or not, and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, segregated and in a distinct fund.

ADVERTISING AND ACCESSORIES

TWENTY-FOURTH: The Exhibitor agrees to advertise and announce each motion picture herein embraced as designated in the main title including the designation of the motion picture as a Columbia Pictures Corporation production. The Exhibitor further agrees that in all newspaper advertising and publicity issued by the Exhibitor relating to any said motion picture, the Exhibitor shall adhere to the date of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of the motion pictures herein embraced, shall be leased from or through the Distributor and same must not be sold, leased or given away by the Exhibitor, but shall be returned promptly to the Distributor after use by the Exhibitor in connection with the exhibition of the particular motion picture.

It is further agreed that the use of the accessories by Exhibitor hereunder is under a license under the respective copyrights relating to such accessories and such accessories shall not be used in any other theatre than the one designated in the Schedule unless otherwise specifically agreed upon in said Schedule.

TWENTY-FIFTH: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule for 1936–37 Season

	Theatre	Town and State	Minimum admission price				Seating capacity
			Matinee		Evening		
			Adults	Children	Adults	Children	

GROUP W-4-5-6

(A) There are licensed for exhibition hereunder all of the sound photoplays of feature length (exclusive of the so-called Western group of photoplays hereinafter referred to and exclusive of any and all Frank Capra productions) or such or so many of them as may be specified hereunder under the heading "Special Feature Attractions," embraced in the Distributor's group of pictures to be known as "W–4" not less than thirty (30) and not more than forty (40), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group "W–4" (except such photoplays as Distributor is required by contract to obtain the consent or approval of the producer or director thereof or other party to the terms and conditions of licensing the exhibition thereof) and identified by designation numbers running from 7001 to 7040. The "road-showing," "preview" and/or "pre-releasing" of any photo-

play during the said period above mentioned shall not be deemed a general release of said photoplay.

(B) There are licensed for exhibition hereunder all of the sound photoplays of the so-called Western group of photoplays or such or so many of them as may be specified hereunder under the heading "Western Feature Attractions", embraced in the Distributor's group of pictures to be known as "W–5" not less than eight (8) and not more than sixteen (16), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group known as "W–5" and identified by designation numbers running from 7201 to 7216.

(C) There are licensed for exhibition hereunder all of the sound one-reel and two-reel motion pictures known as Short Subjects or such or so many of them as may be specified hereunder under the heading "Columbia's Single and Two Reel Attractions" and/or "Court of Human Relations", embraced in the Distributor's group of pictures to be known as "W–6," not less than fifty-two (52) and not more than one hundred and four (104) one-reel and not less than thirteen (13) and not more than twenty-six (26) two-reel which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group known as "W–6."

For the license to exhibit each of said photoplays and shorts the Exhibitor shall pay to the Distributor the following:

No. Pict. Bought		Consec. No. Days Run	Inc. Sat. / Sun.	License Fee or Minimum Guaranteed Rental per Picture	Score Fee Per Day	Special Terms
A	—SPECIAL FEATURE ATTRACTIONS—GROUP W-4					
B	—WESTERN FEATURE ATTRACTIONS—GROUP W-4					

C—COLUMBIA'S SINGLE AND TWO-REEL ATTRACTIONS—Group W-4

	Series	No. Cons. days	No. bought	License fee per subject	Total for series
7500	Color Rhapsodies				
7700	Krazy Kat				
7750	Scrappy				
7800	News World of Sports				
7850	New Screen Snapshots				
7900	Columbia Tours				
7650	Columbia Featurettes				
7200	Stooge 2-reel Comedies				
7250	Andy Clyde 2-reel Comedies				
7400	All Star 2-reel Comedies				

C —COURT OF HUMAN RELATIONS—Group W-4

	Number Cons. Days	Number Bought	License Fee Per Subject	Total for Series
7600		13		

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least _____ Court of Human Relations subjects every _____ commencing the _____ day of _____, 193__, if and as available and in order of availability

until all motion pictures licensed hereunder are exhibited and/or paid for.

Designation.—It is agreed that the license fees herein specified apply to each respective photoplay and to each respective short subject, licensed hereunder according to the classification thereof by the Distributor, and such license fees are not average license fees regardless of the number of such photoplays or short subjects that may be released by the Distributor, embraced in Group W—4–5–6, within the period hereinabove specified. The Distributor agrees to classify each such photoplay and/or short subject at or before the time of the giving to the Exhibitor of the notice of availability of such photoplay or short subject. Nothing in this paragraph contained shall be deemed to prevent the Distributor from exercising its right of re-application contained in the next paragraph hereof.

Re-Application.—The Distributor shall have the right to apply the rental terms (including the license fee or minimum guaranteed rental, percentage of gross receipts, minimum playing time and other rental terms specified in the Schedule) of any motion picture to any other motion picture listed in the Schedule, provided, however, that the Distributor shall at no time increase the total number of motion pictures to which the same rental terms apply beyond the total of such motion pictures specified in the Schedule.

In case the Distributor desires to change the rental terms of any motion picture as above provided, the Distributor shall notify the Exhibitor of the motion picture affected and the terms to be applied to such motion picture, in the notice of

availability sent to the Exhibitor relating to such motion picture or prior thereto.

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least _____ special feature attractions (Group W–4) every _____ and at least _____ western feature attractions (Group W–5) every _____ and at least _____ single reel short subjects (exclusive of Court of Human Relations subjects) every _____ and at least _____ two reel short subjects every _____, commencing the _____ day of _____, 19___, if and as available and in order of availability until all motion pictures licensed hereunder are exhibited and/or paid for.

"The Exhibitor agrees to pay for all the short subjects licensed herein, including the Court of Human Relations subjects, the sum of $_____ to be paid on a weekly basis of $_____ per week, for a period of _____ consecutive weeks, starting _____. The weekly sum herein specified to be paid by the Exhibitor shall be so paid irrespective of the number of short subjects which the Exhibitor may play hereunder during any week from among those licensed hereunder."

It is agreed that wherever motion pictures hereunder are to be exhibited on a percentage arrangement, said percentage or percentages have been fixed by the Distributor in reliance upon the agreement and representation by the Exhibitor that the policy of the theatre will be a _____ policy. In the event said policy is changed by Exhibitor then the percentage or percentages designated in the Schedule shall be increased by 25% of the original percentage terms unless the Schedule expressly otherwise provides.

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Run—Clearance and Additional Provisions

_____

_____

_____

_____

Run: If the Exhibitor is granted hereunder a second or subsequent "run," the Distributor shall have the right in its sole discretion to grant the Exhibitor in respect to any of the motion pictures herein embraced, a "run" prior to such second or subsequent "run" by giving notice in writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such motion picture in accordance therewith.

[End of Schedule]

IN WITNESS WHEREOF, _____ the Exhibitor operating the _____ Theatre, located at No. _____ Street _____ City _____ State _____ has on _____ executed this application, which upon written acceptance by the Distributor when countersigned and approved in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of the motion pictures specified in the Schedule at said theatre in accordance with the terms hereof.

COLUMBIA PICTURES CORPORATION

_____ _____ _____ L. S.

(Salesman) (Manager) (Exhibitor)

Countersigned and approved: Date_____ 193__

COLUMBIA PICTURES CORPORATION

By _____

(General Sales Manager)

By _____

(Partner. General Manager. Officer. Individual (Strike out three))

Direction to Salesman: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, or accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

NOTE: This is "Standard form" referred to in par. (h) of Master agreement printed as Appendix A. Only the front of this form is printed at R. 2147–8. In printing the full agreement above paragraphs "first" through "twenty-fourth," which appear on the back of the form, have been placed ahead of section "twenty-fifth," which appears on the face of the form.

APPENDIX C

TABLES OF MASTER AGREEMENTS MADE BETWEEN DEFENDANTS AND MAJOR DISTRIBUTORS COVERING FILMS RELEASED DURING FIVE YEARS PRECEDING FILING OF COMPLAINT

1. Franchises

(Master agreements covering more than one year)

Name of distributor	Approval date	Seasons covered	Number of towns covered	Special provisions
Loew.....	5- 8-30 [1]	1930-31 1931-32 1932-33 1933-34 1934-35	36	Net profits to be split (Par. 6, R. 2288). Exhibitor may add newly acquired towns (Par. 13, R. 2289).
Paramount	9-15-34 [2]	1934-35 1935-36 1936-37	44	May play out of order of release (Par. 6, R. 2307). May exhibit in newly acquired theatres (Par. 13, R. 2309). Exhibitor released from obligation in towns where it permanently closed theatres (Par. 6, R. 2307-08). Exhibitor may have a second run upon request without additional charge in not exceeding twenty towns (Par. 12 (b), R. 2309).
RKO.....	3-19-35 [3]	1935-36 1936-37 1937-38	41	May play out of order of release (Par. 6, R. 2430). No minimum admission prices required. May exhibit product in newly acquired theatres to be opened (Par. 11, R. 2432). Exhibitor released from obligations where it permanently closes theatre (Par. 7, R. 2431).
Columbia...	9-3-37 [4]	1937-38 1938-39 1939-40	76	No minimum admission price required. May play out of order of release (Par. (d), R. 2160).

[1] Ex. L-1 (R. 2288-89) is basic agreement, amended on October 30, 1932 (R. 2242) April 20, 1933 (R. 2240-41) and September 12, 1934 (Ex. L-2, R. 2243-45). On September 12, 1934, a separate agreement (Ex. L-3, R. 2247-9) was made to cover ten additional towns not covered by the franchise. These exhibits were offered and received at R. 372-76.

[2] Ex. P-1 (R. 2298-3317) is basic agreement, amended on September 22, 1936 (R. 2318-21). Ex. P-3 (R. 2322-27) is preliminary agreement for franchise submitted by defendants, dated July 17, 1934. It provides that "the exhibitor is not to be required to play photoplays in order of release" without any qualification (R. 2325). The formal agreement signed by the distributor (Ex. P-1) added the proviso that "the Exhibitor shall not exhibit photoplays out of the order of general release if in so doing it shall interfere with or delay the exhibition of photoplays to be exhibited by other exhibitors" licensed by the distributor (R. 2307). These exhibits were offered and received at R. 208-10, 327.

[3] Ex. RKO-44 (R. 2422-44) is agreement, offered and received at R. 353-354.

[4] Ex. C-6 (R. 2158-2163) is basic agreement with amendments dated September 14, 1937 (R. 2165-6), October 5, 1937 (R. 2164), October 10, 1938 (R. 2169-94) and August 21, 1939 (R. 2167), offered and received at R. 392, 396.

2. *All master agreements by seasons*[1]

Distributor	Exhibit No.	Approved date	Number of towns covered	Special privileges
1934-35				
Columbia	C-3 (R. 2119-28).	8-29-34	47	May play out of order of release (Par. (c) R. 2122). No minimum admission price required.
Fox[1]	F-3 (R. 2201-05).	9-7-34	49	May play out of order of release (R. 2203).[2] No minimum admission price required.
Loew	(See franchise L-1 tabulated above.)			
Paramount	(See franchise P-1 tabulated above.)			
RKO	(Out of circuit this season.)			
Universal	U-1 (R. 2469-74).	9-10-34	43	May play out of order of release (R. 2469). No commitment in any individual situation (R. 2469).
United Artists	(No master agreement but some films played.)			
Warner	W-4 (R. 2025-33).	9-4-34	41	Net profits to be split (Par. 2 (b), R. 2028). Blanket weekly guarantee payment for all runs throughout circuit (Par. 2 (b) R. 2032).
1935-36				
Columbia	C-4 (R. 2125-42).	9-19-35	54	May play out of order of release (Par. (d), R. 2136). No minimum admission price required.
Fox[1]	F-3 (R. 2205-10).	8-23-35	51	May play out of order of release (R. 2207).[2] No minimum admission price required. No additional charge for subsequent runs in 11 specified towns (R. 2207).
Loew	L-4 (R. 2220-45).	8-27-35	51	May play out of order of release (R. 2220).[4]
Paramount	(See franchise P-1 and P-3 tabulated above.)			
RKO	(See franchise RKO-44 tabulated above.)			
Universal	(Out of circuit this season.)			
United Artists	(No master agreement but some films played.)			
Warner	W-6 (R. 2029-35).	9-15-35	54	Blanket weekly payment for all runs throughout circuit (R. 2029).
1936-37				
Columbia	C-5 (R. 2142-57).	8-31-36	71	May play out of order of release (Par. (d), R. 2145). No minimum admission price required.
Fox[1]	F-5 (R. 2213-19).	9-19-36	65	May play out of order of release (R. 2214).[2] No minimum admission price required. No additional charge for subsequent runs in 11 specified towns (R. 2213).
Loew	L-5 (R. 2226-33).	8-22-36	63	May play out of order of release[4] (R. 2227). No additional charge for second runs in 11 specified towns (R. 2226).
Paramount	(See franchise Ex. P-1, P-3, tabulated above.)			
RKO	(See franchise Ex. RKO-44, tabulated above.)			
United Artists	(No master agreement but some pictures sold.)			
Universal	U-2, U-3 (R. 2475-82).	8-26-36	66	May play out of order of release (R. 2477).[2] No minimum admission price required.
Warner	W-7 (R. 2036-41).	9-1-36	72	Blanket weekly payment for all runs throughout circuit (Par. 2 (a), R. 2036).
1937-38				
Columbia	(See franchise C-6 tabulated above.)			
Fox[1]	F-7 (R. 2219-25).	9-23-37	73	May play out of order of release (R. 2221).[2] No minimum admission price required. No additional charge for subsequent runs in 12 specified towns (R. 2221).

See footnotes at end of table.

2. *All master agreements by seasons*'—Continued

Distributor	Exhibit No.	Approved date	Number of towns covered	Special privileges
Loew	L-6 (R. 2284-70)	8-25-37	62	May play out of order of release (R. 2285).[4] No additional charge for second runs in 13 specified towns (R. 2286).
Paramount	P-4 (R. 2220-2283).	9-24-37	74	No admission price fixed. No additional charge for second runs in 13 specified towns (R. 2285).
	(See franchise RKO-44 tabulated above.)			
RKO			(5)	May play out of order of release (R. 2486). No minimum admission price required. Blanket annual guarantee for all runs in towns covered (R. 2487). "No commitment as to the amount of product to be played in individual towns" (R. 2488).
1937-38				
Universal	U-4 (R. 2482-92)	10-14-37	70	May play out of order of release (R. 2485).[7] No minimum admission price required.
United Artists	UA-69, 70, 71 (R. 2459-69).[8]	9-20-37	66	Blanket rental for each of eleven films is fixed for all runs in all towns covered. No minimum admission price required.
Warner	W-8 (R. 2242-49)	9- 8-37	76	Blanket weekly payment for all runs throughout circuit (Par. 2 (a), R. 2242).
1938-39				
Agreements with Griffith Amusement and Consolidated				
Columbia	(See franchise C-6, tabulated above.)			
Fox[9]	F-8 (R. 2226-39)	8- 8-38	43	May play out of order of release. No minimum admission price required (R. 2226).[6]
Loew	L-8 (R. 2282-97)	10-15-38	43	May play out of order of release (R. 2286-7). No additional charge for 2nd runs in 13 specified towns (R. 2285).
Paramount	P-5 (R. 2236-57)	10-18-38	44	May play out of order of release (R. 2236).[9] No minimum admission price required. No additional charge for second runs in 13 specified towns (R. 2239).
RKO	(Out of this half of circuit.)			
Universal	U-6 (R. 2001-4)	9- 1-38	47	May play out of order of release (R. 2003).[10]
United Artists	UA-18, 19, 20, 21, 26 (R. 468-89).[11]	12-30-38	28	Blanket rental for each film is fixed for all runs covered. No minimum admission price required.
Warner	W-11	8-23-38	44	Blanket weekly payment for all runs used throughout Circuit (Par. 2 (a), R. 2260).
Agreements with R. E. Griffith Theatres and Wester				

See footnotes at end of table.

8. All master agreements by seasons—Continued

Distributor	Exhibit No.	Approved date	Number of towns covered	Special privileges
Columbia	(See footnote 1—identical clause)			
Fox [2]	F-10 (R. 2389-90)	9-26-39	22	May play out of order of release (R. 2391).[3] No admission prices fixed.
Loew	L-7 (R. 2377-84)	9- 9-39	85	May play out of order of release (R. 2377).[4]
Paramount	P-6, 7 (R. 2389-92)	9-26-39	31	May play out of order of release (R. 2391, 92).[5]
RKO	RKO-46 (R. 2481-89)	9-16-39	49	May play out of order of release (R. 2482). No minimum admission price required. Blanket minimum guarantee for all runs in all towns covered (R. 2485). "No commitment as to the amount of product to be played in individual towns" (R. 2487).
Universal	U-5 (R. 2888-2890).	9-17-39	41	May play out of order of release (R. 2889).[6] No minimum admission price required.
1938-39				
United Artists	UA-23, 25, 26, 27 (R. 404-407).[7]	12-30-38	24	Blanket rental for each film is fixed for all runs covered. No minimum admission price required.
Warner	W-12 (R. 2869-71).	9-14-38	35	Blanket weekly payment for all runs throughout circuit (Par. 3 (a), R. 2869).

[1] The agreement appearing in this table with each distributor named therein was respectively offered and received as follows: Columbia (R. 389-90); Fox (R. 389-90); Loew (R. 390-91); Paramount (R. 392-93); RKO (R. 397-98); Universal (R. 395-396); United Artists (R. 403-09); Warner (R. 394-95).

[2] The sample supplementary agreement for a single town which is made a part of each Fox Master Agreement was stipulated as typical of those made for each town covered by the Master Agreement (R. 393-3).

[3] Provision stipulates that privilege of playing out of order of release "is allowed and agreed upon only as a measure and means of expediting bookings to prevent congestion and is not to be abused" (R. 2389).

[4] Privilege of playing out of order of release is conditioned on "guaranteed to completely exhibit or pay in full for each feature and for each run and two real productions not later than thirteen (13) weeks after scheduled release date, and for news and trailers as billed (R. 2389).

[5] Privilege of playing out of order of release is conditioned on requirement "to play or pay for a minimum of twenty thousand dollars ($20,000.00) in product each thirteen-week period, beginning November 15, 1938" (R. 2477).

[6] 31 towns were added for 1937-38, seven by master agreement dated May 14, 1937 (Rx. RKO-47, R. 2487-88.

[7] Privilege of playing out of order of release is conditioned on requirement "to play or pay for twelve thousand five hundred dollars ($12,500.00) worth of product each thirteen-week period, beginning December 15, 1937" (R. 2389).

[8] Deal is written on three contracts between the same parties covering same terms, bearing same date, each contract covering a different producer. Contract for Goldwyn films (Rx. U. A. 71) Runs not printed.

[9] Privilege of playing out of order of release is conditioned on requirement "to play or pay for 30% of all product each thirteen-week period" (R. 2388, 389, 76).

[10] Privilege of playing out of order of release is conditioned on requirement "to play or pay for 30% of all product each thirteen-week period" (R. 2388, 389, 76).

[11] Privilege of playing out of order of release is conditioned on requirement "to play or pay for a minimum of seventeen thousand five hundred dollars ($17,500.00) in product each thirteen week period, beginning November 15, 1938" (R. 2388).

[12] Privilege of playing out of order of release is conditioned on requirement "to play or pay for a minimum of seven thousand five hundred ($7,500) dollars in product each thirteen-week period, beginning December 15, 1939" (R. 2404).

[13] Deal is written on five contracts between same parties carrying same terms, bearing same date, each contract covering a different producer. Name are printed.

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No. 64

Supreme Court of the United States

October Term, 1947

THE UNITED STATES OF AMERICA,
Appellant,

VERSUS

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF OF APPELLEES

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No. 64

In the

Supreme Court of the United States

October Term, 1947

THE UNITED STATES OF AMERICA,
Appellant,

VERSUS

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED THEATRES, INC., ET AL.,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF OF APPELLEES

STATEMENT

This action was instituted by the United States of America April 28, 1939, by the filing of a Complaint which alleged violations of Sections 1 and 2 of Title 15 U. S. C. A. and in which relief was sought under Section 4 of that Act. The charges in the Complaint were limited to the period April 28, 1934, to April 28, 1938 (R. 6, 38).

The action was dismissed as to all of the distributor defendants (R. 49-50). The complainant amended the Complaint by striking Paragraphs 39, 40, 41, 42, 49 and 50 (R. 50). The Complaint was amended by Bill of Particulars

filed May 17, 1940 (R. 36-39). In Paragraph 26 of the Complaint (R. 4) it was alleged that, "Clearance is protection against competition granted to an exhibitor, by agreement with a distributor, which limits the terms on which the distributor may license films to other competing exhibitors." In Paragraph 6 of the Bill of Particulars, it was stated, "(b) By the definition of the term 'clearance' in paragraph 26 it is intended to exclude all clearance other than that 'which limits the terms on which the distributor may license films to other competing exhibitors'" (R. 37). In Paragraph 18 of the Bill of Particulars it was stated, "(c) The manner in which the matters alleged in Paragraph 41 had the effect of enabling the defendant exhibitors to control and monopolize the supply of feature pictures available for exhibition in the Griffith towns as set forth in Paragraphs 42 and 43" (R. 39). In Paragraph 19 of the Bill of Particulars it was stated, "(b) and (c) The defendant exhibitors have compelled each of the defendant distributors to grant to them the privileges set forth in Paragraph 42 by refraining from licensing the product of the defendant distributors for exhibition in the Griffith towns unless the exclusive privileges set forth in Paragraph 42 were granted to them" (R. 39). The above paragraphs of the Complaint, as amplified by the Bill of Particulars, state the charges of violation of the Sherman Act on which this case was tried. The charge was that the defendants combined through a common agent in the licensing of motion pictures with the purpose and effect of compelling each of the major distributors to grant them (a) The exclusive privilege of selecting from the feature pictures released by said distributors such feature pictures as said exhibitors

deemed suitable for exhibition in said towns, as and when prints thereof became available, before said pictures were released to any other exhibitors in said towns; (b) the exclusive privilege of receiving clearance on said feature pictures over competing theatres in said towns (R. 7); and (c) the privilege of receiving more favorable rental terms than can be obtained by competing individual exhibitors (R. 8). The issues raised by the Complaint in this case are much more limited than the issues in *Schine* case (Schine Record 11 -15). The issues in this case are more limited than the issues in the *Crescent* case (Crescent Record 8-10). Each of the cases involved its own facts. It is not a fact that in each of the cases the Government proof consisted principally of licensing agreements made between the defendants and the major distributors, as stated by appellant (Brief —). In the *Crescent* and *Schine* cases the findings of fact were against the defendants. In the case here appellant failed to establish any issue raised by the Complaint, Finding No. 20 reads:

> "The defendants, or any of them, have not conspired or combined with each other, with their operating associates or with the distributors, for the purpose or with the effect to unreasonably restrain or restrict the terms upon which feature pictures were to be, or were, distributed by such distributors, or made available for exhibition in theaters competing with the defendants" (R. 125).

Finding No. 23 reads:

> "The defendants, or any of them, did not monopolize or attempt to monopolize, the licensing or the supply of feature motion pictures for either first, second or

subsequent run exhibition in any situation. The defendants licensed only such supply of pictures as they reasonably believed would be necessary in each situation to satisfy the demands of the public which they served" (R. 126).

Finding No. 25 reads:

"There was no agreement between the defendants, or any of them, with the distributors, or any of them, granting to the defendants, or any of them, in their theaters unreasonable clearance over the theater of a competitor" (R. 126).

Finding No. 26 reads:

"In their contracts with the distributors, the defendants and their associates have not conspired or combined with each other to compel such distributors to grant to them the exclusive privilege of selecting feature pictures released by such distributors, as the defendants deemed suitable for exhibition in the situations where they operated theaters, as and when prints thereof became available, before said pictures were released or made available to any other exhibitor in such situation" (R. 126).

Those findings were not based on licensing agreements alone, but were based on those agreements and the oral testimony witnesses. Each finding of fact was supported by ample evidence, as will hereinafter appear. The burden of proof was on the claimant to establish the charges against the defendants. Before the Court would have been warranted in rendering judgment for the claimant, it would have been necessary for the Court to affirmatively

find facts sufficient to sustain a judgment of that character. There is no assignment of error in which the Court failed to find the existence of any material fact, or that the evidence was sufficient to support an affirmative finding of fact which the Court failed to make.

In this case there is no charge in the Complaint, as amplified by the Bill of Particulars, that any provision of any licensing agreement, in and of itself, constituted a violation of the Sherman Act. For example: There is no charge that the defendants violated the Sherman Act by agreeing with the distributor to charge minimum admission prices. If such an agreement does constitute an unreasonable restraint of trade, appellant is not entitled to relief in this case even though such contracts were established. In order for the complainant to have prevailed in this case, it was necessary that it prove that the defendants combined with the purpose and effect of obtaining the privileges above set out. Provisions of the contracts, which appellant now asserts were in unreasonable restraint of trade, are here involved only as they may tend to evidence a wrongful purpose and intent of the defendants in combining in the licensing of film. Should any provision of any licensing agreement be held to have been in unreasonable restraint of trade, it would not follow that the defendants combined for the purpose and with the effect of obtaining that privilege, if the particular privilege or provision was one normally and usually contained in licensing agreements, or if the privilege was of such a character as to indicate that it was procured as the result of normal bargaining and negotiation between a distributor and an exhibitor.

The history of the organization and growth of the corporate defendants and the relation of the individual defendants to the corporate defendants are set out in Findings 1 to 5, inclusive (R. 83-85). As a supplement to that history, we call attention to some additional facts.

Reference will hereinafter be made to Griffith Amusement Company as "Amusement," to Consolidated Theatres, Inc., as "Consolidated," to R. E. Griffith Theatres, Inc., as "R. E. Griffith Theatres, Inc.," and to Westex Theatres, Inc., as "Westex."

Amusement at no time has owned any interest in either of the other defendant corporations (R. 413, 419, 424, 437).

No individual or corporation owned a controlling interest in Amusement. At the time suit was filed it had outstanding 1400 shares of Class A stock and 1400 shares of Class B stock. The holders of Class A stock had the right to elect three directors, and the holders of Class B stock had the right to elect three directors (R. 412). Of the Class A stock L. C. Griffith and R. E. Griffith each separately owned 616 shares and H. J. Griffith owned 168 shares. Of the Class B stock L. C. Griffith and R. E. Griffith each owned 12 shares and H. J. Griffith owned 123 shares (R. 413-414). The stock owned by the three Griffiths in the aggregate is not sufficient to constitute stock control of that corporation, as they owned only a small amount of the Class B stock, the holders of which had the right to elect three of the six directors.

While R. E. Griffith and H. J. Griffith were directors of Amusement at the time of the filing of suit, both of them were residing elsewhere and were actively engaged in other business and were not active in the affairs of Amusement, either as directors or otherwise.

Since 1931 and until his death in 1943, R. E. Griffith had not participated in the affairs of Amusement, except as agent in the licensing of pictures. After the 1937-38 season that representation ceased (R. 1866-1867). H. J. Griffith was employed by Amusement until April 1, 1939, when he moved to Kansas City, Missouri. Thereafter, he was not active in the conduct of its business (R. 1819-20). At the time of the trial H. J. Griffith was not an officer, director or stockholder in the corporation. His stock had been transferred in trust for his children (R. 1831). R. E. Griffith died in 1943, and H. J. Griffith, R. I. Payne and F. L. Stocker were appointed executors of his estate (R. 1821).

Consolidated owned 239 shares of stock in Amusement and 250 shares of stock in R. E. Griffith Theatres, Inc. L. C. Griffith owned 1530 shares of the 3000 shares of outstanding stock of Consolidated. R. E. Griffith, individually, owned no stock and was not a director in Consolidated, but R. E. Griffith Theatres, Inc. owned 250 shares and H. J. Griffith owned 552 shares (R. 419).

R. E. Griffith Theatres, Inc. owned 199 shares of stock in Amusement (R. 413), 250 shares of stock in Consolidated (R. 419), and 12,900 shares of the 17,376 shares of stock outstanding in Westex (R. 437). R. E. Griffith owned 2,095 shares out of a total outstanding stock of 5,083 (R. 424, 1821) of R. E. Griffith Theatres, Inc. At the time of the trial

H. J. Griffith owned 125 shares of stock in R. E. Griffith Theatres, Inc., and L. C. Griffith owned none (R. 424). Westex Theatres, Inc. on April 28, 1939, owned no stock in either of the defendant corporations. R. E. Griffith Theatres, Inc. owned 12,900 shares of the 17,376 shares of outstanding stock of Westex. R. E. Griffith, individually, owned 50 shares of its stock and no other defendant, individual or corporate, owned any of its stock (R. 437).

At the time of the trial, H. J. Griffith owned no stock in Amusement or Consolidated and was not an officer or director in either company (R. 1831), but after he became one of the executors of the Estate of R. E. Griffith, deceased, he became president of R. E. Griffith Theatres, Inc. and Westex, but owned only 125 shares in the first and one share in the latter (R. 1820-21).

Appellant refers to the purchasing power of the "Griffith Circuit" and includes in its brief a table purporting to show the percentage which the aggregate of the "closed towns" bore to the aggregate of all of the towns in which all of the several corporate appellees owned theatres on April 29, 1934, and on April 29, 1939. The words "closed towns" are misleading. The towns to which they have been applied by appellant are merely those in which there was no competition on the respective dates. For the most part they were towns in which there was no competition at the time one of the appellees entered in the town. In the case of Westex they are used to refer to small towns in which there has never been more than one theatre for each town.

Appellant's table, to which we have referred above, is inaccurate and misleading. Each of the corporate defendants on April 29, 1939, owned theatres as set out in Findings 1, 2, 3 and 4 (R. 83-85). The corporate appellees did use R. E. Griffith as a common licensing agent, prior to the season 1938-39, but that arrangement was discontinued after the 1937-38 season. Since then pictures have been licensed by H. R. Falls as the licensing agent for Amusement and Consolidated and by R. E. Griffith, until his death in 1943, for Westex and R. E. Griffith Theatres, Inc. From 1915, when Griffith Brothers acquired their first theatre, to 1926, when Amusement was organized, R. E. Griffith licensed pictures for all of the theatres in which the Griffith Brothers were interested (R. 1849). After the organization of Amusement, R. E. Griffith licensed pictures for all of the theatres in which it was interested. After Consolidated commenced business in 1930, he licensed pictures for Amusement and Consolidated. In 1931 he terminated his employment with Amusement and disposed of all of his stock in Consolidated. He resigned from Amusement in order to establish his own business. He exchanged the stock which he owned in Consolidated for theatres which Consolidated owned in the three New Mexico towns of Gallup, Hobbs and Roswell. On May 1, 1931, he moved to Roswell and on December 23, 1931, incorporated R. E. Griffith Theatres, Inc., which he actively managed until his death. He never again lived in Oklahoma City (R. 1589-1590). After May 1, 1931, he did not participate in the management of Amusement or Consolidated. He was in Oklahoma infrequently (R. 1866).

R. E. Griffith was experienced in the licensing of pic-

tures and was one of the most competent buyers in the business (R. 1321). When he left the employment of Amusement and severed his connection with Consolidated, in the Spring of 1931, those companies were left without an experienced buyer. Neither L. C. Griffith nor H. J. Griffith had any experience in licensing pictures and Falls, who had been assisting R. E. Griffith, did not have sufficient experience to act as buyer without the assistance of a more experienced person. The result was that L. C. Griffith got in touch with R. E. Griffith and prevailed on him to assist Falls in the licensing of pictures for Amusement and Consolidated. Thereafter, until the season 1938-39, he did assist Falls in licensing pictures for Amusement and Consolidated. He also licensed pictures for R. E. Griffith Theatres, Inc. and for Westex after it began business in 1936. During that time he was not a regular employee of Amusement or Consolidated and received no compensation except for the time he spent in supervising the licensing of pictures during the fall of the year. He never did anything else for Amusement or Consolidated (R. 1867). Beginning with the 1938-39 season, R. E. Griffith had no connection with the licensing of pictures for Amusement or Consolidated. Thereafter, the pictures were licensed for them by Falls and the negotiations were carried on in Oklahoma. That change was brought about because R. E. Griffith wanted to do the buying in New York City, and L. C. Griffith thought that method of buying was costing too much and preferred that it be done in Oklahoma City (R. 1868).

After the season 1937-38 the theatres of the four corporate appellees cannot properly be considered in the ag-

gregate in connection with the alleged buying power of the appellees.

In its table appellant has excluded Oklahoma City. It states that it has done so because that city was excluded from plaintiff's claims of illegal restraint. We submit that in considering the question of buying power there is no excuse for excluding any towns for which either of the appellees licensed pictures. Oklahoma City was the largest city in Oklahoma, and Amusement and Consolidated each operated a theatre which always occupied a subordinate position. Although the number of towns in which appellees had no competition, as compared with those in which they did have competition, does not furnish any correct measure of "buying power" and does not tend to establish an attempt to monopolize interstate trade, we, nevertheless, challenge the correctness of appellant's table and assert that the undisputed evidence shows the facts which will now be stated.

On April 28, 1934, Amusement was operating theatres in twenty-two towns and had competition in eleven towns; and, at the time of the filing of this suit, it was operating theatres in twenty-two towns and had competition in fourteen of those towns (Defts'. Ex. 108, R. 2702, Ev. R. 1595). On April 28, 1934, Consolidated was operating theatres in eleven towns and had competition in seven towns. At the time this suit was filed, it was operating theatres in twenty-one towns and had competition in nine of them (R. 3052-64, Defts'. Ex. 109, R. 2703, Ev. R. 1595). In addition, Consolidated owned a 25% interest in theatres in Alvin, Bay City, El Campo, Victoria, Wharton, Texas City, Cuero, New Braunfels, Refugio and Uvalde. In four of those towns there was

competition. Neither Amusement nor Consolidated operated theatres in either of those towns or licensed pictures for them (R. 1595).

Those towns should not be included in determining the percentage of competitive and non-competitive towns in which Amusement and Consolidated used a common agent in licensing pictures as of April 29, 1939, or any time during the period here involved. Neither of those towns is included in the last contracts which were negotiated by R. E. Griffith for the four companies, to-wit, for the season 1937-38. For that season the above towns are not included in any contract (Exs. L-6, R. 2264, 2270, P-4, R. 2329, 2333, F-7; R. 2223, 2220, U-4, R. 2483, W-8, R. 2542, 2546, C-5, R. 2157, 2158). None of those towns were included in the licensing agreements of Amusement and Consolidated for the 1938-39 season.

At the time of the filing of this suit, H. R. Falls was licensing pictures for Amusement and Consolidated in a total of forty-three towns, and there was competition in twenty-three of them (Findings 1 and 2, R. 83, 84). The total number of towns in which Amusement and Consolidated were operating was only ten more than on April 28, 1934, and there was competition in five more towns than in 1934. The competitive towns were 53.5 per cent of the total.

On April 28, 1934, R. E. Griffith Theatres, Inc. was operating theatres in eight towns and had competition in three of them. Westex was not organized until March 27, 1936. At the time this suit was filed, R. E. Griffith was licensing pictures for R. E. Griffith Theatres, Inc. in thirteen

towns, of which three were competitive, and for Westex in twenty-five towns, of which seven were competitive (Pltf's. Ex. 331, R. 1100, 1104). The total number of towns in which R. E. Griffith Theatres, Inc. and Westex were operating theatres on April 28, 1939, was thirty-eight, and there were competing theatres in ten of them. The towns in which there was competition comprised 26% of the total. Of the towns in which there was no competition only one, to-wit Clovis, New Mexico, had a population in excess of 4,000. At the time of the organization of Westex, it acquired theatres in nine towns from R. E. Griffith Theatres, Inc. (R. 437-438). All of the theatres subsequently acquired by Westex were in one-theatre towns, except in the towns in which there was competition. No competition was eliminated at the time of the acquisition or thereafter (Pltf's. Ex. 381, R. 1100-1108). R. E. Griffith Theatres, Inc. and Westex were operating in only five towns having a population of 4,000, or more, and in the remainder of the towns, the population ranged from 404 to 4,000. In most of the towns in which Westex and Consolidated were operating, there had never been any competition, and the towns were fortunate to have one motion picture house. There is nothing in the record to indicate that the percentage of non-competitive towns in which the defendants were operating was any greater than the percentage of non-competitive towns operated by independent exhibitors as to the total of independent towns in the area. No defendant acquired any theatre by means of any predatory practice or with the intent or purpose to unreasonably restrain trade or stifle competition (Finding No. 14,

R. 123). There was no evidence as to the earnings of any of the defendant corporations. Therefore, there was no evidence that such earnings were out of proportion to the physical expansion of the gross receipts and assets (Compare with *Crescent* Case, 323 U. S. 173, 183). The expansion of theatre ownership was not accomplished by predatory practices, competition was not limited by predatory practices, and there was no combination for the purpose or with the effect of crushing competition (Findings No. 10, 14 and 15, R. 87, 123). There was no demand by the defendants for monopoly rights in towns where they had competition, as a condition to giving the distributor business in towns where they had no competition (Finding No. 12, R. 123).

Appellant has asserted that Fox, Loews, Paramount, RKO, Warner, Columbia, Universal and United Artists distributed substantially all of the first class feature film. The evidence is that they constituted less than half of the distributors of motion pictures during the period here involved. Pictures were distributed by Republic, PRC, Monogram, Grand National, Allied, Adams, British Gaumont, Square Deal, Sax and Majestic (R. 941, 942, 1016, 1017). Many of the so-called independent distributors sold good "A" feature pictures (R. 1225). The number of pictures released by all of the independents is not shown, but the approximate number released by four of them was 375 (R. 784-785). The evidence is that the major companies did produce a greater number of top box-office pictures than were produced by independents. However, only a small number of the total released by each major distributor was considered to be in that class. One of appellant's witnesses rated the major

distributors as to quality of production as follows: Metro, Paramount, Fox, Warners, RKO, Columbia, Universal and United Artists, in the order named. That witness stated that the number of top pictures released by each was as follows: Metro—6 to 8, Paramount—8 to 10, Fox—6 to 8, Warners—3, RKO—2, Columbia—2, Universal—2, and United Artists—2 (R. 946-947). The number of pictures which were actually produced and made available for exhibition by each distributor for each season cannot be determined by the number licensed. As the pictures were licensed before production, there were many of them which were never produced (R. 1303, 1773).

ARGUMENT

The Contracts by Which Appellees Licensed Films Did Not Unreasonably Restrain Trade.

The charge in the Complaint is that the defendants combined their theatres in licensing pictures with the purpose of compelling each of the major distributors to grant them specified special privilege (Complaint, Pars. 41-42, R. 6). It was not charged that any of the provisions of any licensing agreement, in and of itself, constituted a violation of the Sherman Act. For example: There is no charge that the defendants violated the Sherman Act by agreeing with the distributor to charge minimum admission prices. If an agreement between a distributor and an exhibitor, which contains a minimum admission price clause, does constitute an unreasonable restraint of trade, appellant

is not entitled to relief in this case, even though such agreement were established.

In order for the complainant to prevail in this case, it was necessary that it prove that the defendants combined with the purpose and effect of obtaining the privileges set out in Paragraph 42 or combined with the purpose and effect of obtaining more favorable rental terms that could be obtained by competing individual exhibitors (Par. 49). Provisions of the contracts, which appellant now asserts were in unreasonable restraint of trade, are here involved only as they may tend to evidence a wrongful purpose and intent of the defendants in combining in licensing film.

Appellant asserts that contracts by which pictures were licensed were normally made on a distributor's printed form, and that a typical sample of such printed form is set forth as Appendix B of appellant's brief. It further asserts that the printed forms ordinarily specified the number of features licensed, the number which the exhibitor is required to play, the name of the theatre in which the film is required to be played, the rental or license fee for each film and the minimum admission prices to be charged by the exhibitor. As we have not been furnished with Appendix B, above referred to, we must assume that the form which there appears is one of the standard printed forms, which appear in the record (Ex. C-27, R. 2189, F-96-2, R. 2336, L-129, R. 2294, P-120, R. 2387, W-60, R. 2572, W-60, R. 2572). In each instance in which the printed form was attached to a so-called "master" licensing agreement between appellees and a distributor, the complete agreement has not been printed in the record, but the entire printed form

was made a part of the contract. In those instances it will be necessary to refer to the complete standard forms as above set out. Thus, Plaintiff's Exhibit C-5 (R. 2143) incorporates in the agreement the provisions of the standard form of contract and there is attached what purports to be a copy of the printed agreement (R. 2147, 2148), but there has been printed only part of the printed form, as appears from an examination of Plaintiff's Exhibit C-27-2 (R. 2189).

Appellant's statement that the distributors' printed forms contained the rental terms, as outlined above, is erroneous. The printed forms merely contained the general provisions common to most contracts, but the matters which are determined by negotiation between the parties must be written after negotiations have resulted in an agreement. In every licensing contract such rental terms be written in the blank spaces in the printed form or attached thereto in the form of a memoranda or rider. As those terms are the subject of negotiation and bargaining between the distributor and the exhibitor, they will vary in some particulars in every contract. Those variances are not evidence that a distributor has been coerced into granting any provision. In the absence of evidence to the contrary, the reasonable inference is that each such provision is the result of normal negotiations between the parties. The written provisions, which appear in the contracts, may conflict with certain clauses of the printed form, in which case the written provisions will prevail over the printed provisions. However, no clause of the printed provision can be considered as having been superseded, unless it cannot be reconciled with the written matter contained in the contract. The undisputed

evidence is that the contracts with appellees resulted from normal negotiations between the parties. The distributors' standard printed form was used in every contract, and attached thereto was a written memoranda which contained the things which were not covered by the printed form. No provision in appellee's contracts unreasonably restrained trade. There is no evidence that any provision in any contract was included therein because of any coercion exerted by appellees, or that appellees combined in the licensing of films for the purpose of obtaining any privilege.

Playing out of order of release. Pictures were not played in strict order of release by any exhibitor (R. 585, 1329-30, 1453-54, 1456). The printed form of contract of each of the distributors contained a provision which permitted an exhibitor to play pictures out of order of release, which was substantially the same as the privilege granted in the defendants' contracts. Typical of such provisions in the printed forms are paragraph 4-c of Plaintiff's Exhibit F-3-G (R. 2210, Ev. R. 370). Appendix A is a copy of paragraph 4-c of Fox's printed form. Printed forms used by other distributors contained similar provisions. (Pltf's. Ex. L-129-4, R. 2296, Ev. R. 381, C-27-2, R. 2192, Ev. R. 389, P-120-11, R. 2389, Ev. R. 210, Ex. 358, R. 2097, Ev. R. 983, W-60, R. 2574, Ev. R. 384).

Fox's memoranda contract with defendants provided that individual contracts would be drawn for each town, and they were so drawn. An individual contract was prepared on the printed form for each town. Each contained identically the same conditions upon which pictures might be played out of order of release, as were contained in contracts with other exhibitors (Pltf's. Ex. F-5-F-

G, R. 2217-18, Ev. R. 370). The defendants' contracts, in addition, required that the exhibitor actually play 25% of the pictures every thirteen weeks. Loew's also prepared individual contracts of each town (Pltf's. Ex. L-8-M, R. 2293, Ev. R. 380). The other distributors attached to a letter memoranda the printed form of contract. An example is the Columbia contract (Pltf's. Ex. C-6-D, R. 2161, Ev. R. 395), which provides that the standard form of exhibition contract herewith attached is to become a part and parcel of this agreement. Columbia's printed form of contract provided in Paragraph 4-C (Pltf's. Ex. C-27-2, R. 2192, Ev. R. 589) for the playing of pictures out of order of release on similar conditions to those stated in the Fox printed form, *supra*.

Each of the printed contract forms contained a paragraph, which was substantially the same as Paragraph Sixth of Fox's form (F-3, R. 2296), which became part of each of the contracts made with appellees and must be construed in connection with the privilege of playing out of order of release. Appendix B is a copy of Paragraph Sixth of Fox's printed form. That paragraph authorized the distributor to designate an availability date for each picture and required the exhibitor to select a play date within fourteen days after the mailing of the notice of availability, the play date to be within thirty days from the available date and, if the exhibitor failed to select a play date, the distributor was authorized to set such date. Although it was not necessary to date the pictures in the order of release, play dates had to be selected when notice of availability was given, and the exhibitor had no control of such availability.

The number of prints available for dating, the difficulties in booking pictures and, particularly, the difficulty in booking important pictures on dates when they would produce the most money made it necessary to play pictures out of order of release (R. 1329). None of the contracts required the distributor to make pictures available to any exhibitor in the order of release, and they were not made available in order of release. It was only reasonable that the exhibitor should not be required to play the pictures in strict order of release. Playing pictures out of order of release was a condition which prevailed throughout the United States, and was applicable to circuits and independents alike. (R. 1329-1330).

By reason of the clause providing for the selection and assignment of play dates, which was a part of all contracts, including defendants', the distributor retained the control of the booking of the pictures (R. 1330, 1453, 1454-56, 1462-63). In Paragraph Sixteenth of said printed form, there was fixed a limit on the time beyond which the exhibition of a picture on first run could not be delayed. Even though an exhibitor agreed to exhibit pictures in order of release, it could not always exhibit them in such order, as the distributor was not required to and did not make pictures available for each exhibitor in the order of release. The above provisions of the printed contract were adequate to enable the distributor to license a sequence of runs and to enable a subsequent run exhibitor to book and play pictures, even though the pictures were not played in order of release on prior run. Therefore, it is not true that defendants could hold back the playing of a picture so as to unreasonably restrict a competitor in either

licensing or playing a picture. That the charge is immaterial to any issue in the case is indicated by the testimony of appellants' own witnesses, who were appellees competitors in eighteen towns. There was no testimony of any restraint of trade or competition resulting by reason of the privilege of playing out of order of release, or that any exhibitor was discriminated against in that particular, or that he was delayed in playing pictures. Only one of plaintiff's witnesses testified in regard to that matter, and he stated that he was not required to play pictures in the order of release; that dates would be set up for all pictures as they became available, but that they could be played out of order of release, although sometimes he had to pay for them if they were not played within a reasonable time after availability (R. 585). The privilege of playing out of order of release did not prevent the sale of regular runs following any defendants' theatre (R. 1468). Regular second or subsequent runs, following a defendants' theatre, were licensed in Ada (R. 935-936, 944), Enid (R. 597-598, 599-600), Norman (Pltf's. Ex. 288, R. 2068, Ev. R. 696), Lubbock (R. 476, 489), Shawnee (R. 535, 559, 560-562, 567), Stillwater (R. 835), and Blackwell (R. 449). An exhibitor who had a second run after them could determine when it would be available in the same manner as he would if the pictures were played under the provisions of the printed form of contract (R. 1462). In either event he could book the picture after it had been booked on prior run and not before. In either event the distributor controlled the booking in the same identical manner (R. 1500, 1509).

The above evidence establishes that appellant has erroneously asserted that the privilege of playing out of

order of release tended to prevent competitors from licensing a regular run following a prior run. The testimony of Warner's sales manager, which was referred to by appellant, does not tend to support that assertion. That witness testified that ordinarily pictures are not played in the strict order of release as available, and that during a period involved the general practice was to allow for booking facility and also for facility in running and operating a theatre (R. 1509, 1510). That witness further stated that appellees under their contract did not have the right to delay the dating of pictures at their pleasure, as the distributor had the means in the provisions of the printed contract attached to the master agreement to prevent the withholding of first run dates (R. 1509). That witness further stated that under appellees' contract, second run pictures could be licensed, dated and played in the same manner as if the contract had been entirely written on the printed form (R. 1508, 1509). There was no evidence that competitors of the appellees had no opportunity to deal with the distributors for films not used at all by appellees or for subsequent runs of films played by appellees on a prior run, except as appellees should decide to make such films available to them. The evidence is to the contrary, as above set out. Pictures were licensed on subsequent runs following a prior run of one of the appellees, and there was no testimony from any source that the competitors in those situations were prevented from dealing with the distributors or from promptly obtaining and playing the pictures.

In licensing pictures, subject to such clauses, appellees had no privilege which was not extended by the distributors

to all other exhibitors, including the appellees' competitors. There was no discrimination or special privilege given to appellees in permitting the playing out of order of release. There is no evidence that appellees combined in licensing pictures for the purpose of obtaining that privilege, or that any distributor granted the privilege because of the alleged buying power of appellees.

Optional second run. Appellant contends that appellees were given the privilege of playing picture on second run, at their option, in various towns under the terms of certain contracts, and that the defendants were enabled thereby to unreasonably tie up second run product.

Finding No. 23 (R. 126) reads:

> "The defendants, or any of them, did not monopolize, or attempt to monopolize, the licensing or the supply of feature motion pictures for either first, second or subsequent run exhibition in any situation. The defendants licensed only such supply of pictures as they reasonably believed would be necessary in each situation to satisfy the demands of the public which they served."

That finding is not assigned as error. That should eliminate consideration of the contention that appellees unreasonably tied up second run product.

There were competitors who licensed second run product which was not used by any appellee. Not a single one of those exhibitors testified that he was unable to license second run product which was not used by such appellee until such time as the pictures had lost their value for second

run exhibition, or that he was unreasonably delayed in the booking or playing of those pictures.

The Fox contract for the 1934-35 season (Pltf's. Ex. F-2, R. 2202, Ev. R. 370) contained a definite commitment for forty features second run for Lubbock, Shawnee and Chickasha and prices were set up for repeat runs in Bartlesville, Enid, Okmulgee and Pampa, but there was no optional contract. For the 1935-36 season (Pltf's. Ex. F-3, R. 2207, Ev. R. 370) the privilege was granted of using thirty pictures second run in eleven towns which were named. For the 1936-37 and 1937-38 seasons, a similar privilege was granted (Pltf's. Ex. F-5 and F-7, R. 2213, 2221, Ev. R. 366, 368). For the 1938-39 season (Pltf's. Ex. F-8, R. 2227, Ev. R. 370) there was a definite commitment at fixed rentals in each of the second run situations. When the memoranda contract was entered into in New York, appellees didn't know exactly how many second run pictures they would be able to run in the towns covered by the contract, but when the contracts were made up for the individual towns, a definite contract for the number of pictures they would use in each of the second run situations was executed (R. 1323-1324).

The contract with RKO (Pltf's. Ex. RKO-44, R. 2422, Ev. R. 355) was not an optional contract, but was a definite commitment on twenty-six pictures second run in specified towns. The Universal contract for the 1934-35 season (Pltf's. Ex. U-1, R. 2469, Ev. R. 397) was not an optional contract, but was a selective contract for both first and second run. In subsequent years (Pltf's. Ex. U-2, U-3 and U-6, R. 2475, 2479, 2501, Ev. R. 398, 402) there was a definite commitment limited to eight top features and six westerns, and prices were set

out in allocation sheets which were attached to the contract. The Warner contracts (Pltf's. Ex. W-3, W-4, W-6, W-7, W-8, W-11, R. 2507, 2522, 2529, 2542, 2560, Ev. R. 384, 386, 387, 388) were definite purchases of second run in specified towns. The Columbia contract (Pltf's. Ex. C-4, C-5, R. 2126, 2143, Ev. R. 391, 392) was not an optional contract, but was a selective contract for the playing of second run pictures set out in the schedule at C-4-F in certain specified towns. The Metro franchise (Pltf's. Ex. L-1, R. 2241, Ev. R. 374), which covered the seasons 1930-31 to 1934-35, inclusive, licensed product for second run in only two situations, to-wit, Enid and Oklahoma City. It was a definite commitment for those towns, and there was no agreement of any kind for second run in any of the other situations. The contracts for the seasons 1935-36, 1937-38, 1938-39 (Pltf's. Exs. L-4, L-6, L-8, R. 2250, 2264, 2285, Ev. R. 376, 378, 380) were not optional contracts at all, but were selective second run contracts on thirty features.

The original Paramount franchise (Pltf's. Ex. P-1, R. 2309) contained a clause whereby the distributor agreed that whenever requested it would furnish to the exhibitor a second run for not exceeding each of twenty of the towns embraced in the agreement. In September of 1936 that clause was modified (Pltf's. Ex. P-1-Y, R. 2319-20, Ev. R. 212) to provide that "exhibitor shall be furnished forty feature length pictures in Lubbock, Borger, Pampa, Ardmore, Shawnee, Seminole, Bartlesville, Okmulgee, and Ada." Paramount contracts for the 1937-38 and 1938-39 seasons (Pltf's. Ex. P-4 and P-5, R. 2329, 2336) granted the privilege of playing second run thirty pictures in specified

towns. In considering the reasonableness of the above contracts, it is important to bear in mind that prior to the Consent Decree, the major distributors all licensed their product in advance of production with the exception of United Artists. They endeavored to license all of their pictures to one customer for first run exhibition. The exhibitors did not know what the pictures would be like when produced or what box office value they would have, even on first run, and certainly could not tell what value they would have on second run until after they had been released. Most of the contracts were definite commitments for a specified number of pictures in specified towns, but with the privilege of making the selection from all of the pictures released. The contracts were made for only those towns in which appellees were operating second run theatres. Clearly the contracts were not made for the purpose of tying up second run product. They were merely attempting, as best they could, to meet their requirements for their second run houses according to the customs of the trade. Those agreements must also be considered in connection with the provisions of the printed contract form which authorized the distributor to fix the available date for the booking of all pictures, at any time after the prints were received, and which required the exhibitor to promptly select play dates. The exhibitor could not delay beyond that time in determining whether or not he would exhibit the picture on second run. That provision made it impossible for the exhibitor to delay unreasonably in making a selection or rejection of the pictures. The pictures could always be made available for licensing to another exhibitor within a reasonable time after release date and prior to the first

run exhibition. It is significant to note that, during the entire period involved, none of the contracts granted any second run privileges to Amusement or Consolidated in towns in which they had no second run house, as in Clinton, Duncan, Elk City, Stillwater, Altus, Blackwell, Sapulpa, Hobart or Mangum, although there was competition in each of those towns. No contract granted any second run privilege to R. E. Griffith Theatres, Inc. or Westex in any of its towns. Second run privileges were only obtained in towns where they were needed by defendants.

Under the heading of "Altus" under Subdivision E-1 of Part II of appellant's brief, appellant asserts that appellees' master agreements with Fox, Loew, Paramount, and Warner gave them the privilege of a second run in Altus without additional film rental. In support of that statement appellant refers to Ex. F-5 (R. 2213), Ex. L-5 (R. 2262), Ex. P-3 (R. 2320-2326), and Ex. W-7 (R. 2540). Those references refer to contracts for the season 1936-37. Those contracts, which appellant has referred to, show exactly the contrary to the statement by appellant. There is no contract or evidence in the record in this case that will support that statement. The Fox contract (Ex. F-5, R. 2213) specifies the towns in which appellees had the privilege of exhibiting pictures on second run. Altus was not one of those towns. The Loew's contract (Ex. L-5, R. 2262) specifies such towns and Altus was not one of them. Warner's contract (Ex. W-7, R. 2540) specifies the second run towns and Altus is not named. The Paramount contract referred to (Ex. P-3, R. 2320-2326) was never executed by Paramount and no pictures were licensed under it (R. 337, 338).

The second run agreement between appellees and Paramount for the 1936-37 season is contained in the supplemental agreement of September 22, 1936 (R. 2318-2322, Ev. R. 213). It specifies the towns in which the exhibitor shall furnish second run pictures (R. 2320) and Altus is not named. There is no proof that the above contract provisions were entered into with the intent to tie up product, or that such was its effect.

Those provisions of the contracts were not unusual. In the first run contract with Amusement's Shawnee competitor for the 1933-34 season an option was granted to Jones for second run product (Pltf's. Ex. 117, R. 2046, Ev. R. 307). Scaling, Westex's Plainview competitor, testified that when he was playing first run Paramount product, he was permitted to return the outstanding pictures for second run exhibition (R. 215).

Appellant asserts that the foregoing second run provisions were similar to the second run options "granted by the same distributors to the Crescent circuit and condemned by this Court in *United States* v. *Crescent Company.*" The provision referred to in the opinion of this Court in the *Crescent* case was only the "repeat run clause in the franchise" of Paramount. That clause was not similar at all to the second run provisions in any of appellees' contracts, except the clause contained in the original Paramount franchise. In the *Crescent* case the repeat run provision was coupled with unreasonable clearance provisions. The trial court found, from the evidence of competitors, that it was used for the purpose of tying up product which the defendants did not need and could not use. In Finding 70 the Court

stated that "Although the 1937-38 product was thus tied up Crescent played only four pictures second run and the first of these was played after the close of the 1937-38 season." Other similar findings were made. Most of the towns in which the repeat run privilege was granted in the Crescent case were towns in which the defendants used no second run. In the case here the testimony affirmatively established that appellees obtained second run privileges only in the towns where they needed second run pictures. There were no unreasonable clearance provisions in the contracts. Each contract contained provisions which enabled the distributor to require the exercise of the privilege within a reasonable time. The evidence further shows that the privilege was not obtained for the purpose or with the effect of tying up product in order to deprive a competitor from obtaining it. It was not an unusual contractual provision. There is no evidence that it was obtained by coercion or that appellees combined in the licensing of pictures for the purpose of obtaining that privilege.

The selective second run contracts were not unusual. They were in line with the general sales practice (R. 1348).[4] Among the few second run contracts of independent exhibitors, which were placed in evidence, practically all of them were selective contracts covering from nine to eighteen pictures out of the total releases of a distributor for a season (Pltf's. Ex. 69, O. R. 4007; 112, O. R. 4029; 113, O. R. 4030; 115, O. R. 4032; 198, O. R. 2057). The provisions of the printed form of contract, above referred to, furnished a method for the selection of the pictures which the exhibitor desired to play, and made it possible for another exhibitor to freely license any of them, which were not

used. Thus, on November 1, 1937, Metro licensed to Mrs. Berry, Amusement's competitor in Norman, fourteen features of the 1937-38 product for second run exhibition (Pltf's. Ex. 288, R. 2072, Ev. R. 696). That contract was made at a time when Amusement had a selective contract for thirty features with Metro (Pltf's. Ex. L-6, R. 2264). In Ada, Enid, Lubbock, and Shawnee, the independent exhibitors licensed and played subsequent run major pictures. There was no evidence from any of them that they were unreasonably delayed in either licensing or playing such pictures (R. 535, 542, 551, 557, 562, 944, 945, 947, 950, 597, 599, 600, 601, 602, 489, 490, 494, 521, 522, 898).

The selective second run privilege did not operate as an unreasonable restraint of trade. It was a normal and customary privilege and can create no inference that appellees combined in licensing pictures for the purpose or with the effect of obtaining that privilege.

Free second runs. Appellant's assertion that distributors frequently made no charge for second runs, which were licensed to appellees, is not supported by the contracts to which reference is made. In some instances the allocations of film rentals are attached to the contracts which were introduced in evidence. In other instances the allocations or deal sheets are not in evidence, but there is no evidence that they were not made. Wherever the allocation sheets are attached, they show that prices were allocated to second run. The fact that some of the contracts state that the second run rental is included in the first run rental does not mean that the second run pictures were licensed free of charge. The witness, Kupper, Fox's general sales

manager, explained that the first and second run rental were coupled together in the Fox contracts for the purpose of securing to the distributor the maximum amount of revenue at the earliest date; that the exhibitor not only paid rental on the second run pictures, but paid the rental at the time the rent was paid for the first run. The Court asked the question, "I understand you to say you did make a charge for the first run and made a charge for the second run." Kupper answered, "That is right" (R. 1350). Those provisions of the contract were required by the distributor for its benefit and were not demands made by the defendants for their benefit. They did not operate to the detriment of any independent exhibitor or create an inference of exertion of buying power.

Elimination of foreign made pictures. The privilege of eliminating foreign made pictures was available to any exhibitor, independent or otherwise, who desired it (R. 1337). There was no evidence that any exhibitor was required to license foreign made pictures. The agreement for the elimination of such pictures did not unreasonably restrain trade, and, as the privilege was available for any exhibitor, there was no discrimination.

Failure to specify minimum admission prices. In some of appellees' contracts admission prices were not stated. The failure of a distributor and an exhibitor to agree on the minimum admission prices to be charged does not unreasonably restrain trade. In fact, appellant is now asserting the reverse, and is contending that an agreement fixing a minimum admission price constitutes an unreasonable restraint of trade. If the failure to insert

admission prices in any of appellees' contracts is material here, it must appear from testimony other than from the contract itself. It was not uncommon for licensing contracts to have the admission prices omitted. The evidence was that the distributors ordinarily did no more than attempt to insert in the blank spaces in the exhibition contracts the admission prices which the exhibitor was currently charging. Evidence of any discrimination in regard to the failure to specify minimum admission prices is completely lacking. The failure to insert the minimum admission price clause resulted either through inadvertence (R. 1377), or because of an understanding that the admission prices, currently being charged or contained in previous licenses, would be continued. In either event the distributor considered that the exhibitor was obligated to continue to charge its current admission prices (R. 1377, 1545, 1912).

Appellant contends that the omission of the minimum admission price clause in appellees' contracts resulted in "price cutting activities" in Ada, Enid, Hobart, Lubbock, Sapulpa, Seminole, Shawnee and Wewoka. In that connection attention is called to Finding No. 24 (R. 126), in which the Court found that both the defendants and their competitors indulged in the use of bargain prices and price reductions, ordinarily practiced to secure patrons in their theatres, particularly in Ada, Enid, Seminole, Shawnee, Wewoka, Sapulpa and Lubbock, and that those practices were acts which normally flow from competition, particularly, in abnormal times when competition becomes keen, such as existed during the period involved here; that none of the practices upon the part of the defendants were in-

dulged in with the intent or purpose to crush or destroy competition, but was done for the purpose of meeting, in the ordinary and natural way, the practices of rival exhibitors. The Court heard the verbal testimony of the witnesses in regard to that matter and arrived at the above conclusion. The finding is supported by ample evidence (R. 940-41, 603-606, 1656-1659, 991-992, 1672, 886, 888, 889, 890, 634, 636, 564, 566, 535, 536, Deft's. Ex. 133, O. R. 5511, Ev. R. 1647, 1651, 1680). During the same period, appellees made similar bargain prices for the purpose of stimulating trade in towns in which there was no competition (R. 1659). If an exhibitor desires to increase his business, he has a perfect right to endeavor to do so by increasing the quality of the program or by decreasing the price, or both. Giving the consumer more for his money in order to increase an exhibitor's business has never been considered to be a violation of the Sherman Act, even though it may make it difficult for a competitor to survive. *Sinclair Refining Co.* v. *Federal Trade Commission* (C. C. A. 7), 276 Fed. 686, 688. When an exhibitor endeavors to increase his business by giving the patron more for his money the tendency is for the competitor to do the same thing or resort to some other competitive plan. Such competition tends to increase the business of each of the competitors. In such cases it frequently happens that neither competitor is injured and, through an increase in the volume of new business, the profits of each of the competing exhibitors may be increased. That is particularly true during a period of depression. It is important to note that there is not a word of testimony from any witness to the effect that his business was less profitable during the period of price reductions, "pal days," "penny days," "two-for-ones" and other

similar bargain policies. It is common knowledge that during the depression the exhibitors generally, in order to maintain attendance, resorted to all kinds of devices to attract the public. There was no thought of eliminating competition. It was a question of survival. There is no foundation for appellant's contention that, by reason of the omission of a minimum admission price clause in appellees' contracts, they were able to reduce prices which their competitors could not do. In each of the situations mentioned, the competitors were playing product of major distributors and commenced the bargain prices and continued them during the entire period when a defendant exhibitor was giving bargain prices.

In Ada both Miss Kyser and Amusement were playing major product, and both operated for a time on a policy of admitting two persons for the price of one, plus a penny on the mid-week change of program. Miss Kyser, the independent exhibitor, under her contract, did exactly what Amusement did under its contract. There was no testimony that any distributor treated Miss Kyser any differently than it treated Amusement (R. 940). During that time Miss Kyser was playing the product of RKO, United Artists, Universal, Metro and Fox, and she continued the policy for a period of about two years (R. 935-6). The town of Ada had three theatres when an oil boom came along and, at the height of the boom, each exhibitor opened another theatre (R. 941). The boom subsided and along came the "recession" in 1938 when there were five theatres competing for the business with the theatre attendance in a slump. One of the exhibitors thought it good business to offer a bargain day on

the mid-week program when the attendance was the lowest. The competing exhibitor established a similar policy. Miss Kyser did not claim that her net income was adversely affected by the practice, and there is no evidence that the stimulant did not result in greater attendance so that otherwise vacant seats would be filled and people, who would otherwise have seen only one show a week, were induced to see two or three.

The price reductions in Enid did not start with Amusement. When Gray returned to Enid in 1937, as competitor of Amusement and Shield, he opened the Rivoli (renamed the Royal), after having previously sold his theatre to his partner, Shield. He knew that Shield was operating the Royal on a policy of two admissions for fifteen cents on every Wednesday-Thursday and "Country Store" on Saturday night (R. 605). About the middle of 1938 Amusement occasionally ran double bills at the Criterion for the admission price of twenty cents and twenty-five cents, but there were no regular double bills. About June, 1938, Gray adopted a policy of playing double bills on Sunday-Monday-Tuesday at ten and fifteen cents. Shortly thereafter, Shield countered with a policy of double bills on Sunday-Monday-Tuesday at ten cents and continued his two admissions for fifteen cents on Wednesday-Thursday and "Country Store" on Saturday night. Gray then commenced a policy of two-for-one on Wednesday-Thursday along with his double bills. His plan was to admit two persons for fifteen cents when they presented a newspaper ad or theatre calendar, and that policy continued until June or July of 1939. Sometimes the policy was continued during

the week. It was not until the middle of January, 1939, that Amusement commenced to offer its bargains, after both Shield and Gray had been giving bargain admissions for many months (R. 603-605). At that time Amusement commenced to present double bills at the Mecca on five days of the week, and admission to the Mecca was reduced to ten cents. The circumstances under which it offered bargain admission in Enid present a good example of the use of bargain prices to create new business, as distinguished from the desire to ruin a competitor's business. On November 16, 1938, Amusement opened the Cherokee which was a newly constructed theatre having 950 seats and modern in every detail. At that time it was also operating the Mecca which, prior to the opening of the Cherokee, had been operated as a second run house. The Cherokee was constructed with the idea of operating it as a second run theatre on the theory that its large seating capacity would permit the showing of second run pictures at lower admission and result in a great increase in theatre attendance. However, it was opened on a "B" policy and continued to operate on that policy until the middle of January, 1939. The Criterion, which had been operated as a "B" house, was changed to second run house, and the Mecca became a subsequent run house. About the middle of January, 1939, the original plan for the Cherokee was carried out, and the "B" operation was changed back to the Criterion, and the Mecca continued as a subsequent run house. The Cherokee did a fine business, but the patronage of the Mecca decreased. In order to stimulate the business at the Mecca, the admission price of that theatre was reduced to ten cents for a time, but the policy was discontinued about the first of June, 1939. A

policy was then adopted that was similar to the two-for-one which Shield and Gray had been using for many months. The policy was to give a free ticket to the Mecca for every ticket bought at the Cherokee. That was discontinued about the first of July, 1939. The result of that policy was that the business of the Mecca increased without hurting the business of the Cherokee, and the Mecca was placed on a successful operating basis (R. 1656-8; 1671-2). The record does not show what product Shield was playing during the period of at least two years when he was operating on bargain prices, but Gray was playing product of Universal, Loew's, Fox, Paramount, RKO and United Artists, and he continued to play pictures for less than fifteen cents adult admission from June, 1938, until he sold his theatre (R. 604-5). He had various bargain offers for at least a year, whereas, Amusement had bargain offers from about the middle of January, 1939, until about the first of July, 1939. Gray did not testify that his business operated less profitably because of the bargain admission prices. He did not testify that he sold his business because he was operating at a loss.

In Hobart there was no reduction by Amusement of its admission prices. Amusement opened the Kiowa in November, 1934, charging ten cents for children and fifteen cents for adults, and continued that policy for eight or nine months. At that time the Oklahoman, operated by Mahone, under receivership, was charging ten cents for children and twenty-five cents for adults. He immediately opened his balcony and fixed a fifteen cent adult admission price for the balcony and continued the twenty-five cent

charge for the main floor. After the Kiowa had been operating for eight or nine months, its admission prices became ten cents for children and adults fifteen cents for matinee and twenty cents for evening (R. 991-2).

In Lubbock there was no evidence of price cutting by Lindsey Theatres, Inc. but Smith & Bearden, its competitors, operated the Tech on the policy of a special students' rate and "Pal Day" commencing shortly after the Tech was opened in June, 1936, and they continued that policy until sometime in 1941, when the partnership was dissolved, although running major product (R. 486-91). The Cactus had "buddy night" and Midway had "free view." Both were independent exhibitors (R. 527). During that time the Tech was playing product of Metro, Universal, United Artists, Columbia, RKO, Warner, Fox and Paramount (R. 488-490). The contracts with those major exhibitors did not prevent the Tech from operating on bargain prices for a period of more than four years.

In Sapulpa there was no evidence that Consolidated at any time operated on an admission price of less than ten cents for children and fifteen cents for adults. Moulder, Consolidated's competitor, testified that he believed that Consolidated had a bargain price of two-for-one at the Yale for a time, but he was not certain (R. 636). Moulder played double bills on Wednesday - Thursday - Friday - Saturday, while the Consolidated was playing single bills, and had a fifteen cent adult admission price for his balcony (R. 938-9).

In Seminole there was a period, not fixed by the evidence, when Amusement's competitor, Love, claimed that a free pass to the Rialto was given with each admission to the

State; thereupon, Love reduced his admission price to ten cents for adults (R. 890). Love opened his theatre in Seminole in 1936. During that time he was playing product of at least one major distributor (R. 882). There was no testimony that any major company refused to license him pictures because of his admission price policy. In this town Love started the bargain prices by adopting the policy of admitting two-for-one on the Wednesday-Thursday change, and when Amusement started the policy of giving free passes to the Rialto with each admission to the State, Love reduced his admission price to ten cents (R. 890).

In Wewoka, the Pix, which Love bought in April, 1938, was charging ten cent admission price at the time it was purchased by Love. During 1939 Love started the policy of admitting two adults for sixteen cents. Thereafter, Consolidated commenced a two-for-one policy. During that time Love also had "Family Night" and other similar bargain prices. During that period he was playing the product of at least one major distributor (R. 889). There was no testimony that Love's revenue in either Wewoka or Seminole was lessened by reason of the bargain prices.

Shawnee is the only place where any exhibitor testified that he was forced to discontinue the playing of any distributor's product at an admission price of less than fifteen cents for adults. As early as December, 1935, Jones' Ritz was being operated on a policy of admitting two adults for sixteen cents. Defendant's Exhibit 173 (O. R. 5595, Ev. R. 1937) shows that during all of the year 1933-34, the Ritz was operating on a policy of two-for-one. During that time Momand was operating the Odeon on a ten cent policy and

also had "Pal Day" (R. 564-5). Jones and Momand both competed with Amusement which operated the Rex on a ten cent admission policy during most of 1933 and 1934 (Defts'. Ex. 171, O. R. 5585, Ev. R. 1937). The evidence does not show when those policies were discontinued by either of the theatres. The evidence does show that the Rex was replaced by the Avon on March 1, 1936, and the admission prices of Amusement during 1936 in the Avon were: Children—ten cents, and adults—fifteen cents (R. 535). Jones complained to Fox about the playing of pictures by Amusement at the Rex for ten cents, and Fox advised Amusement that it must correct its policy or it would not serve it pictures (R. 1378). Since 1935 Jones played on a policy of "Penny Day" on mid-week program (R. 566). During that time he was playing pictures of Metro (R. 581), Universal (R. 534), United Artists (R. 539), Fox (R. 538), Columbia (R. 555), and Warner (R. 556-7). There is no evidence that any distributor, other than Fox, required him to discontinue playing its product at bargain prices. Fox refused to ship Amusement, as well as Jones, until it corrected its policy (R. 1378, 1800, 1839).

In each of the situations, which appellant has referred to, the independent competing theatre was cutting prices at the same time that the defendant operating in that town was offering bargain prices, and was doing so at a time major product was being played. Regardless of any control which any distributor may have attempted to exercise, and even though the use of bargain prices may have been in violation of the exhibitor's contract, there was no violation

of the Sherman Act in resorting to that method of competition under the circumstances in evidence here. There is no evidence that the admission price clause was omitted from any Griffith contract because of any demand by appellees, or because of any exertion of buying power.

Agreements fixing admission price. Appellant now contends that the contracts between the several appellees and the several distributors violated the Sherman Act because they contained agreements which fixed the admission prices which would be charged for the exhibition of the pictures licensed. That contention is not within the issues of the Complaint. The case was not tried on the theory that such an agreement between an exhibitor and a distributor, who licensed the copyrighted picture, was violative of the Sherman Act. As heretofore stated, the gist of the Complaint herein was that the defendants combined to compel the distributors to enter into contracts with them which granted exclusive privileges set out in Paragraph 42. It was not contended that the clause, fixing the admission prices to be charged by the defendants, was one of the privileges referred to. It was charged that the exclusive privileges set out in Paragraph 42 of the Complaint enabled the defendants to force competitors to maintain admission prices higher than those warranted by the quality of the entertainment they were able to offer (C. 43, R. 7).

During the trial counsel for appellant contended that the admission price clauses in the defendants' contracts were similar to those involved in the *Interstate* case, 306 U. S. 216, where the exhibitor defendant wrote a joint letter to the several distributors, advising that unless the distri-

butors agreed to sell their pictures to subsequent run competitors, conditioned that a smaller admission price than 25 cents would not be charged, they would not agree to license the distributors' pictures for exhibition at their first run houses at the admission price of 40 cents (R. 331, 332). There is no such admission price agreement in any of appellees' contracts. There is no evidence of any such demand by any appellee. In no contract of appellees' involved herein was there any agreement in any way relating to admission prices which were to be charged by competitors or requiring any distributor to impose such terms on any competitor. In the case here there was no evidence of any conspiracy among the distributors to fix prices, and no evidence of any price fixing scheme. So far as the evidence in this case shows, the price fixing agreements applied only to pictures covered by the particular contract under which the copyrighted pictures were licensed for exhibition and only to the exhibition of those pictures by the licensee in its theatres. No contract attempted to restrict the admission prices on subsequent exhibition at other theatres of the films covered by the contract. We do not understand that such an agreement, in the absence of evidence of a price fixing scheme, was held to be illegal in *U. S.* v. *Paramount*, 66 Fed. Supp. 323. However, if such agreements are illegal, we submit that such question was not within the issues tried below, it was not presented to the trial court for determination and, consequently, no error was assigned in connection with it.

Lump sum rentals. Appellant contends that appellees licensed pictures for a number of theatres in a number of

towns for a lump sum rental, and thereby competing exhibitors were placed at an unreasonable disadvantage, citing *U. S.* v. *Paramount, supra.* This alleged violation of the Sherman Act likewise was not within the issues in the case here. It was not one of the exclusive privileges which was alleged to have been obtained by the defendants, and the defendants were not charged with violating the Sherman Act by reason of licensing pictures in a number of towns and theatres for a lump sum rental. Neither the original Complaint nor amendments contained in the Bill of Particulars brought that matter into this case. We also submit that this matter was not assigned as error as required by rule 9.

Appellant offered no testimony as to how the lump sum amounts, which were set out in appellees' contracts, were made up. The only testimony in that regard was given by the witness, Kupper, general sales manager of Fox, in a detailed explanation of how contracts were negotiated between him and the representatives of appellees. He testified that he would make up a long sheet in which he listed every one of the towns for which a contract was being negotiated, and would go down the list of towns and put down the rental agreed upon opposite each town, and would then total those amounts. In that way he arrived at the amount which was inserted in the memoranda contract opposite the particular group of pictures of a specified class (R. 1433, 1434). Later individual contracts were prepared for each town, and in that individual contract the rental for each picture was separately set out. Metro likewise prepared individual contracts for each town. One of

the deal sheets, referred to by Kupper, is in evidence (Pltf's. Ex. F-4, R. 2211, Ev. R. 370). Similar work sheets were prepared by Metro and, in some instances, those sheets were attached to the memoranda contracts (Pltf's. Ex. L-6, R. 2272, Ev. R. 379). While the evidence does not disclose whether or not individual contracts were prepared by other distributors, it does appear that Paramount, Columbia, RKO and Universal prepared similar deal sheets (Pltf's. Ex. C-6-N, R. 2172; P-5, R. 2342-47; U-3-C, R. 2481-82; RKO-46, R. 2454). Appendix "A" of appellant's brief purports to be Exhibit C-5-R and reference is made to R. 2143-46. The part of the exhibit which has been copied includes only four pages of the exhibit which is introduced in evidence. The exhibit which was offered is C-5-A to J, inclusive. The exhibit, as a whole, was received in evidence (R. 392). It appears in the record (R. 2143-2155). Pages G to J, inclusive (R. 2151, 2156) are the deal sheets which were attached to that contract. Those deal sheets set out the details of the terms, such as film rental and playing time applicable to each picture in each town. In those contracts the licensing terms for each picture in each theatre, in which it would be played, could be ascertained with as much certainty as though an individual contract had been drawn. It is apparent also that those deal sheets made it possible for the distributor to know the amount of rental attributable to the playing of each picture on each run in each town.

In *U. S.* v. *Paramount, supra*, the Court stated that the independent theatre owners would labor under a great disadvantage in attempting severally to match or outbid the offers of a circuit which was making offers

for all of its theatres. It has never been recognized that a violation of the Sherman Act occurs because a competitor is placed at a disadvantage due to a particular method of doing business on the part of his competitor, or because such method of doing business makes it difficult for others to do business successfully. In *Prairie Farmers Publishing Co.* v. *Indiana Farmers Guide Publishing Co.* (C. C. A. 7), 88 Fed. (2d) 979, 982, the facts were that five publishers got together and quoted a lump sum rate which was lower than the separate rate offered by each. A competing publisher complained that it was an unreasonable restraint of trade, and that it was placed at a great disadvantage in attempting to match the rates offered by the five publishers. The Court held that, although the competitors were placed at a great disadvantage in attempting to compete against the lump sum rate, there was no violation of the Sherman Act. In *Federal Trade Commission* v. *Paramount Famous-Laskey Film Corporation* (C. C. A. 2), 57 Fed. (2d) 152, 157, *supra*, it was said, "The mere fact that a given method of competition makes it difficult for competitors to do business successfully is not, of itself, sufficient to brand the method of competition as unlawful and unfair." To the same effect are *Arkansas Brokerage Co.* v. *Dunn & Powell* (C.C.A. 8), 173 Fed. 899, 901, 903; *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, 582.

In *U. S.* v. *Crescent Amusement Co.*, 323 U. S. 173, this Court said, "It will not do to analogize this case to a case where purchasing power is pooled so that the buyers may obtain more favorable terms. The plan here was to crush competition and to build a circuit for the exhibitors." The trial

court in that case stated that United Artists for certain seasons made contracts for certain of its pictures with the defendant exhibitors and their affiliates for a lump sum and referred to the contracts as blanket contracts. As to those contracts the trial court said, "In each of these contracts the price for the pictures is fixed in a lump sum in all situations covered by the contract with no allocation as to the respective individual situation." (Finding No. 165). In Finding 169 it was stated that the blanket contract for the season 1938-39 was for 61 situations and for the 1939-40 season was for 73 situations. In Finding 170 the Court said, "Such contracts above mentioned did not, in fact, suppress or restrain interstate commerce or create, or tend to create, a monopoly in the exhibition of motion pictures in the territory covered by the bill." Although the Government appealed that case to this Court, there was no appeal from the above findings.

In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 498, this Court said, "This Court has since repeatedly recognized that the restraints at which the Sherman Law is aimed, and which are described by its terms, are only those which are comparable to restraints deemed illegal at common law." The common law never recognized that the sale of property in large quantities to one individual or a group of individuals for a lump sum price was illegal. It has always been generally recognized that the owner of a quantity of property might sell the entire quantity for a lump sum amount to any person or group of persons without violating any law. In no instance has anything, comparable to the licensing of a number of pictures for a number of

theatres for a lump sum amount, been held to violate any law.

If appellees had demanded that a distributor license its product to all of its theatres as a condition to the licensing of pictures in any theatre, or if appellees had conditioned the licensing of pictures in one or more of its theatres or towns on the licensing of pictures to it in another town or towns, such conduct would have constituted a violation of the Sherman Act. There is no evidence of any such act on the part of the appellees. The evidence affirmatively shows that the distributors did exclude theatres of the several corporate defendants from the licensing agreement whereever they desired in order to license features to the appellee's competitors. There was no demand on the part of appellees to include such towns, and there was no attempt to coerce any distributor to include such theatres. The fact that numerous theatres were included in one contract and that the rentals were stated in a totaled amount in some of the contracts, did not prevent the independent exhibitor from licensing the pictures in those situations. The fact that distributors did grant priority of run to independent exhibitors in some of the competing towns should constitute conclusive evidence that the lump sum rentals, which were contained in the memoranda contract, did not prevent the distributors from licensing pictures to competitors of appellees or place such competitors at a disadvantage in licensing pictures. In the contracts of appellees the lump sum rentals merely reflected the sum total of rentals for theatres in such towns as each distributor, in the

voluntary exercise of its judgment, determined to include in its negotiations with appellees.

Appellant has quoted one sentence from the testimony of Sears, sales manager of Warner. Sears' testimony does not support appellant's contention that Warner licensed its pictures to appellees in preference to their competitors because the rentals in individual towns were small in comparison with the total of the rentals in the several towns of appellees. Sears testified that in each town his company selected a customer and continued to license to such customer as long as the account remained satisfactory without first negotiating with other exhibitors (R. 1513); that in the selection of a customer the same factors were taken into consideration without regard to whether the customer was a member of a circuit of theatres or operated in only one town; that many factors were involved in the selection of a customer but the prime factor which was considered by his company was the revenue; that he considered the amount of revenue that his company could get out of a particular theatre for a particular town to be the prime consideration (R. 1494, 1495). The attorney for plaintiff propounded this question: "So that in so far as the particular independent is concerned, even if he were prepared to give you a deal which would yield substantially more in that particular town than what the circuit was giving you there, you would reject that deal in favor of the circuit as it meant losing the circuit deal; is that right?" The witness answered: "I would have to take into consideration the expense involved in soliciting all of these particular opposition accounts and see whether or not I was going to get all of them

as against the one sale of the particular circuit" (R. 1504). That question was conditioned on what would have been given consideration if the selection of an independent exhibitor in one of appellees' towns had meant losing the deal in all of the other towns of the circuit. There is no evidence that, in the deals, which were made by Warner with the appellees, there was any threat that appellees would not license pictures for the other towns if Warner licensed pictures to a competitor in one or more towns. In the absence of any such condition, it was only necessary, according to the testimony of Sears, that his company ascertain the best net revenue obtainable in each particular town. Such net revenue in the particular town would be the prime consideration in selecting the customer (R. 1494, 1504). There was no evidence that Warner failed to give the revenue in the particular town prime consideration in each town which was included in appellees' contracts.

Appellant has also referred to the testimony of McCarthy, Universal's sales manager. McCarthy testified that there were a number of conditions that entered into the choice of his company of a customer in a particular town; that in one town one of the factors might be the determining factor, while in another some other factor might determine the choice of customer (R. 1542). He testified that in determining whether his company would sell to an exhibitor member of a circuit or an independent in a particular town, his company would sell to its regular established customer in that particular town; that in the event his company had an established account with an independent, it was not the policy of his company to sell away from that account just

because a circuit was operating a theatre in that town or because more revenue could be obtained from the entire circuit than could be obtained from the independent operator in that town (R. 1554). He further testified that in the negotiations with the defendants, there was no threat that product would not be licensed for other towns in the event the theatre or theatres of a particular defendant in a given town were not selected as against the opposition (R. 1555). The witness stated that when a deal was made with appellees for 1936-37 season, after it had failed to make a deal for the previous season, the question of getting back into the circuit, as a whole or not at all, was never brought up and the deal was negotiated without including the town of Hobart in which Amusement's competitor was its established account (R. 1557); that the deal with appellees for the 1936-37 season was presented to appellees by his company and solicited by his company for the towns which were included in the contract—towns in which one of appellees had been Universal's regular customer—and there were excluded from the negotiation and contract such towns as his company desired to exclude (R. 1558).

The trial court heard the evidence of witnesses as to the type of theatres which were operated by the competing exhibitors and by appellees, and had in evidence photographs of all of the theatres in every town in which there was competition. The evidence also showed the type and character of the several exhibitors in those towns. From that evidence it clearly appeared that each distributor in the situations, in which its product was licensed to appellees, would have made the same selection of

customer if the defendant corporation, who owned that theatre, had been operating as an independent instead of a circuit.

Master contracts. The so-called master contracts between appellees and various distributors were merely memoranda agreements entered into between the distributor and exhibitor at the close of negotiations for the licensing of pictures. Those memoranda agreements were used for the convenience of the parties (R. 1325). The master contracts between appellees and Fox and Metro were merely letter memoranda, setting forth the terms which had been agreed upon and as soon as convenient individual contracts on the standard printed forms for the theatres in each town were prepared and executed. The other master contracts consisted of typewritten sheets, to which the printed form of contract was attached and there were also attached deal sheets, setting out the terms of the agreement as to the theatres in each of the towns. The master contracts were not different from contracts entirely written on the printed form, except as to the number of towns and theatres included in the one contract. The real details of every contract between a distributor and an exhibitor are attached to the printed form or written in the blank spaces in the printed form (R. 1325). The printed form merely covers the general provisions common to most contracts, and matters which are determined by negotiation between the parties must be written after negotiations have resulted in an agreement (R. 1551-1552). The picture or pictures licensed, the license fee—or the percentage, guarantee against percentage, guarantee against open or flat rental, the number of

days to be played and like matters are the result of trade and barter between the exhibitor and distributor and are not covered by the printed form. It follows that there was nothing illegal in the use of a typewritten memoranda for the purpose of supplementing the printed contract form.

The term "master contract" does not mean that the contractual provisions of any two or more documents, which may be referred to as "master contracts," are the same. The contractual provisions, which are agreed upon pursuant to the negotiations of the parties, will vary in each master contract, as in any other contract for the licensing of motion pictures. The illegality, if any, must be found in the substance of the contract and not in the form or the name which may be given to the contract.

Appellant contends that master contracts, which were in evidence in the *Crescent* and *Schine* cases, were substantially the same as those which are in evidence here, and that they were condemned by the Court. That statement is not correct, and it is not supported by the record.

In the *Crescent* case the trial court expressly approved the use of master contracts which contained blanket rentals. In the *Schine* case there was no condemnation of master contracts as such. The Court there held that the defendants had combined to compel the granting of special privileges and with a wrongful motive. In the case here it is not charged that master contracts and franchises are, in and of themselves, illegal. The charge is that the defendants combined for the purpose of obtaining, through their contracts, certain provisions which are specified in Paragraph 42 of

the Complaint (R. 6). The trial court found that the charges were not true. In the *Crescent* and *Schine* cases the trial court held that the evidence did establish the charges contained in the Complaint. The illegality, if any, in a master contract or franchise must be found in the substance of the contract and not in the form or the name, which may be given to a particular document. In the instant case appellant was not entitled to prevail, unless it established that the appellees combined in the licensing of pictures for the purpose or with the effect of compelling the distributors to grant the special privileges specified in the Complaint.

Appendix A of appellant's brief is a portion of appellees' contract with Columbia for the 1936-37 season. It is not a complete copy of that contract. That which has been copied is merely the typewritten portion of the agreement which was attached to Columbia's standard printed form and to the "work sheets," which set out the rentals for the exhibition of each picture in each theatre in which it was licensed to be played. The typewritten portion of the Columbia contract is not, as asserted by appellant, illustrative of most of appellees' contracts. The Columbia contract required the payment of rentals for pictures which might be selected from the whole which would, in the aggregate, amount to a minimum total rental. It merely allowed the exhibitor to select from the total pictures released those which it desired to play, but required the selection of a sufficient number to produce the guaranteed rental. That was not an unusual provision. At least 80% of all Columbia contracts were selective (R. 1535).

The Columbia contract, in Paragraph (a), refers to the allocation of rentals in Exhibit A (R. 2145). In Paragraph (f) the exhibitor is obligated to deliver to the distributor detailed allocations "on all Columbia features and short subject product enumerated in this agreement as previously outlined" (R. 2145). The Columbia product for the 1938-39 season (Ex. C-6-G, R. 2165) provides that the individual allocations shall be determined by the distributor, and those allocations are attached to the contract (R. 2172, 2185-2188).

There is no contract between appellees and any other defendant which permits the appellees to allocate film rentals. There was nothing unlawful in the agreement in Exhibit C-5 whereby the exhibitor was accorded the privilege of allocating the rentals to the several theatres. As heretofore stated, that privilege was upheld in the *Crescent* case. That privilege did not prevent Columbia from dealing with any competing exhibitor. The undisputed evidence is that Columbia did license competing exhibitors its product in Sapulpa and Hominy during the entire period. The foregoing provision was no impediment to the licensing of pictures to appellees' competitors in any place where it desired to license them. Columbia's pictures were licensed prior to production. At that time it had only recently become a national distributor. The number of good box-office pictures which it produced each season was small and estimated by one of appellant's witnesses at two (R. 947). Under those circumstances the privilege of selecting pictures to be used and of allocating the rental to the particular towns was entirely reasonable. The printed contract which was a part of the Columbia contract, in Paragraph 6, contained

a clause which was substantially the same as Appendix B of this brief. That clause gave the distributor the right to require the exhibitor to select the pictures which it desired to exhibit within fourteen days after notice given by the distributor of the availability and further required that the exhibitor select an exhibition date within a period not exceeding thirty days thereafter. There is no evidence that any competing exhibitor was prevented or delayed in licensing Columbia pictures which were not used by appellees by reason of the selective privilege, or that Columbia was prevented from licensing pictures to a competitor of either of the appellees because of that provision, or because the rentals were stated in a guaranteed aggregate amount.

The failure of the master contracts to require the playing of any specified film in any specified theatre at any specified time is no special privilege. Contracts with all exhibitors for a season's product failed to make any such requirement. As the pictures were licensed before they were produced, it could not be foreseen when the picture would be produced, when it would be released, or when it would be made available by the distributor for exhibition in a particular theatre. Such a requirement in a contract for a season's product would have been absurd. The printed form of contract, which contained adequate provisions relating to the selection of play dates, was incorporated in all of appellees' contracts. The playing arrangements could be inserted either in the blanks, which were left for that purpose in the printed forms, or they could be contained in a memo or rider, as was done in the contracts with appellees. The amount of playing time and other details in the play-

ing arrangement would necessarily vary in each contract. In Exhibit C-5 the playing time, the run and the theatre, in which the picture might be exhibited, are set out on the first page of the typewritten memo (R. 2143). The provisions for availability and selection of play date are contained in Paragraph 6 of the printed form (R. 2192). There was nothing unusual in the agreement that a picture might be played in either of several theatres in a particular town. A like privilege was granted to independents who operated more than one theatre in a town (Pltf's. Ex. 276, R. 2065; Pltf's. Ex. W-1, R. 2505; Defts'. Ex. 69, R. 2699; Defts'. Ex. 262, R. 2673).

Appellant asserts that appellees' contract specified a starting date for the playing of pictures and gave the exhibitor generally a period of at least twelve months, commencing a few months after the commencement of the season in question, within which to play the pictures covered by the contract. It is further asserted that such provision prevented the licensing of pictures which were not used to a competing exhibitor. The undisputed evidence was to the contrary (R. 1461, 1497, 1498, 1500).

A provision specifying the time within which the exhibitor is to commence exhibiting the pictures covered by a contract and providing for the liquidation of the contract in a specified period, which frequently extends beyond the current season, was customary in contracts with independents as well as with appellees (Pltf's. Exs. 197 and 357, R. 2054, 2089; Defts'. Exs. 26 and 69, R. 2674, 2678, 2698). There is no evidence that any distributor gave appellees

longer to liquidate their contracts than it gave to independent exhibitors.

It is not a fact that "R. E. Griffith refused to agree to a clause requiring unused pictures to be released for exhibition by others within sixty days after they were made available to the circuit." In the negotiation of the contract between Universal and R. E. Griffith Theatres, Inc. and Westex for the 1938-39 season, he did refuse to agree to a clause which would have required him to make eliminations within sixty days after the release of the pictures. There is a vast difference between the release date and the date on which those pictures would be made available in the local exchange for use in the theatres in the small towns for which he was licensing pictures. He was willing to and did execute a contract which embodied the usual and ordinary clause in regard to the selection of play dates under which the elimination of pictures would be made when notice of availability was given by the distributor. The distributor could give the notice of availability at any time after the picture was received at the local exchange. (See Appendix B, this brief.)

Appellant has further asserted that the Paramount franchise was modified to contain a provision requiring the selection of pictures to be exhibited on second run within sixty days. That statement is correct, but the evidence does not support the further assertion of appellant that the modification was made by reason of a complaint to the Department of Justice by an exhibitor at Plainview.

Appellant, in Appendix C, has listed each of the contracts under which pictures were licensed for exhibition in

the theatres of the several appellees during the seasons 1934-35 to 1938-39, inclusive. In a column headed "Special Privileges" there have been listed a number of clauses of the several contracts. We again assert that no provision which has been listed by appellant constitutes an unreasonable restraint of trade. Each and every provision is such that it can reasonably be inferred that it was inserted as a result of the negotiations between the parties and without any motive or purpose of unreasonably restraining trade or crushing competition. Appellant has entirely failed to establish that any of those provisions were "special" in the sense that they were not inserted as a result of the usual and ordinary processes of negotiation and bargaining between a distributor and an exhibitor.

Appellant completely failed to establish that appellees combined in the licensing of pictures for the purpose or with the effect of compelling any distributor to grant any of the so-called "special privileges."

Franchises. It is not charged in the Complaint that appellees violated the Sherman Act by entering into franchise agreements with any distributor. The only question here is whether appellees combined for the purpose and with the effect of obtaining a franchise, that is a licensing agreement in the form of a contract for more than one season's product. This Court in *U. S.* v. *Crescent Amusement Co.*, 323 U. S. 173, 188, recognized that such contracts may be lawfully used. However, in that case it was held that the franchise contained provisions which unreasonably restrained trade and had the effect of extending over the period of the fran-

chise certain provisions of the annual agreements which were held to unreasonably restrain trade. In the case here the franchise, like the annual agreements, contained no provisions which were unusual or which unreasonably restrained trade. In *Chicago, etc. Railroad Co.* v. *Pullman Co.*, 139 U. S. 79, this Court recognized the validity of an exclusive contract for a longer period than is involved here, but in *U. S.* v. *Pullman Co.*, 50 Fed. Supp. 123, the Court held such franchises could be unlawfully used. There is nothing illegal in merely licensing the product of a motion picture distributor for a period of more than one year. Appellees were parties to only four contracts which extended for more than one season. Each was with a different distributor and was not renewed. The franchise with Metro was executed May 8, 1930, and expired with the season 1934-35 (Pltf's. Ex. L-1, R. 2238). The Paramount franchise was executed July 17, 1934, and was for a period of three years (Pltf's. Ex. P-1, R. 2298). The RKO franchise was executed March 19, 1935, and was for a period of three years (Pltf's. Ex. RKO-44, R. 2422). The Columbia franchise was executed September 14, 1937, and covered the product for two years (Pltf's. Ex. C-6-G, R. 2165). Appellees did not originate the idea of these franchises or solicit them. They were actively sought by the distributors from circuits and independents alike. At that time the distributors thought the franchises were desirable and, therefore, sought them. There was no distinction in the desirability of a franchise with a circuit as compared with an individual operator (R. 1523, 1910-11). Appellees at no time had franchises with more than two distributors. There was not a time when seven of the eight major distributors could not, within a short time,

license their product to someone other than Griffith. At all times there were six of the eight major distributors whose product was not under franchise. The defendants held no franchise at the time of the trial. Appellant asserts that the franchise with Loew's grants the privilege of adding new towns to franchises. The clause referred to is Paragraph 13 of Plaintiff's Exhibit L-1. That clause merely provides that if the exhibitor shall acquire any town, and if the parties to the franchise agree, after such acquisition, that it can be added to the franchise, and if rental prices for such additional town can be agreed upon, such rental prices shall be added to the guaranteed film rental for the purpose of determining the total of the guaranteed rentals and the excess revenue to which the percentage terms of the franchise are applicable. New towns could not be added to the franchise by the exhibitor but could only be included by subsequent agreement. Such was the construction which the parties gave to the contract. Griffith entered into Gallup after the franchise had been executed but Gallup was not added and, during the entire time of the franchise, Loew's product was licensed to Griffith's competitor. Although the franchise covered Hobart, that town was not restored when, in the fall of 1934, Amusement opened the Kiowa. Metro continued to license its product to Griffith's competitor.

Appellant lists, as a further "special provision" of Loew's franchise, the provision for "net profits to be split." Appellant has not attempted to argue that such an agreement was illegal or unusual. However, the original franchise, which was executed in 1930, provided for rental in a guaranteed amount with a split of the gross rental after the de-

ductions allowed in Paragraph 6 (R. 2238). Appellant failed to call attention to the fact that in 1933 the rental terms were amended to provide for varying percentages of the gross receipts without any deductions and without any kind or character of a split of net profits (R. 2240). For the period in this suit the rentals under the Loew's franchise were percentages of the gross receipts (R. 2240, 2243).

Appellant contends that the Paramount franchise granted the right to exhibit pictures in newly acquired theatres, and that such agreement unreasonably restrained trade. The clause referred to is found in Paragraph 13 in Exhibit P-1. It merely provided that if the exhibitor should open an additional theatre in any town covered by the franchise, it would be permitted to play any flat rental picture in such new theatre in the place of any of the theatres in that town named in the franchise. It further provided that if the exhibitor should build or acquire a theatre which, in the distributor's opinion, was "better than the present Class A theatre," the percentage pictures shall be presented in such new theatre. Those provisions were neither unreasonable nor discriminatory. The copyright law prohibits the exhibition of a picture in any theatre which is not covered by a license agreement. In making a contract covering a period of three years, it was reasonable that the parties agree that, as to pictures which were to be played on flat rental, a newly acquired theatre might be substituted for one of those named in the franchise. There is no evidence that Paramount ever denied such a privilege to any exhibitor who requested it. There is no proof that this privilege was ever used to the injury of any competi-

tor or that it was intended to so operate. In Paragraph 8 of the franchise it is provided that the exhibitor shall be released from those obligations to exhibit the pictures in any town covered by the franchise where exhibitor shall permanently close all of its theatres in such town. That privilege could not injure the competitor or restrain trade. The only person who could be affected would be the distributor who would lose the revenue from any town where all the theatres were closed. That provision would not apply unless all the exhibitor's theatres in the town were closed. The evidence discloses that there were a few situations of that kind, such as Earlsboro, and other oil boom towns which failed to develop. It was reasonable that defendants should have an escape clause applicable to such situations.

The original Paramount franchise contained a clause which provided that the distributor would, upon the request of the exhibitor, furnish to the exhibitor, without additional charge, a second run for not exceeding each of twenty towns. That clause was amended by supplemental agreement of September 22, 1936 (R. 2318-2321), which provided that the exhibitor shall be furnished forty feature length pictures * * * for second run in nine towns which were named. It further provided that all the pictures not selected within sixty days after national release date would be automatically released. That provision was materially different from the "repeat run" clause of the Paramount franchise in the *Crescent* case. In that case Paramount had requested the exhibitors to modify the clause of the original franchise so as to provide for the selection and playing of repeat runs within ninety days of the conclusion of the first

run exhibition. The exhibitors declined to make the modification, but finally agreed to make the selection within ninety days, with the further agreement for an additional 120 days after the first run exhibition within which to play the pictures so selected (Finding No. 119, *Crescent* case). In the instant case the modification required the selection within sixty days after national release date. Prior to the modification, the selection had to be made under the terms of the printed contract, which was a part of the franchise agreement, within thirty days after notice of availability. Neither provision was unreasonable or constituted an unreasonable restraint in the licensing and playing of pictures by the exhibitor's competitors. As we have heretofore seen, there is no evidence that Paramount, within a reasonable time after the availability of pictures in the local exchange, was prevented from licensing pictures to any exhibitor because of either provision.

There was no violation of law in the distributor agreeing with the exhibitor that, in consideration of the rentals that were being charged, the exhibitor would have the right to exhibit the pictures on first run and should also have the privilege of a second run in certain towns. That was the proper subject for negotiation and bargaining between the parties.

Appellant has called attention to a letter from Paramount to Jake Jones, dated October 2, 1934, in which it was stated, "It is against the company's policy at this time to write franchises." The Paramount franchise with the defendants was accepted by the distributor September 15, 1934 (R. 2312), but negotiations for a franchise were in-

itiated by Paramount and had been going on since prior to July 17, 1934 (R. 1913, 1774). It was not against the policy of Paramount to enter into franchise contracts at the time the negotiations for this franchise were entered into, but later it changed its policy and sought to discourage the sale of franchises (R. 1910).

Appellant has listed four alleged "special provisions" contained in the RKO franchise. It contained a clause which provided that, "If the exhibitor shall during the term of this agreement open additional theatres in any of the towns covered herein * * * any of the feature photo plays * * * may be exhibited therein in place of any of the theatres named therein." It contained a further clause which provided that, "The exhibitor shall be released from his obligation to exhibit photo plays in any town covered hereunder where the exhibitor shall permanently close all of his theatres therein" (R. 2431, 2432). Those provisions have been discussed herein in connection with the Paramount franchise.

The RKO franchise did not contain minimum admission prices and did permit the playing of pictures out of order of release. Both of those provisions have already been discussed.

Appellant refers to the fact that certain pictures, which were licensed to Amusement by RKO, were not played and were not released by it until 1937. It asserts that it shows that the distributors did not enforce the provisions of the printed contract by which the exhibitor could be required to select and date the pictures upon notice of availability

by the distributors. This case involves the transactions of the several appellees with eight distributors for a period of five years. The government, after combing all of the records of the distributors, was able to produce only this one instance in which it claims that pictures were not promptly eliminated by defendants. No exhibitor has asserted that any product, which he desired to play, was unreasonably withheld from him by any defendant, or that he had any difficulty in licensing, dating or playing pictures because of the failure of a defendant to promptly select, date and play pictures. The RKO pictures, to which appellant has referred, were licensed to the defendants under the RKO franchise. That contract gave the defendants the right to make selection from all of the pictures for first run exhibition, subject to the agreement that the defendant was to play sufficient pictures for the rentals to aggregate a guaranteed rental. It also provided for a selection of twenty-six pictures for second run exhibition in certain towns which were named. The list of unplayed pictures, which have been referred to by appellant, consisted of only two or three first run pictures in certain towns and a somewhat larger number of second run pictures in certain towns. Those were pictures which the defendant did not select for playing in those situations. We have seen that the RKO printed form of contract (Ex. RKO-67-20, R. 2464), which was part of the franchise, in Paragraph 7, provides for notice of availability, selection of play dates and arbitrary dating by the distributor if the exhibitor should fail to furnish a play date. Paragraph 21 (R. 2468) provides that in the event the exhibitor shall fail and refuse to select or desig-

nate a date for exhibition thereof, as in Article 7 provided, the distributor may cancel the contract and proceed to license the pictures to other exhibitors. RKO had full control of the situation and the request for a form of release was merely for the purpose of clearing the distributor's record. Amusement made its selection of the pictures it desired to use at the time notice of availability was given. The failure of RKO to clear its records was not the fault of the defendants (R. 1808).

The asserted "special provisions" in the Columbia franchise have been heretofore discussed.

As appellees did not seek those franchises and as the distributors were, at the time they were entered into, making franchises in the normal course of business with independents, as well as circuits, and as the terms and provisions of the franchises were not unusual or discriminatory, the making of those franchises does not evidence that appellees obtained them as the result of their circuit buying. It follows that there has been no violation of the Sherman Act as charged in the Complaint in this case, even though it should be held that franchises of that kind are *per se* illegal.

Appellees Did Not Conspire With Each Other or With Any Distributor to Prevent or Restrict the Licensing of Pictures By Competing Exhibitors.

Appellant urges that, independently of the licensing agreements, there existed agreements, between appellees and each of the distributors, which restricted and suppressed independent competition. The finding of the trial court was

against that contention (Findings 20, 21, 22, and 29, R. 125, 126, 127). There was no direct evidence of any such agreement, but there was direct evidence to the contrary. The finding of the Court is supported by ample evidence (R. 1358, 1364, 1365, 1368, 1370, 1372, 1373, 1374, 1375, 1376, 1495, 1524, 1545, 1560-61, 1761-2, 1765, 1767-8, 1770, 1774-6, 1778-9, 1782-3, 1784, 1792, 1830, 1831, 1871-2, 1912). Appellant contends that, notwithstanding the direct evidence, there were circumstances from which the Court should have inferred the existence of a conspiracy. We will now consider those.

Refusals of distributors to negotiate with exhibitors for runs not licensed by any other exhibitor. The evidence discloses that prior to the Consent Decree, some of the distributors refused, in some situations, to license second or subsequent run pictures which were not licensed to the first run exhibitor. Such refusals were not limited to towns in which appellees operated theatres or to competitors of appellees. The direct evidence, last above referred to, was that each distributor determined for itself whether it would license an additional run or runs in a particular town. In some towns an additional run was licensed to a competitor of the appellee. In others, some of the distributors refused to license an additional run. Appellees had nothing to do with any distributor's action in that regard and made no request of any distributor for such action. They had no contract, agreement or understanding relative thereto with any distributor. Each distributor, during that period, exercised its right to license or not to license an additional run in a town, depending on its individual judgment as to whether

such additional run would be injurious to its first run revenues (R. 1311-12, 1907). The refusal to license an additional run was not limited to towns in which appellees or circuits were operating. The determination of how many runs would be licensed in any town and whether an additional run should be licensed in a particular town required the exercise of judgment on the part of the distributor. There is no evidence that any distributor was wrong in limiting the number of runs to be licensed, but even if were, an erroneous exercise of judgment was not a violation of law. The distributor was the owner of the copyrighted product which it had a right to license or not to license. There were towns in which the distributor would expect to receive more revenue from only one run than if it permitted a second run in opposition to the first run. The same was true of third runs (R. 1311-12, 1907, 1908). There were many things which a distributor would consider in determining how many runs it would license in a particular town. He would consider the effect of the run on the revenue which it might expect to subsequently receive from prior runs; the effect on the first run exhibition of a picture by an outstanding star of the concurrent exhibition of a subsequent run picture by the same star; the net revenue which the distributor might expect to receive from the second and subsequent run exhibition; the expense of serving the additional account as compared with the anticipated revenue; whether the additional business, which would develop from the additional run, would tear down the business, which the distributor was enjoying in the licensing of its existing runs, instead of increasing net revenue from the additional run

(R. 1311-12, 1907). Each distributor sold as many accounts in each town as it thought it was good business to sell (R. 1458). Regardless of the reason for the distributors refusing to license an additional run, the evidence affirmatively establishes that in the instances in which a distributor refused to license its product to independent theatres, the defendants were not responsible for such refusal, and there was no coercion on the part of the defendants to bring about such refusal and no conspiracy or agreement between the distributors and the defendants whereby any product was refused to any exhibitor.

Refusal of distributors to negotiate with defendant's competitor for the continuance of a run previously licensed to such competitor. During the period here involved it was the practice of each distributor to select a customer or customers in each town to whom it desired to license a particular run of its pictures, and each season it negotiated with and endeavored to license its product to such exhibitor before negotiating with any other exhibitor. That was the normal practice (R. 1303-5, 1358-9, 1493, 1533-34, 1885, 1553). In licensing their pictures to appellees, the several distributors followed the normal practice. Appellant contends, however, that Paramount, having licensed its pictures to certain of Amusement's competitors in the towns of Ada, Duncan, Elk City, Hobart, Norman, Shawnee, Stillwater and to the competitors of Consolidated in Clinton for the seasons 1932-33 and 1933-34, departed from its normal practice when it returned to the customer of its choice in the season 1934-35. No town in which R. E. Griffith Theatres, Inc. or Westex operated is involved.

Consolidated, in the town of Clinton, and Amusement, in the other towns, were the established customers of Paramount prior to the season 1932-33, and continued to be Paramount's choice, although the product of Paramount was licensed to the competing exhibitor in each of those towns for two seasons. The failure to license to the established customer in those seasons was because of the inability of Paramount to reach an agreement with defendants as to rental terms and playing time (R. 1772-4). Those matters related to theatres in all of the towns and not to part of the towns. The result was that Paramount sold away from Amusement and Consolidated, the customers of its choice and its established accounts to a less desirable exhibitor in each situation. In each of those seasons, Paramount first negotiated with those defendants as the exhibitor of its choice and only licensed the competing exhibitors when unable to reach an agreement with them (R. 1909). The Court heard the testimony of the independent exhibitors in each of those towns and had before it evidence which established that in each town the theatre of Consolidated or Amusement was superior to those of the opposition and that Paramount had had long and favorable experience with those exhibitors. In the season 1934-35, when the product was again licensed to Amusement and Consolidated, appellee had no knowledge or information as to what negotiations, if any, had been carried on between Paramount and the exhibitors to whom the product had been licensed in the preceding season. Paramount voluntarily negotiated with defendants for the product in those towns, and there were no demands by defendants that those towns should be included

in its contract. Nor was the licensing of the Paramount product in non-competitive towns conditioned on the licensing of product in the towns where it had been licensed to competitors for the preceding year (R. 1775-6, 1908-9). Gallup and Sapulpa were the only competitive towns in which Paramount had an established independent account, in which the competitors could be favorably compared with defendants. In those towns Paramount in the 1934-35 season, and thereafter, continued to sell to the independent customer and has continued to do so throughout the years (R. 1909). Appellant contends that in the town of Hominy, Paramount sold away from its independent customer for the season 1937-38. Consolidated did not enter the town of Hominy until June 14, 1936 (R. 421). For the season 1935-36 the Paramount product was licensed to McClain, who was operating the Ritz Theatre in competition with the Pettit, which was operated by Vincent. The Pettit did not have Paramount product for the 1935-36 season or for the 1936-37 season. The "sell-away" from the Pettit took place prior to the time Consolidated acquired any interest in Hominy (R. 514).

Relative to the alleged sell-away by RKO for the season 1935-36 in some towns, the evidence discloses conditions which are similar to those above related (R. 1779-1781). For the season 1934-35 RKO was unable to reach an agreement with defendants for its season's product, and wherever possible it licensed its product to competing theatres. The stumbling block in the RKO negotiations was the demand of RKO that the pictures be licensed on a very high percentage or on flat

rentals increased 100 per cent (R. 1781). In neither of those towns was the independent exhibitor an established customer of RKO or its choice of customer for that particular season, and failure to license its product to defendants was due entirely to an inability to agree on rental terms (R. 1522, 1781).

In Hominy RKO continued to license its product to its regular customer, Vincent, and never offered it to Consolidated (R. 502). In Hobart RKO, in the early part of 1934, entered into two contracts with Mahone who was the receiver of the Oklahoman Theatre for the 1934-35 and 1935-36 product (Pltf's. Ex. 357, 358, R. 2089, 2094). The RKO product for the 1936-37 and 1937-38 seasons was licensed to Griffith Amusement Company under the franchise executed in March, 1935 (Pltf's. Ex. RKO-44, R. 2422). At that time the Oklahoman was still in receivership (R. 981). It does not appear that Mahone, prior to the receivership, was ever the customer of RKO. Mahone had used the product of RKO in the Oklahoman during a portion of the time that theatre was in receivership, but he could not be considered a regular customer. In the normal course of events, the Oklahoman would be sold at receivership sale and there was no assurance that Mahone would continue to operate it, as he had disposed of that theatre and other theatre interests in Hobart in 1930. The theatre was sold by the receiver in 1935 (R. 983) When Amusement, which had been a customer of RKO for a long time, opened the Kiowa, which was a fine deluxe theatre, it was reasonable that RKO would, under the circumstances, license its product to Amusement for use in the Kiowa in preference to licensing it for use in a theatre then

being operated under receivership and which would shortly be sold. The execution of the franchise was not conditioned upon the inclusion of Hobart and the product of RKO was voluntarily licensed to Amusement for the two seasons mentioned (R. 1779-1782).

Appellant contends that Universal in the season 1936-37 sold away from defendants' competitors in the towns of Ada, Brady, Clinton, Duncan, Enid, Gallup, Norman, Shawnee and Stillwater. In each of those towns, with the exception of Brady, Amusement or Consolidated were the regular customers of Universal, but in the 1935-36 season, they were unable to reach an agreement upon rental terms, and Universal licensed its pictures wherever possible to competing exhibitors (R. 1784-1785). For the next season, however, Universal voluntarily negotiated with defendants for its product in those towns and, being able to reach an agreement as to rentals, licensed its product to defendants, its established customers (R. 1543-4, 1785, 1786, 1792). Westex became interested in theatres in Brady in June, 1935, and first licensed pictures for those theatres for the 1935-36 season. Morgan acquired an interest in a competing theatre in December, 1935, and operated it until November, 1936 (R. 1028-31). When Morgan purchased the Ritz, that theatre had under contract, for the 1934-35 season, product of Universal, United Artists and Columbia. Morgan played out Universal and United Artists contracts, but played only a few of the Columbia pictures. United Artists solicited him to purchase pictures for the 1935-36 season, but he was unable to agree on terms and made no contract. He did not approach Universal or Columbia in an

effort to license their pictures for the 1936-37 season (R. 1031-32), and, as stated above, sold his theatre on November 12, 1936. Prior to acquiring the Ritz, Morgan had operated theatres in six towns and had left unplayed pictures in those towns (R. 1041-42). Morgan had never been a customer of Universal in this town and his previous history indicated that he would not become a satisfactory regular customer at any place. In Hobart, Universal has continued to license its product to Mahone and has never offered it to Amusement (R. 982, 1005, 1784).

Appellant asserts that Fox and Warners sold away from Nagle in Gallup for the 1932-33 season. Nagle did not license Fox or Warner product for the season 1931-32 and there is no evidence that he was ever a regular customer of either of those companies (R. 750). For two seasons prior to the period involved in this suit, R. E. Griffith Theatres, Inc. had been the customer of those distributors in that town. In Hobart, Sapulpa and Plainview, where Fox had established customers before Amusement, Consolidated or Westex entered those towns, Fox continued to license its product to those customers on the run they had always had and did not offer it to defendants (R. 1361-2).

Appellant contends that Metro sold away from Consolidated's competitor in Sapulpa for the 1932-33 season and in Hominy for the 1936-37 season. The Pettit theatre in Hominy had not licensed Metro's pictures during the period when it had no competition. When McClain opened the Ritz, Metro licensed its 1934-35 product and later its 1935-36 product to him. At that time Consolidated had no interest in any theatre in Hominy. When Consolidated acquired the

Ritz, Metro continued to license its product to Consolidated for use in the Ritz (R. 508-510).

Prior to the season 1932, Metro had licensed its pictures to Moulder for use in the Empress Theatre in Sapulpa. There is no direct testimony as to why Metro ceased to do business with Moulder after the season 1931-32, but the evidence does show that Moulder was in financial difficulties at that time and closed one of his theatres (R. 629, 637). Moulder's financial condition was, of itself, sufficient to warrant Metro in considering that he was no longer a satisfactory customer. Beginning with the 1932-33 season, Metro has licensed its pictures to Consolidated. Moulder has had all the major product he needed or could use (R. 638, 645). He has at all times had first run pictures of Fox, Paramount, Columbia and United Artists—four of the eight major distributors, which the plaintiff contends were parties to the alleged conspiracy. In Sapulpa, Paramount chose to license to Griffith's competitor as it did in Gallup. Metro preferred to license to Nagle in Gallup, Mahone in Hobart, but preferred Consolidated in Sapulpa. The Metro product was not licensed to Westex in either Stamford, Ballinger or Odessa (Pltf's. Ex. L-5, R. 2258, L-6, R. 2270, L-7, R. 2280).

Appellant further contends that Columbia, Fox, Metro, Paramount, United Artists, Universal and Warners sold its second run product away from its regular customer in Norman for the 1938-39 season. There is no evidence that Mrs. Berry, Amusement's competitor, was at any time the established second run customer of either of those distributors, or that she was the customer of either of those distributors for

its best second run pictures for the season 1937-38. The only contract for second run product for that season, which was introduced in evidence, was a contract with Metro, dated November 26, 1937, for pictures of the fourth, fifth and sixth groups (Pltf's. Ex. 288, R. 2072, Ev. R. 696). Mrs. Berry testified that during the year 1937 she was able to secure some second run major product that Amusement was playing first run (R. 662), but she nowhere testified that she had product of any major distributor for second run pictures on a season's contract, and no contract with any major distributor for the best pictures was produced by her.

Appellant's contention is that, after that season, Berry was unable to license second run pictures on a season's contract, whereas she had been able to do so for the 1937-38 season. There was no evidence that she was not able to license second run pictures on less than a full season's product. She had a part of United Artists' pictures first run and some second run (R. 663). She believed that she had some Universal pictures for the 1937-38 season (R. 673). Defendants' Exhibits 12 to 60, inclusive (R. O. R. 5263-5313, Ev. R. 685-6), were the United Artists' contracts which Mrs. Berry produced, but only two of those contracts were made in the 1937-38 season, and both were first run. The evidence conclusively shows that Mrs. Berry was not the choice of either of those distributors for its second run product for the 1937-38 season and, consequently, there was no sell-away in the 1938-39 season. For that season Paramount licensed thirty of its features second run to Amusement on September 24, 1937 (Pltf's. Ex. P-4, R. 2329-30);

Fox licensed thirty of its pictures second run to Amusement (Pltf's. Ex. F-7, R. 2221); Columbia licensed its pictures second run to Amusement (Pltf's. Ex. C-6, R. 2158); Warner licensed thirty of its pictures second run to Amusement (Pltf's. Ex. W-8, R. 2546); Metro licensed thirty of its pictures second run to Amusement (Pltf's. Ex. L-6, R. 2262); Universal licensed its pictures to Amusement second run (Pltf's. Ex. U-4, R. 2484). There is no evidence as to whom the pictures of RKO and United Artists were licensed second run for that season.

Appellant further contends that there was a sell-away by Fox and Metro in Shawnee for the season 1933-34. The Ritz was leased by Amusement from Jake Jones in 1926. The lease was made when the Ritz was operated as the "A" Theatre, but in 1930 it had become the "C" theatre. On account of the high rent, which was being paid for it and the business depression, the Ritz was closed in August of 1930. In December of 1930, Amusement again opened the Ritz and attempted to operate it as a second run house, but the operations were not successful and, on March 2, 1931, it was closed. The original term of the lease expired September 1, 1931, and in February or March of 1931, Amusement acquired the Victory Theatre, then closed, expecting to use that theatre for a second run house upon the expiration of the lease on the Ritz. The financial depression commenced to be felt in the summer of 1930 and the downward trend in the theatre business in Shawnee continued until 1933 (R. 1636). At the expiration of the lease on the Ritz, Jones took it over and commenced to operate it and has continuously operated it ever since.

On May 1, 1933, Amusement opened the Victory under the name of the Rex and operated it as a second run house until the Avon was built and opened March 1, 1936 (R. 1688). Amusement had certain product of Fox and Metro licensed for exhibition second run in the Ritz and, when Jones took over the Ritz in September of 1931, that product was released by Amusement and licensed to Jones (R. 315). For the 1932-33 season Metro and Fox did not offer Jones a season's contract for their product second run. There is no evidence of any effort, on the part of Jones, to obtain that product and no evidence as to the product which he did license for that season, except Paramount's, which he licensed first and second run. The record is silent as to whom the Fox and Metro product was licensed second run for the 1932-33 season. The Rex, formerly the Victory, was not opened by Amusement as a second run theatre until May 1, 1933 (R. 1638). So Jones' failure to obtain Fox and Metro product could not have been due to the fact that the product had been licensed for use in the Rex. The evidence fails to establish any sell-away by Fox or Metro in Shawnee.

Priority of run was not arbitrarily or wrongfully obtained by appellees in any situation. The eight major distributors in the aggregate did not produce enough top box office attractions to supply pictures for more than one-fifth of the playing time of even one theatre (R. 946-7) in towns, such as those here involved, where there were three changes of program each week. Any exhibitor operating a class "A" theatre desired to have the best pictures, which were available, if they

could be licensed on reasonable terms. It was the policy of each of the distributors to attempt to license all of its pictures in advance of production to one exhibitor in each town. Each of the appellees in the non-competitive, as well as competitive, situations, where the town would support more than one theatre, played the best pictures in the "A" theatre and the others in a "B" theatre. When those pictures were licensed to one exhibitor on first run, they could not be licensed to another exhibitor in the same town for the same run. In any competitive situation it was unavoidable that one exhibitor would be successful in obtaining that which both exhibitors desired. They could not both have the same thing. One exhibitor necessarily had to take something less satisfactory to him than that which he desired. Competition is a battle for something that only one can get. One competitor must necessarily lose. *Sinclair Refining Co.* v. *Federal Trade Commission, supra.*

Even though one exhibitor might not be able to successfully operate his theatre, because of inability to obtain the pictures which he desired but could not obtain because they were licensed to and needed by his competitor, that would not constitute a violation of the law. However, the evidence in this case shows that an exhibitor can successfully operate on independent product and the pictures of major distributors which were available to him. Mrs. Guthrie in Clinton (R. 1007), Miss Kyser in Ada (R. 930), Mrs. Berry at Norman (R. 653), Russ at Stillwater (R. 821), Guest at Duncan (R. 818), Mrs. Hunt at Elk City (R. 1063), Jones at Shawnee (R. 317), Bearden & Smith at Lubbock (R. 1062), Isley & Moran at Chick-

asha (R. 896), and Nagle at Gallup (R. 740), Mahone at Hobart (R. 974), Moulder at Sapulpa (R. 627), and Love at Seminole (R. 880) have continued for years to operate successfully in competition with the defendants. The number of pictures released annually by independent distributors, during the period involved, is not shown, but four of the independents released approximately 375 pictures (R. 784-5).

Appellant argues that the selection of the same exhibitor in a competitive situation by six or seven of the major distributors, year after year, is explicable only in terms of circuit buying power. It is much more reasonable to infer that the things which would normally cause one distributor to choose a certain exhibitor in a town, would likewise cause other distributors to be desirous of licensing their product to the same exhibitor. If one distributor chooses a particular exhibitor because that exhibitor is a more desirable exhibitor than a competing exhibitor, it is very likely that other distributors will make the same choice, unless there can be a difference of opinion between reasonable men as to which exhibitor is more desirable. An exhibitor has the inherent right to acquire the best pictures possible, and the distributor, likewise, has an inherent right to choose its own customers. The trial court saw and heard the exhibitors who were operating in competition with appellees and had evidence from which it could determine whether or not a prudent distributor would choose one of the appellees as a customer in preference to the independent operator. After hearing the evidence, the Court found that, "The defendants, or

any of them, did not monopolize or attempt to monopolize the licensing or the supply of feature motion pictures for either first, second or subsequent run exhibition in any situation. The defendants licensed only such supply of pictures as they reasonably believed would be necessary in each situation to satisfy the demands of the public which they served." (Finding No. 23, R. 126). That finding is not assigned as error. It follows that there is no issue as to whether or not appellees licensed more pictures than were necessary or tied up product in order to keep it from their competitors.

The Court found that the defendants had not conspired nor combined with each other or with either of the major distributors to stifle competition or to monopolize, or attempt to monopolize, the exhibition of films (Finding 29, R. 127). Normally, there would exist no reason why any distributor would not be able to reach a satisfactory deal with a customer with whom it had been dealing for many years. During the period involved in this suit, there were failures of the defendant to reach an agreement with individual distributors and, on those occasions, the distributors did license their product to others. However, it was only natural that, when the next season came around, the distributor would again endeavor to license its product to its first choice of customer instead of offering it to a second choice of customer. There is not a single situation which has been referred to by appellant, in which the licensing of product in a manner different from that in which it was licensed, would not have constituted an abnormal and unnatural method of distribution.

Appellant contends that only when one exhibitor plays the product of three or four majors and the other exhibitor uses the remaining four or five can the distributor earn maximum rentals. There is no evidence to support that assertion. Appellant's argument is that there are 104 preferred days of playing time during each season and, unless the major product is divided that each distributor will receive inadequate preferred playing time. There is no evidence that there were sufficient pictures of the distributors, from whom appellees obtained first run, to result in inadequate playing time for any distributor on its pictures which were worthy of preferred time. Likewise, there is no evidence that a distributor would receive more rentals or desire to have its pictures played in an inferior house or in one where the best pictures were not usually shown in order to obtain more preferred playing time. Each distributor desires to have its top pictures played by the best exhibitor in the town and at the theatre which has the reputation of being the outstanding motion picture house. Each distributor has only a very limited number of pictures which are worthy of preferred playing time. There are not sufficient pictures of the eight major distributors in the aggregate to supply the preferred playing time of one theatre. The evidence is that there were less than 40 pictures of major companies which were worthy of preferred playing time (R. 946-7).

There were introduced in evidence photographs of the exteriors and interiors of the theatres in each of the towns in which there was competition (Defts'. Ex. 110 to 168, Inc., O. R. 5442-5581, Ev. R. 1603-1625, 1726-1733, 1895-6). Complainant made no attempt to prove that the independ-

ent theatre in either of those towns compared favorably with the theatres of the appellee operating in that town, as to size or general character, or that there was any factors which would normally be considered by a distributor which would cause the selection of the independent over the defendant's theatre, excepting in Gallup, Hobart, Hominy and Sapulpa. In Gallup, Nagle expressed the opinion that his theatre was superior to either of the Griffith theatres. The Chief, operated by R. E. Griffith Theatres, Inc. was remodeled and was an "A" house. The Navajo, its other theatre, played only slough pictures and second runs (R. 745). Nagle had the product of two of the best majors during the entire period and the product of at least one, and usually two, other major distributors was always available to him. He always had the product of Metro and Paramount (R. 742), and RKO was available to him for the 1934-35 season and the 1938-39 season, and Universal was available to him for the 1935-36 season. He had the product of United Artists for one season, and there is no evidence that it was not available to him for the other seasons (R. 743, 751).

At Hobart the Kiowa, operated by Amusement, is a fine deluxe theatre with all new equipment, the finest in that part of the country. It is larger than the Oklahoman, operated by Mahone (R. 991, 1002-3, 1582). Mahone has each year licensed the product of Fox, Loew and Universal. For the 1938-39 season the RKO product was not licensed to Amusement in Hobart, and there is no evidence that Mahone licensed it, but it was available for him. Mahone did not want United Artists product (R. 998, 999).

In Hominy the Pettit, which was operated by Vincent, was a larger theatre than the Ritz, which was operated by Consolidated. However, the Ritz obtained the product of four of the majors when it was first opened in opposition to the Pettit by McClain, another independent exhibitor. Consolidated modernized the Ritz and it was a nice theatre. It was superior in every respect, except size, to the Pettit (Defts'. Ex. 149-A and B, 150-A and B, O. R. 5546, 5548). In 1938-39 the Pettit had the product of three major distributors and fifteen or twenty pictures of another (R. 503).

In Sapulpa the Yale, operated by Consolidated, had about 750 seats against 1200 seats in the Criterion, operated by Moulder. Both the Criterion and Yale were nicely equipped and suitable for the exhibition of choice first run pictures (R. 629). The Yale was completely remodeled and redecorated in 1936 or 1937 (R. 1620). Moulder, during the entire period, has had the product of four of the majors. He has at all times had Paramount, Fox, Columbia and United Artists (R. 638). He had all of the pictures that he needed (R. 645).

There is no evidence that out of the thirteen competitive towns, outside of Oklahoma City, in which Amusement operated, there was any opposition theatre equal to its theatres, except in Hobart; or that out of the twelve competitive towns, outside of Oklahoma City, in which Consolidated operated, there was any opposition theatre which was equal to its theatres, except in Hominy and Sapulpa; or in the six competitive towns in which R. E. Griffith The-

atres, Inc. operated, there was any opposition theatre which was equal to its theatres, except Gallup.

In choosing a customer, a distributor, in addition to the size and equipment of a theatre, takes into consideration its acquaintance with the exhibitor and the history of the distributor with that exhibitor; the character and integrity of the exhibitor; the financial ability of the exhibitor; the previous experience relative to satisfactory liquidation of accounts and business transactions; the ability of the exhibitors from the standpoint of showmanship, progressiveness and advertising; the ability of the exhibitor to develop revenue in his theatre; the standing of the particular theatre in the community; the policy on which the particular theatre operates and whether the exhibitor has been a regular customer in that particular town over a period of years. There is no evidence that any competitor was the equal of either of the defendants in those particulars.

Appellant further contends that the distributor granted priority of run to appellees in some towns where the opposition theatre was charging the same or a larger admission price than was being charged by Griffith. Admission prices, which were fixed in contracts between distributors and appellees' competitors, were in no instance fixed pursuant to any demand of appellees or by reason of any agreement between appellees and the distributors (R. 1327, 1534-5, 1545, 1912, 1871, 1830-1, 1762, 1765, 1768, 1770, 1775, 1779, 1782). No competitor was required to charge those admission prices pursuant to an agreement with any appellee as was the case in *Interstate Circuit* v. *United States*,

306 U. S. 208. There is no evidence in this case that there was any policy or practice, on the part of any distributor, to grant priority of run to the exhibitor charging the largest admission price. When minimum admission prices were inserted in the licensing contracts, they were the admission prices which were currently being charged by the exhibitor. The exhibitor fixed those prices, and the only requirement on the part of the distributors was that such price would not be less than 15 cents for adults (R. 1357, 1551, 1912). Appellees had nothing to do with that practice. There is no evidence that any appellee charged a lesser price for admission to any first run "A" house than was charged by a competing theatre on a subsequent run. Appellant asserts that in Lubbock the Texan charged a lesser admission price than the Tech, operated by Smith & Bearden, and that the Texan played ahead of the Tech. The admission prices to the theatres of Lindsey Theatres, Inc., which were in effect in 1939, were as follows: All theatres charged an admission of 10 cents for children; the Texas, Lyric and Cactus charged an adult admission of 20 cents; the Lindsey and Broadway charged 25 cents; and the Palace, which at that time was the "A" theatre, charged 35 cents for balcony and 40 cents lower floor (R. 1901-2). When the Federal tax came into effect, Lindsey Theatres, Inc. made some changes in admission, lowering some and raising others, but endeavoring to make prices which did not involve odd cents (R. 1651-1652). The Tech was first opened with an admission price of 20 cents for adults. About two years later the admission price was raised to 25 cents for adults (R. 485). That change was voluntarily made by Smith & Bearden and was evidently made when

the Federal tax of October 1, 1941, became effective, which fixed a 20 per cent tax on all admissions over 10 cents. There is no evidence that those prices, which exceeded the 15 cent minimum were not voluntarily made by those exhibitors. Shortly after the Tech was opened, Smith & Bearden began to give a special students' rate and it continued until the partnership was dissolved. They also had "pal days" which started about 1937 and continued until the dissolution of the partnership (R. 894). The admission price, which was charged by the Texan at the time Smith & Bearden opened their Tech theatre, was 20 cents (R. 486). No change was made in the admission price to the Texan after the Tech opened. As the admission prices to the Texan were determined before the Tech was opened, they had no relation to the prices which Smith & Bearden voluntarily fixed for their theatre. The admission to the Texan remained the same, except for Federal taxes, until the trial of the case (R. 1652).

Appellant asserts that in the town of Ada the Ritz and Kiva theatres of Griffith Amusement Company charged the same admission prices as the Strand operated by Miss Kyser. There was no evidence as to the admission prices which were generally being charged in the theatres operated by Miss Kyser. She said that she did not remember the price policies of the various theatres in Ada (R. 940, 941). The adult admissions charged by theatres of Amusement in the period between 1934 and 1939 were: McSwain —35 cents; Kiva—20 cents; and Ritz—15 cents through August and 20 cents for the balance of the year. (Defts' Ex. 133, O. R. 5511, Ev. R. 1647). Those theatres were acquir-

ed by Amusement on March 1, 1932, prior to the time that Miss Kyser owned any theatre in Ada. There is no evidence to indicate that Miss Kyser did not voluntarily fix the admission price policies for her theatres at the time they were opened, or that the admission prices, which were being charged by the three theatres of Amusement, did not remain the same as they were before Miss Kyser entered business in the town of Ada.

A comparison of the admission prices in Ada, a competitive town, against Chickasha, a non-competitive town, and Norman, a competitive town, with Okmulgee, Bartlesville and Vinita, non-competitive towns (Defts'. Ex. 133) clearly shows that the lower admission prices in competitive situations were matched by equally low admission prices in the non-competitive situations. In all situations defendants maintained prices which they thought would attract the customers and enable customers to get the most possible entertainment for their money. They endeavored to maintain theatres which operated on different policies in order to have a broader appeal and reach as many potential customers as possible. The evidence in regard to admission prices does not warrant an inference that the admission prices, which were charged by appellees' competitors, were fixed pursuant to any agreement between appellees and any distributor, or that appellees had anything to do with the admission prices which were charged by their competitors. The evidence does not warrant an inference that priority of run in any instance was granted to a defendant contrary to the normal and usual practice of the distributors in licensing pictures.

There is no evidence that the defendants combined in the licensing of pictures for the purpose of compelling any distributor to grant priority of run to them in any situation.

Licensing of pictures by distributors without having offered them to competing exhibitors. Prior to the decision in *U. S.* v. *Paramount*, 66 Fed. Supp. 324, the courts had repeatedly recognized that it was elementary law that a trader could buy from whom he pleased and sell to whom he pleased, and that his selection of a seller or buyer was wholly his own concern. Such was recognized to be a part of a trader's civil rights. He was at liberty to refuse business relations with any person whomsoever and for any reason whatsoever. That was recognized as the law by this Court in *U. S.* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 320, and *U. S.* v. *Colgate and Co.*, 250 U. S. 300, 307. That was recognized to be the law in *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.* (C. C. A.), 227 Fed. 46, 49, and *Greater New York Film Rental Co.* v. *Biograph Co.* (C. C. A. 2), 203 Fed. 39. See also *Westway Theatres, Inc.* v. *20th Century-Fox Film Corporation* (C. C. A. 4), 30 Fed. Supp. 830, 836; *Brosious* v. *Pepsi-Cola Co.* (C. C. A. 3), 155 Fed. (2d) 99, 102. In *U. S.* v. *Bausch & Lomb Co.*, 321 U. S. 707, 708, this Court held that Congress in no instance has indicated an intention to interfere with ordinary commercial practices. "In a business, such as Soft-Lite, which deals in a specialty of a luxury or near-luxury character, the right to select its customers may well be the most essential factor in the maintenance of the highest standards of service." Likewise, in the motion picture exhibition field, the right to select customers may be the most

essential factor in the maintenance of the highest standards of service.

It would appear that the decision in *U. S.* v. *Paramount*, 66 Fed. Supp. 324, is in conflict with the above decisions to the extent that the Court held that licensing agreements made without an opportunity being given for exhibitors to bid for pictures at an offered price is illegal. In the case here it is an undisputed fact that some pictures were licensed to appellees without any offer having been first made to competing exhibitors and that others were licensed to defendants' competitors without any offer having first been made to the defendants. Also, it is an undisputed fact that licensing contracts with all exhibitors throughout the United States have for many years been made without pictures having been first offered to, or negotiations had with, competing exhibitors. If, for that reason, a licensing contract violates the Sherman Act, then every licensing contract which has been made during a period extending back to the early days of the motion picture industry has violated such act.

Extending back to the early days of the industry, it has been the well established practice of motion picture distributors to select the exhibitor to whom it desired to license its pictures—generally an exhibitor with whom it had for years satisfactorily done business—and to attempt to negotiate a contract with that exhibitor before negotiating with, or offering its pictures to, anyone else. If a satisfactory deal could be made with that exhibitor, the distributor would not offer its product on that run to a competing exhibitor. If unable to make a satisfactory deal with the exhibitor of its choice, it would

attempt to license its product to the next best prospect. The terms on which the pictures were licensed were arrived at by negotiation between the distributor and the prospective customer. That was the normal and customary way of licensing pictures for all exhibitors regardless of the number of theatres involved (R. 1303-1308, 1533-1542, 1518-1520, 1541-1560, 1562-1905). The defendant corporations were selected as customers in a normal and customary way, and the negotiations leading up to the contracts were carried on between them and the several distributors in the usual and normal way.

In Paragraph XIX of the Consent Decree in the *Paramount* case it was expressly provided that, "Except as otherwise expressly and specifically provided in this decree, nothing herein shall be construed to limit the right of any distributor defendant to select its own customers, to bargain with them in accordance with law, or to negotiate with or license to, or accept any offer from, any exhibitor to license its motion pictures, or any number thereof, upon such terms and conditions as it deemed advisable or to its best interest." Thus, it appears that at the time the Consent Decree was entered, it was not considered unlawful for a distributor to select its customer and license pictures to him without first having negotiated with the competing exhibitor. If, notwithstanding the terms of the original decree, the later decree in the *Paramount* case should be affirmed, we submit that appellant is not entitled to any relief in the instant case on the ground now under consideration. No such contention was presented in the Complaint in this case (Complaint, Pars. 41, 42 and 43, R. 6 and 7, as amended by Bill of Particulars, 18(c)

and 19, R. 39). The alleged combination of appellees, which was an essential part of the charge against them, had nothing whatever to do with the fact that the pictures were licensed to them before the distributors had negotiated with competing exhibitors. That was the trade practice of the distributors and applied to all exhibitors. There was no departure from the normal and usual practice in licensing pictures and, consequently, there were no grounds for inferring that appellees combined to coerce and compel the distributors to adopt that method of negotiating for the licensing of pictures to them.

Whatever Buying Power Appellees Possessed Was Rightfully Acquired.

We have seen that, at the time this suit was filed, there was no connection between Amusement and Consolidated, on the one hand, and R. E. Griffith Theatres, Inc. and Westex, on the other hand, in the licensing of pictures. Amusement and Consolidated were interested in theatres in forty-three towns and R. E. Griffith Theatres, Inc. and Westex were interested in forty towns (Findings 2, 3 and 4, R. 84, 85). Appellant failed to establish that theatres were either acquired by predatory methods or wrongful acts. It failed to establish that theatres were combined in the licensing of pictures for the purpose or with the effect of crushing competition.

Acquisition of theatres. The trial court made a finding that the theatres and interests in theatres acquired by the several defendants were acquired in the course of ordinary, normal and legitimate growth and development of

the business, and that none of the theatres or interests were acquired by wrongful means, predatory practices, or with the intent to stifle competition or to monopolize the licensing or exhibition of moving picture films (Finding 14, R. 123). The Court also made a finding that the defendants did not acquire any competing theatre by virtue of any combination, conspiracy or agreement upon the part of the defendants to control or stifle competition, or to monopolize the exhibition of moving picture films in those situations, and that no acquisition was made as the result of coercion, threats or predatory practices (Finding 15, R. 123). Those findings were made after the Court had heard the oral testimony of witnesses.

In addition to those findings the Court made some findings relative to certain towns (Findings 11-1 to 11-25, R. 89-122). Some of those findings contained statements of conflicting testimony relating to alleged predatory practices of a defendant. Appellant asserts that the Court made no finding as to where the truth lay. In every instance, in which the Court in a particular finding failed to make a finding of the ultimate fact that the alleged predatory acts or wrongful conduct had not been established, such finding of ultimate fact was made in Findings 14 and 15 (R. 123).

Appellant has presented only nine instances in which the testimony established that the defendants acquired a theatre from a competing independent exhibitor. There is no evidence that the defendants combined to make any acquisition. There is no evidence that the method in which pictures were licensed by appellees was in any way responsible for the acquisition of those theatres.

Amusement operated in three of those situations, to-wit, Blackwell, Norman and Phillips Camp; Consolidated operated theatres in four of those situations, to-wit, Altus, Lubbock, Hominy and Mangum; Westex operated theatres in two of those situations, to-wit, Plainview and Brady.

The finding that there were no predatory acts or wrongful conduct in the acquisition from Hamm of his Ritz theatre in Altus is supported by the evidence (R. 1595, 1596, 1748-1750). The undisputed evidence further was that the lease on Consolidated's Paramount theatre in Altus had expired in the fall of 1936, and the Ritz was purchased to replace the Paramount as its "C" house. It has been continuously operated (R. 1595, 1748, 1751).

Appellant's statement that Consolidated's master contracts with Fox, Loew, Paramount and Warner gave it the option to play second run pictures in Altus is erroneous. Consolidated had no second run privilege under any of its contracts for the town of Altus.

The finding that there were no predatory acts or wrongful conduct in the acquisition from Laham of his Bays theatre in Blackwell is supported by the evidence (R. 441-474). The Bays was acquired by Amusement subsequent to the period involved in this suit. Although the Bays had more seats than either of the theatres of Amusement, the latter theatres were adequately seated, in view of the number of theatres which were operating in Blackwell. There is no evidence that the seating capacity of either of those theatres was inadequate to accommodate all of those who desired to view the pictures which were there exhibited.

The Bays was an old theatre and, in its appointments, was not the equal of either of Amusement's theatres. Amusement acquired it with the intention of operating it as a theatre and did operate it briefly. It was closed because the city authorities declared the building to be in an unsafe condition (R. 441-463, 1578, 1579, 1580). At the time Laham sold the Bays, it had unplayed product of RKO to the extent of thirteen first run and twenty-nine second run, three shorts and forty-seven news reels, which were unplayed on the contract which it made a year before (R. 470). The Bays was able to obtain and played five pictures each week during the year previous to the sale (R. 465). For the 1938-39 season, in addition to the RKO product first and second run, it also had the second run product of Metro for the 1937-38 and 1938-39 seasons, first run product of Republic, Grand National and Gaumont British and some second run of Universal (R. 443). The fact that Metro licensed its season's product for the 1938-39 season to the Bays refutes appellant's contention that Amusement's first run contracts prevented the licensing of second run product.

The finding that there were no predatory acts or wrongful conduct in the acquisition from Duffy of his two theatres in Mangum is supported by the evidence (R. 701-702, 706-11, 1258-1271, 1826-1827; Defts'. Exs. 63, 64, 65, R. 2694, 2695, Ev. R. 717). Before Consolidated went into Mangum, it was apparent that Duffy could not survive. He had not obtained the renewal of the lease on the premises on which he was operating his principal theatre (R. 718). He was operating the other theatre on weekends and without any lease (R. 709, 716). He was unable to take pictures out of

the express office and was writing the distributors that he was broke. He wrote Metro that, "Competition is not breaking me; everyone in Mangum is broke" (Defts'. Ex. 66, R. 2697). Duffy admitted that he had all the major product he needed or wanted (R. 704-705).

The finding that there were no predatory acts or wrongful conduct in Amusement's operations in Phillips, or in connection with the abandonment of Smith & Bearden's Phillip theatre, is supported by the evidence (R. 725, 726, 729-732, 738, 739). The entire transaction relative to Phillips, Texas, occurred after the period involved in this suit. Amusement did not purchase the Phillip theatre. While Smith and Bearden were operating the Phillip, it was twice damaged by fire. After the second fire it was abandoned and the lease was surrendered and the equipment was taken out and moved to another town. Later, when the expansion of a refinery required the abandonment of Amusement's theatre, it built and equipped a new theatre on the location formerly occupied by the Phillip theatre (R. 731-738). There was no provision in the contract of Amusement with any distributor which granted clearance to Amusement's theatres in Borger over Smith & Bearden's theatre in Phillips or over any other theatre. Each distributor was free to make its own decision as to what availability would be given to the theatre of Smith & Bearden. Plaintiff's witnesses made no contention that they were unable to obtain ample product. Their complaint was that several of the distributors refused to make pictures available to their theatre in Phillips until after the pictures had been played in Borger. If that condition had been the result of an agree-

ment between Amusement and those distributors, the reasonableness of clearance would be involved. However, there was no clearance granted to Amusement's theatres in Borger over the theatre in Phillips. There was no evidence that clearance was requested by appellees of any distributor.

The finding that there were no predatory acts or wrongful conduct in Consolidated's acquisition from Vincent of his Pettit theatre in Hominy is supported by ample evidence (R. 498, 512). During the entire time that the Pettit was in competition with Consolidated, the Pettit was the preferred customer of RKO and Columbia, and their product was licensed to Vincent to the exclusion of Consolidated (R. 508, 509). The Ritz was being operated in opposition to the Pettit when Consolidated acquired it, and McClain, the owner of the Ritz, was already the customer of Paramount, Metro, Warner, Fox and Columbia. After Consolidated acquired the Ritz, Columbia thereafter licensed its product to the Pettit in preference to Consolidated (R. 508, 509). Although the Pettit was a larger theatre than the Ritz, it was not superior to it (R. 503, 504). Because of the death of his wife, Vincent sold the Pettit because he wanted to leave Hominy (R. 511, 512, 513). Consolidated leased the Pettit and remodeled and modernized it and thereupon gave up its lease on the Ritz (R. 1731). Vincent testified that the town of Hominy was not sufficiently large to support two theatres; that the Pettit was built during the boom conditions in the Osage Nation and that after the boom subsided it was overseated (R. 512, 513).

The finding that there were no predatory or wrongful acts by the defendants in its operations in Lubbock is

supported by ample evidence (R. 1136-1150, 1189-1198). Lindsey Theatres, Inc. owned and operated theatres in Lubbock. Consolidated owned half of the stock of that corporation. Lindsey acquired two theatres from Mauldin and one from Sanders. There was no evidence of any threats or predatory practices in connection with those acquisitions. They were acquired in the course of legitimate expansion, as the town's population increased, and they have been continuously operated by Lindsey Theatres, Inc. There was no evidence that either of the former owners were unable to obtain adequate major product. The evidence which was offered by the plaintiff related to the construction of a theatre by Lindsey on College Avenue and alleged threats on the part of representatives of Lindsey Theatres prior to the construction of that theatre, and to the demand of the owners of the Tech theatre for the privilege of exhibiting pictures in the Tech ahead of the Tower. The Court heard the testimony of these witnesses relative to the alleged threats and found that the plaintiff had not established that the defendants had engaged in threats or predatory acts. The finding is supported by the evidence (R. 1139-1142, 1195-1198). Prior to the opening of the Tower theatre, the Tech theatre had been licensed pictures for exhibition on a specified run in the town of Lubbock. After the Tower was opened, they made a joint demand on the distributors that they be permitted to play pictures first run on College Avenue (R. 521). Two of the distributors acceded to the demand but each of the others continued to license its pictures in the customary manner. The Tower was by far the second best theatre in Lubbock, and several of the distributors licensed

pictures for second run exhibition in Lubbock in that theatre (R. 1148, 1372) in lieu of a downtown theatre of Lindsey which had been playing second run in Lubbock. The Tech continued to receive the same run in Lubbock that it had received prior to the building of the Tower (R. 489). The owner of the Tech admitted that in order for any distributor to accede to his demand for the licensing of product to the Tech theatre for first run on College Avenue would have constituted a departure from the ordinary method of licensing pictures (R. 524). The evidence discloses that there were three exhibitors operating in Lubbock in competition with Lindsey Theatres, Inc. Each of them was able to license subsequent run pictures. That evidence completely refutes appellant's contention that the master contracts of appellees prevented the licensing of subsequent run to competing exhibitors. It is not a fact that the Tower was permitted to play second run 100 to 120 days ahead of the Tech (R. 494). There was no clearance provision between any distributor and appellees for clearance in favor of any of Lindsey's theatres in Lubbock. Each distributor was free to negotiate with the Tech in regard to the availability of pictures for that theatre without being limited or restricted by any contractual agreement with appellees.

The finding that there were no predatory acts or wrongful conduct in Westex's acquisition from Tower Theatres, Inc. of its Fair theatre in Plainview is supported by ample evidence (R. 241-275). Scaling and associates opened the Fair theatre on January 11, 1936, and operated it until October 15, 1936, when it was sold to Westex. The real

issue in connection with Scaling's operation in Plainvew was his inability to license second run pictures. Westex licensed no second run pictures in that town. That subject has hereinbefore been covered. We have seen that the several distributors did license second and subsequent run to competitors of appellees in other towns and were free to license them in Plainview if they had so desired. Appellees had nothing to do with the failure or refusal of any distributor to license pictures for second run in the Fair theatre. There is no evidence that Scaling sold his theatre because of a lack of product. He operated his theatre on a policy of four changes per week until the theatre was sold (R. 274).

The finding that there were no predatory acts or wrongful conduct in the acquisition by Brady Amusement Company from Morgan of its Ritz theatre is supported by ample evidence (R. 1028-1032, 1041-1042). Morgan acquired an interest in the Ritz theatre in Brady in December of 1935 and operated it until November of 1936. There is no evidence that he was at any time an acceptable or established customer of any distributor. Although pictures of Columbia were licensed to the Ritz when Morgan acquired it, he played only a few of the pictures. In the six towns in which he had operated briefly before coming to Brady, he had left unplayed pictures. United Artists solicited him to purchase pictures for the 1935-36 season, but they were unable to agree on terms and made no contract. Appellant claims that he was deprived of the Universal product for the 1936-37 season. He had never been a customer of Universal in that town, and the history of his theatre opera-

tions was sufficient to warrant Universal in preferring not to license pictures for exhibition in the Ritz theatre, while Morgan was operatng it.

In Norman Amusement did not acquire any theatre from a competitor. The finding that there were no predatory acts or wrongful conduct in the acquisition by Amusement of a lease on a building in which Mrs. Berry had operated her Campus theatre is supported by ample evidence. Mrs. Berry was unable to renew the lease on the Campus theatre, but Amusement had nothing to do with her inability to renew that lease. The undisputed evidence is that the failure was the result of a controversy between the landlord and Mrs. Berry (R. 1469-1477). Thereafter, Amusement leased the property for the purpose of operating a theatre adjoining the University Campus. Amusement's lease provided that it should have possession about August 1, 1938, but did not obtain possession until October 5th (R. 1610). Amusement contemplated that it would not be necessary to remodel the building, and that it could be opened shortly after possession was acquired, but when possession was obtained it was found that the former tenant had torn up and damaged the building to such an extent that it would require a major job of repair and remodeling. The wiring had been entirely torn out, the lobby frames on the front of the building had been stripped off, and the walls had been stripped. The penthouse on the building had been torn off, leaving a large hole in the roof, so that a cooling system could not be installed without building a complete new roof and penthouse. When Amusement discovered the condition of the building and the extent of the repairs neces-

sary, it decided that it would be better to acquire another location near the Campus, with a front of 50 feet instead of 25 feet. Negotiations were carried on, but a suitable location could not be obtained. Amusement then decided to delay making the large expenditures necessary to open the Campus until it could observe the operation of a similar theatre on a lot 25 feet wide, adjoining the Campus at Stillwater. When the operation proved satisfactory, it remodeled and equipped a theatre on the former Campus theatre location and opened it as the Boomer theatre (R. 1610-1612).

There was no evidence that in 1937 Griffith remodeled a closed theatre and reopened it as the Varsity. The Court did not so find (R. 111). The undisputed evidence is that Amusement's lease on the theatre referred to expired in 1930 and was not renewed. Amusement had no connection with that theatre from the time its lease expired until July, 1947. When Amusement purchased the real estate at a foreclosure sale and remodeled, re-equipped and opened it as the Varsity at that time, it was not equipped for or operated as a theatre (R. 1606, 1607, 1719). Appellant's contentions relative to the distribution of product in Norman has heretofore been answered.

The number of competitors who discontinued operations in the territory, in which the several defendants operated, were surprisingly small without regard to business and economic conditions. In view of the fact that the period involved in this suit was one in which the entire country experienced the greatest depression in its history, it is indeed surprising that the number who discontinued operations was so small. The evidence fails to disclose any plan on the part of the

corporate defendants, either separately or collectively, to crush competition or attempt to monopolize.

Vendor's agreements not to compete. The trial court made a finding that agreements not to compete were taken in connection with the purchase of theatres by the several defendants and based upon the sale of the good will of the vendor, and were for lawful purposes, and were in conformity with the state statutes in such situations, and were not entered into with the purpose or with the effect of unreasonably restraining trade or commerce (Finding No. 16, R. 124). No adequate assignment has been made relating to the vendor's agreements not to compete. The undisputed evidence was that each of those contracts covered the sale of a going theatre business, and that the sale carried with it the good will of the vendor. Such covenants have been recognized as reasonable and valid restraints of trade and not in violation of any law. *U. S.* v. *Missouri Freight Association*, 166 U. S. 290; *U. S.* v. *Addyston Pipe & Steel Co.* (C. C. A. 6), 85 Fed. 271, 280; *Goldberg* v. *Tri-States Theatre Corporation* (C. C. A. 8), 126 Fed. (2d) 26.

Such agreements were taken whenever a defendant purchased a going theatre business and were not limited to instances in which a theatre business was purchased from a competitor. The agreements were in conformity with applicable state law. Such contracts are not recognized as evidencing a wrongful intent or purpose because they restrict competition. On the contrary, both State and Federal law recognizes such contracts, when taken in connection with the sale of a going business, as a reasonable restraint of trade.

Plaintiff's Exhibit 273, which has been listed by appellants, is not included in the original or typewritten record. The vendor's agreement made at the time of the sale of the theatre in Brady to the Brady Amusement Company (Pltf's. Ex. 133) is the only agreement, in which a contract not to compete within a specified time, extended beyond the immediately competitive area. There was no contract of that kind made by Amusement or Consolidated. The vendor's agreement, which was made in connection with the purchase of the theatre in Plainview by Westex and associates, was in conformity with the laws of the State of Texas, although it did not state a time limit. In the absence of a specified period, the agreement has been held to be binding for only a reasonable period. *Malakoff Gin Co.* v. *Riddlesperger* (Texas), 192 S. W. 530; *Langever* v. *United Advertising Corporation* (Tex. Civ.), 258 S. W. 856; *Randolph* v. *Graham* (Tex. Civ.), 254 S. W. 402.

Theatres in which the several defendant corporations own less than 100% interest. Defendants' Exhibits 169 and 170 (O. R. 5583-84, Ev. R. 1899), and Plaintiff's Exhibit 381 (R. 1103) reflect the interest owned by the several defendants in the various towns in which theatres were operated. Amusement owned theatres in partnership with other parties in twelve towns. In those towns one or more individuals jointly owned the theatres with Amusement. At the time the theatres were jointly acquired, said parties had not been operating competing theatres in the town where the acquisition was made or at any other place. Competition was not eliminated by reason of the partnership arrangement. The partnership in the town of Ada is illus-

trative of how those partnerships were formed. Amusement owned 60% interest and Mr. and Mrs. Killough owned 40%. Those interests were acquired May 6, 1929 (R. 416). Mr. and Mrs. Killough had formerly been partners with Griffith Brothers in Honey Grove, Texas. The Honey Grove theatre was traded for a theatre in Hugo which was operated by the Killoughs with Griffith Brothers until they, in company with Amusement, bought theatres in Ada. The Killoughs have been partners with either Griffith Brothers or Amusement in the operation of theatres since about 1917 (R. 1843-4).

In Stillwater Amusement owns 66⅔% and Leachman Brothers 33⅓% (R. 417). That partnership was made in 1926 immediately after Claude Leachman had completed his schooling at the college in Stillwater. He decided to enter the motion picture business and succeeded in interesting the two Griffith brothers in making an investment with him (R. 1206, 1207). In each of those towns the partners entered the town as partners and have remained partners ever since.

In Guthrie, Amusement and Powell each owned a 50% interest in certain theatres. Powell acquired a theatre in Guthrie in 1923 and in 1925 he sold a one-half interest to Griffith Brothers. When Amusement was organized, Powell continued to own one-half interest, and Amusement acquired the one-half interest which had been owned by Griffith Brothers. The sale was initiated by Powell and was not due to any threats of predatory competition or otherwise.

Consolidated had partners in 25 towns, including Lubbock, Texas, in which the theatres were owned by Lindsey Theatres, Inc., the stock being equally owned by Consolidated and Lindseys. Also included are eight theatres in the towns of Cuero, New Braunfels, Refugio and Uvalde owned by Jack Pickens Theatres, Inc., in which Consolidated owned 50% of the stock. Also included were nine theatres in the towns of Alvin, Bay City, El Campo, Texas City, Victoria and Wharton, in which Consolidated owned a 25% interest. There is no evidence that the persons or corporations, interested with Consolidated in those towns, were ever in competition with Consolidated or either of the other corporate defendants in those towns, or elsewhere.

There is no evidence that the persons or corporations, with whom R. E. Griffith Theatres, Inc. or Westex owned interests in theatres, were ever in competition in any place.

There is no evidence that, in any situation, any partnership was arranged because of any threat of either of the corporate defendants to enter into competition with the person with whom it became a partner, or for the purpose of eliminating competition or other wrongful purpose. That type of operation was commenced by L. C. and R. E. Griffith when they first started in the motion picture theatre business in 1917, at a time when they were both traveling men and purchased interests in theatres with others who operated the theatres (R. 1843). Prior to the time either of the corporate defendants was organized, L. C. and R. E. Griffith had ascertained the advantages incident to a partnership arrangement under which one of the partners could operate the theatre and become an in-

tegral part of the community, while R. E. Griffith attended to the licensing and booking of pictures. Those partnerships were legally formed and were so continued. There was no violation of the Sherman Act or any other law in either the formation or continuation of those partnerships. Likewise, there was nothing illegal in the agreements between either of the corporations and its partners, which provided that the corporation would license and book pictures and perform other services for which it would be compensated in a designated amount, while the other partner would carry on the local management of the theatre and would be paid a designated amount for that service.

Joint operating agreements in Stillwater and Enid. Appellant has referred to these agreements as "pooling agreements." The word "pooling" has been used to designate many different arrangements, and such arrangement may or may not be illegal depending on the facts. In Stillwater the agreement was one entered into between Amusement and a competing exhibitor for the joint operation of one theatre owned by each and a division of the expenses of operation and the net proceeds. That contract was entered into September 12, 1931, and was for a period of one year (Pltf's. Ex. 341, O. R. 4305, Ev. R. 822). It was made in the darkest days of the depression when it was imperative that every possible means should be used to economize and at the same time to transact all possible business. The contract was terminated and both exhibitors resumed the operation of its own theatres prior to the period involved in this suit. That competition has continued ever since (R. 821).

In early 1932 Paramount Pictures Corporation, through a subsidiary, Texas-Oklahoma Enterprises, Inc. was operating two theatres in Enid, Oklahoma. Amusement was also operating two theatres there. The evidence does not disclose what other exhibitors were then operating theatres in Enid. In January, 1932, Paramount was in bankruptcy, and W. C. Underwood and C. T. Ezell of Dallas, Texas, purchased all of the stock of Texas-Oklahoma Enterprises, Inc. Paramount had no connection with Texas-Oklahoma Enterprises, Inc. after said sale. After acquiring the stock of the corporation, Underwood, who had been a partner with L. C. and R. E. Griffith prior to 1928 in the Oklahoma Specialty Company, made a deal with L. C. Griffith whereby Amusement would operate the two theatres of Texas-Oklahoma Enterprises, Inc. in Enid. Underwood and Ezell had no time or inclination to go into the theatre business and acquired the theatres in Enid with the expectation of being able to arrange with Amusement to operate the theatres. The theatres were operated by Amusement under such arrangement until 1938 when Amusement purchased a half interest in the theatres of Underwood and associates and sold half of its theatres in Enid to Underwood and associates. Thereafter, Underwood and associates and Amusement operated, as partners, the theatres which they had theretofore severally owned. Plaintiff's Exhibit 30 (R. 2019) is not a pooling arrangement, but is a contract for the operation of the theatres which were jointly owned by the above parties.

In Finding No. 17 (R. 124), the Court specifically found that each of the contracts was entered into "for the purpose of economy and efficiency in opera-

tion caused by local conditions. Such contracts were not entered into with the intent or purpose of unreasonably restraining trade or commerce, stifling competition or monopolizing the industry, and they did not have such effect. All such contracts were reasonable and the result of ordinary business dealings."

There is no evidence whatever that either of those operating agreements was brought about because of the inability of the "independent exhibitor" to obtain adequate product, or because of any illegal discrimination or unreasonable restraint imposed by reason of "circuit buying power."

Although a partnership agreement entered into between competitors eliminates some competition as does also a joint operating agreement between competing exhibitors, such contracts are not *per se* illegal. Such agreements do not necessarily effect an unreasonable restraint of trade and, when entered into for the primary purpose of effecting economy and efficiency of operation, such agreements are not violative of the Sherman Act. *U. S.* v. *Joint Traffic Association*, 171 U. S. 505, 567; *Fechteler* v. *Palm Brothers Co.*, (C. C. A. 6), 133 Fed. 462, 471; *U. S.* v. *Du Pont de Nemours & Co.*, 188 Fed. 127, 150; *Appalachian Coals, Inc.* v. *U. S.*, 288 U. S. 344, 360.

Administration contracts. The administration contracts are of two general types. One is an agreement between one of the corporate defendants and a party with whom it jointly owned and operated a theatre or theatres in a certain town, setting forth the terms of the partnership operation, the duties to be performed by each party, the compensa-

tions to be received by each party for the services performed, the division of profits and other details of operating the business. The second type is an agreement between Amusement, on the one hand, and Consolidated and its partner, as the owners and operators of certain theatres whereby, for an agreed percentage of the gross box office receipts, Amusement agreed to perform certain services, including the licensing and booking of pictures. An example of such contract is Plaintiff's Exhibit 10 (R. 2007). R. E. Griffith Theatres, Inc. had similar contracts with Westex and persons with whom Westex owned theatres.

The trial court found that such agreements were entered into for legitimate purposes and were not entered into, upon the part of any of the defendants, with the intent or purpose of unreasonably restraining trade or commerce, stifling competition or monopolizing the exhibition of moving picture films, and that they did not have such effect; that such administrative contracts were not entered into or used by the defendants, or any of them, for the purpose of compelling or attempting to compel any distributor or distributors of motion picture films to license pictures to the defendants or to grant the defendants any such privileges or to unreasonably restrain, restrict or interfere with the licensing of moving picture films to any other exhibitor (Finding 18, R. 124). This finding is not assigned as error. It is amply supported by the evidence (R. 1865-6).

Amusement and R. E. Griffith Theatres, Inc. each owned 100% interest in theatres in a number of towns. It was natural that each would create and maintain an organi-

zation to perform certain administrative functions in the operation of their respective theatres, including bookkeeping, auditing, tax service, insurance service, repair services of all kinds, advertising service, shipment of films and accessories, the supervision of the operation of theatres and the licensing and booking of pictures. Amusement maintained such an organization at Oklahoma City, and R. E. Griffith Theatres, Inc. maintained a similar organization at Dallas (R. 1863-65, 1589, 1638-41). There was nothing illegal in those parties using a common agent in the licensing of pictures and in the performance of the numerous valuable services covered by those contracts. It has never been considered unlawful for persons and corporations to use a common purchasing or selling agent in order to avail themselves of all the normal economic advantages which flow from quantity buying or selling. The welfare of the public does not require that individual exhibitors shall refrain from cooperating in order to obtain the same economic advantages of quantity buying, which may be enjoyed by single corporation or individual, who entirely owns a large number of theatres. The authorities have recognized that the public welfare will be served by such cooperative buying or selling. *Midwest Theatre Company* v. *Co-Operative Theatres of Michigan*, 43 Fed. Supp. 216; *Appalachian Coals, Inc.* v. *U. S.*, 288 U. S. 344, 357, 377; *Prairie Farmers Publishing Company* v. *Indiana Farmers Guide Publishing Company* (C. C. A. 7), 88 Fed. (2d) 979; *Arkansas Brokerage Company* v. *Dunn & Powell, Inc.* (C. C. A. 8), 173 Fed. 899.

The ability to employ persons of skill, in performing duties which demand skill, is one of the normal and legal pur-

poses and functions of cooperative buying and selling. The above cases recognize that the economies resulting from the reduction in overhead, saving of time and expense to the various members of the group and a possible reduction in price, resulting from sales in large quantities, are all legitimate, proper and normal economic advantages, which are inherent in that method of dealing. Undoubtedly, pictures may be cooperatively licensed in a manner which does not violate any law. The Court is not required to infer a wrongful purpose on the part of appellees in the use of administration contracts and of a common licensing agent, when it is just as reasonable to infer that they were entered into and used for lawful and legitimate purposes. *Penn. R. Co.* v. *Chamberlain*, 288 U. S. 333, 339; *Schad* v. *20th Century-Fox Film Corporation* (C. C. A. 3), 136 Fed. (2d) 911, 996. The real question in this case, therefore, is whether or not there is evidence that the lawful advantages, inherent in cooperative licensing of pictures, has been pushed beyond the point of such lawful advantages. There is a complete absence of evidence of any such wrongful use. There is no evidence that appellees would not deal with the distributor unless their demands were met. The evidence is to the contrary. There is no evidence that the administration contracts were entered into for the purpose of eliminating competition between the parties to such contracts. There was no competition between the parties to the contracts at the time they were entered into, and the contracts were subject to termination on 30 days' notice. There is no evidence that these contracts were entered into for the purpose of unreasonably restraining trade or in any manner violating the Sherman Act.

Possession of unexerted power which has been lawfully acquired is not unlawful. We have heretofore seen that the evidence does not support appellant's contention that there were concessions or discriminations of any kind or character in favor of appellees. It is important that we now ascertain what significance, in law, is to be given to appellant's assertion of the existence in the appellees of "vast purchasing power" and "competitive advantages" resulting from aggregating a large group of theatres in licensing films. This brings us to a consideration of the question of the legality of quantity buying and of any competitive advantages which may accrue by reason of such buying. In that connection, let us assume that all of the theatres for which R. E. Griffith was licensing pictures prior to the season 1938-39 were acquired by lawful means and that they were all owned 100% by R. E. Griffith, and that he otherwise licensed pictures for those theatres in identically the same manner as he licensed them for the group of theatres for which he acted. The so-called "buying power" of R. E. Griffith would then be identical with that which was possessed by the aggregation of theatres for which he licensed pictures during that period. Under those circumstances would R. E. Griffith possess power to compel any major distributor to do anything and would the possession alone constitute a violation of Section 2 of the Sherman Act? The answer is found in *United States* v. *United States Steel Corporation*, 251 U. S. 417, 450, where it was said, "But we must adhere to the law and the law does not make mere size an offense or the existence of unexerted trusts to its prohibition of them and its power to repress

power an offense. It, we repeat, requires overt acts and or punish them." To the same effect are: *U. S.* v. *International Harvester Co.*, 274 U. S. 693, 708; *Federal Trade Commission* v. *Paramount Famous-Laskey Film Corporation* (C. C. A. 2), 57 Fed. (2d) 152, 157; *U. S.* v. *Standard Oil Co.*, 173 Fed. 177, 196; *National Biscuit Co.* v. *Federal Trade Commission* (C. C. A. 8), 299 Fed. 733, 736.

Under the above authorities, if R. E. Griffith did possess the power to compel the distributors to grant to him more favorable rental terms than could be obtained by an individual or corporation licensing pictures for a single theatre, the possession of such power would not constitute a violation of the Sherman Act. There being nothing illegal in the "buying power" possessed by one individual owning theatres in 43 towns, is the possession of the same amount of "buying power" resulting from the aggregation of theatres of several owners, illegal? Would the mere fact that the defendant corporations operated as separate corporations, instead of all being unified in one corporation, make the possession of the same character and quantity of power unlawful? The question is answered in the negative in *Appalachian Coals, Inc.* v. *U. S.*, 288 U. S. 344, 377, in which it was said, "Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge corporation bringing various individual units into one ownership. Either may be prompted by business exigencies and the statute gives to neither a special privilege. The question in either

case is whether there is an unreasonable restraint of trade or an attempt to monopolize." The resort on the part of the appellees to the common expedient of using a common agent in the licensing of pictures in order to promote economy and efficiency in the operation of their business was not illegal. If that arrangement materially aided them in competition, it was not condemned by law. It was said in *Arkansas Brokerage Company* v. *Dunn & Powell* (C. C. A. 8), 173 Fed. 899, 901, "It is quite as important to approve all lawful, fair and reasonable expedients devised to promote individual success as it is to condemn vicious and unlawful practices which violate public right and the public wield." In *Midwest Theatres Company* v. *Cooperative Theatres of Michigan*, 43 Fed. Supp. 216, the Court considered the legality of the use of Cooperative Theatres of Michigan as a common purchasing agent in the licensing of motion pictures for more than 100 theatres. It held that the "buying power" of the combination was not, in itself, illegal, and that the fact that the propriety ownership of the theatres was in a number of individuals instead of one did not render illegal the possession of such power as was collectively possessed by those exhibitors who cooperated. The method of cooperatively licensing pictures or "circuit" operation is open to anyone who desires to adopt it and who has the resources and ability to operate it. The fact that such operation may give an economic advantage over rivals, who have not chosen to adopt a similar method, does not constitute a violation of the Sherman Act. *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, 582; *Prairie Farmers Publishing Co.* v. *Indiana Farmers Guide*

Publishing Co. (C. C. A. 7), 88 Fed. (2d) 979, 982, Cert. denied 301 U. S. 696; *Federal Trade Commission* v. *Paramount* (C. C. A. 2), 57 Fed. (2d) 152, 156. Among the economic advantages, which may legally be obtained by quantity buying, is that of obtaining, by reason of competent and efficient representation, more favorable terms than can be obtained by a buyer in less quantities, and the saving of expense and time by using a common agent. Those are recognized as legitimate advantages. Since the pooling of purchasing power does not violate the Act, appellant has failed to make a case, unless it has established by a preponderance of the evidence that appellees combined to compel and coerce the distributors to grant privileges which were in unreasonable restraint of trade. The collective licensing of pictures was not *per se* unlawful. The combination itself did not necessarily have the effect of unreasonably restraining trade. The trial court found that the purpose of appellees was to secure economy and efficiency and to obtain the lawful advantages which normally flow from such cooperative effort, and that the evidence did not sustain the charge that they combined or conspired to crush competition, to compel or coerce any distributor to unreasonably restrain trade in interstate commerce, or to monopolize the industry in the exhibition of moving picture films in the territory set forth in the Complaint (Finding No. 10, R. 87). The trial court further held "that the defendants, or any of them, did not compel or attempt to compel any distributor named in the Complaint to grant to them, or any of them, any privileges or concessions which were not granted to their competitors or which gave them any sub-

stantial advantage over their competitors" (Finding No. 19, R. 125). The Court made the further finding that, "The defendants, or any of them, did not conspire or combine with each other in the operation of theatres or with associates or with the distributors for the purpose or with the effect to unreasonably restrain or restrict the terms upon which feature pictures were to be or were distributed by such distributors or made available for exhibition in theatres competing with the defendants" (Finding No. 20, R. 125).

The mere possession of such "buying power" as the defendants collectively possessed was not as great as that possessed by a single independent exhibitor in some cities (R. 1381). The aggregate rentals paid by all of the defendants represented only a minor part of the annual revenue of each of the five largest distributors. A witness produced by plaintiff stated the percentage of the total annual film rentals of the Oklahoma City Exchange, which were paid by Amusement and Consolidated to Fox, Loew's, Paramount, and Warners for the five years involved in this suit. The average percentages were: Fox—33%; Loew's—28.13%; Paramount—32.25%; Warners—30%. The average percentage of RKO for the seasons 1935-36 to 1937-38, inclusive, was 30% (R. 1119, 1120). He further testified that the percentage of the totals of the annual rentals of the Dallas Exchange paid by the defendants was as follows: Fox—from 2 to 5%; Loew's—from 4.59 to 7.78%; Warner—from 3 to 7%; Paramount—from 2.32 to 2.92%. RKO was estimated at 2 to 8% (R. 1124, 1125). He further testified that the total

rentals in the Oklahoma City Exchange of Loew's during the highest year amounted to slightly more than 15/100 of 1% of that corporation's gross revenue; that the total rentals in the Oklahoma City Exchange of Paramount for the highest year was about 12/100 of 1% of the corporation's gross revenue; that the total rentals in the Oklahoma City Exchange of Warner Brothers in the highest year was about 14/100 of 1% of the corporation's gross revenue; that the total rentals in the Oklahoma City Exchange of Fox in the highest year was about 29/100 of 1% of the corporation's gross revenue; that the total rentals in the Oklahoma City Exchange of RKO in the highest year was about 1/10 of 1% of the corporation's gross revenue. It follows that such "collective buying power," as the defendants possessed, was not sufficient, in and of itself, to have the effect of compelling either of the distributors to do anything. Hence, the plaintiff is not entitled to prevail in this case without proving, by competent evidence, that the defendants combined for a wrongful purpose or wrongfully exerted such power.

The facts in this case establish that whatever buying power the defendant corporations had, either separately or collectively, was not acquired wrongfully; that it did not grow and develop by oppressive or coercive competition; that it was not wrongfully used or exerted; that it was not acquired for a wrongful purpose; that it was not used to obtain unfair or unreasonable advantages over competing theatres; that it did not attempt to obtain unfair advantages from any distributor; that it did not condition the licensing of moving picture films in any situation upon the licensing of such films in any other situation, or

in any non-competitive situation. There was no plan, purpose or effort to crush competition. Therefore appellant failed to prove the allegations of the complaint as amplified by the bill of particulars.

In *U. S.* v. *Crescent Amusement Company, supra*, the Court found (Finding 9-B) that the defendants did combine their closed towns with the competitive towns in licensing films for the purpose and with the effect of compelling the major distributors to license films on a non-competitive basis. In the opinion of this Court, it was stated that, "The defendants would insist that a distributor give them monopoly rights in a town where they had competition, or else the exhibitor would not give the distributor any business in the closed towns where they had no competition." In *U. S.* v. *Schine*, 63 Fed. Supp. 229, the Court held that the defendants combined buying power to dictate terms to the distributors. In the case here the trial court found that "the defendants did not condition the licensing of moving picture films in any competitive situation upon the licensing of such films in any other situation, or in any non-competitive situation upon the licensing of such films in any competitive situations." (Finding No. 12, R. 123). That finding is supported by direct evidence (R. 1358-9, 1496, 1524, 1534, 1545, 1561, 1767, 1768, 1770, 1775, 1776, 1779, 1792, 1798, 1865, 1867, 1871, 1872, 1881, 1830, 1912; see also Findings 15, 19, 20, 26 and 29, R. 123-127). There is no direct evidence to the contrary and there is no other evidence which warrants a contrary inference or finding.

In the *Schine* case, the Court said that "motive is essential."

Appellant refers to the seasons when appellees did not make a circuit deal with Paramount, RKO and Universal, in support of its contention that the failure of a distributor to make a satisfactory deal with all of the defendants had the effect of depriving that distributor of film revenue from any of the defendants. We have hereinbefore referred to the circumstances under which circuit deals were not made in those instances. There was no demand by appellees that either of the distributors license its pictures to all of them or to any of them in any particular situation. The negotiations related only to those towns in which the distributor desired to negotiate contracts with appellees. There was no demand by appellees that pictures should be licensed to them in any situation as a condition to licensing pictures in any other situation. During the period here involved there was no circuit contract between any distributor and appellees under which priority of run was granted to appellees in all of the competitive situations. The failure of appellees to make a circuit deal with Paramount, RKO and Universal in those seasons was not due to any demand of the defendants for any exclusive privilege or because of any attempt by the defendants to compel the distributor to license its product in some town or towns where the distributor desired to license its product to another, or where a competing exhibitor was its established customer (R. 1771, 1772, 1781, 1787).

There Was No Error in the Exclusion of Testimony Offered By Appellant.

The testimony which appellant, in its brief, contends was wrongfully excluded falls into three groups and will be so presented in this brief.

Testimony of independent theatre operators as to conversations with the representatives of major film distributors. Those statements were made by representatives of distributors who were not parties to the litigation. They were statements which were made without sanction of oath and without the opportunity for cross-examination. They were clearly hearsay. Most of the testimony of that kind related to the statement by the representative as the reason why the particular distributor would not license certain product to an exhibitor. The Court suggested to plaintiff's attorney that a representative of the distributor be called as a witness to testify as to his reasons for not selling. Whereupon, the attorney for plaintiff stated, "I would not accept his answer as to what his reasons were" (R. 452). The hearsay rule forbids the mere use of extra-judicial reference as an assertion to evidence the fact asserted. Wigmore, 2d Ed., Sec. 1788.

Inter-Department communication of the distributors. Testimony of this character was offered in the trial court on the theory that the statements therein contained were declarations of a co-conspirator in the furtherance of the conspiracy. The testimony was not admissible on that theory. In order for such declarations to be admissible in evidence, there must be a compliance with certain well-defined rules of evidence.

This Court has recognized that there is a distinction between a conspiracy and a contract in restraint of trade. A conspiracy is a partnership in a wrongful purpose. *United States* v. *Kissel*, 218 U. S. 601, 608.

The statements of an alleged co-conspiracy cannot be received as evidence against a defendant until the existence of the conspiracy and the defendants' relation to it are proved by independent evidence. *Glasser* v. *United States*, 315 U. S. 60, 74; *Walz* v. *Fidelity-Phoenix Fire Insurance Company* (C. C. A. 6), 10 Fed. (2d) 22, 24; *Minner* v. *United States* (C. C. A. 10), 57 Fed. (2d) 506, 511; *Winchester and Partridge Manufacturing Company* v. *Creary*, 116 U. S. 161, 166.

Statements of alleged co-conspirators to third persons, made in the absence of the defendant, are admissible against him only if performed or uttered in furtherance of the objects of the conspiracy. The statement of the alleged co-conspirator must be made in furtherance of the particular conspiracy which has been established. Statements which were not made in furtherance of such conspiracy are not admissible. *Pinkerton* v. *United States*, 328 U. S. 640, 647; *Logan* v. *United States*, 114 U. S. 263, 308, 309; *Brown* v. *United States*, 150 U. S. 93, 98.

Statements of past events are inadmissible against anyone except the person who uttered them. *McMan Oil and Gas Company* v. *Hurley* (C. C. A. 5), 24 Fed. (2d) 776, 779; *United States* v. *Brig Burdett*, 34 U. S. 682, 689. Under the above authorities the inter-department communications between representatives of a distributor were properly excluded.

Appellant now asserts that such documents were admissible under Section 695, Title 28, U. S. C. A. No document was offered in evidence on that theory, and no exhibit which was excluded was admissible under that statute. The statute referred to is copied in Appendix C. The modified "Shop Book Rule" contained in that statute was enacted for the purpose of eliminating the necessity for identification of the records by the person who made the entry therein. *Palmer* v. *Hoffman*, 318 U. S. 109, 112. It was not intended in any manner to change the existing law relating to the character of documents which were admissible under the Shop Book Rule or as exceptions to the hearsay rule. The statute merely eliminated the necessity for establishing the authenticity of the class of documents which were theretofore admissible under the "Shop Book Rule" without establishing the authenticity of the documents, except to the extent of establishing that they were made in the regular course of the business. In *New York Life Insurance Company* v. *Taylor* (Court of Appeals, D. C.), 147 Fed. (2d) 297, it was said, "Such records must be those which are a product of routine procedure and whose accuracy is substantially guaranteed by the fact that the record is an automatic reflection of observation." In the *Palmer* case (318 U. S. 109, 111), this Court said that typical of such records are "payrolls, accounts receivable, bills of lading and the like."

In the same case this Court said that the Federal Shop Book Statute is not one "which opens wide the door to avoidance of cross examination." The exhibits which were excluded in this case were of a character which should not be admitted until the person, who wrote the documents,

has been subjected to the safeguard of cross-examination. *New York Life Insurance Company* v. *Taylor, supra; Antorg Trading Corporation* v. *Higgins* (C. C. A. 2), 150 Fed. (2d) 536, 539; *Schmeller* v. *United States* (C. C. A. 6), 143 Fed. (2d) 544, 550; *Buckley* v. *Altheimer* (C. C. A. 7), 152 Fed. (2d) 502, 507. The documents under consideration here were also inadmissible because the plaintiff did not make the preliminary proof required by statute. It requires that the person, offering documents of the character which are admissible under the Act, shall first establish that, "It was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter." No preliminary proof was offered by the plaintiff, except the stipulation that the documents were taken from the files of the several distributors. That is not a sufficient compliance with the requirement of the statute. *Schmeller* v. *United States, supra*, page 550.

In order for a memorandum or record to be admissible under Section 695, it must be a record of a contemporaneous act or transaction and not a statement of a past event. Each of Plaintiff's Exhibits (L-54, L-109, L-110, L-114-A, U-39) were offered by the plaintiff for the purpose of establishing statements, therein contained, of past transactions, and those exhibits were, therefore, inadmissible. *La Alra Silver Mining Co.* v. *United States*, 175 U. S. 423, 498-99.

The testimony was not admissible for the purpose of impeaching witnesses. Appellant contends that Exhibits F-19-CC and DD (R. 2597, 2598), RKO-21-E (R. 2640), U-39-R (R. 2669), L-54, L-68, L-109, L-110, L-114-A, L-123

(R. 2626, 2627, 2629, 2630, 2634) were admissible for the purpose of impeaching witnesses who testified in the case, even if they were not admissible as substantive evidence. There are well-recognized rules relating to the impeachment of witnesses by prior statements of the witness. As such evidence is not admitted as substantive evidence, but only for impeachment purposes, the witness must have first testified to a matter which is sought to be contradicted by the impeaching testimony. In addition, a proper foundation must be laid and the attention of the witnesses must have been called to the prior statement, whether oral or in writing.

Plaintiff's Exhibit F-19-CC is not a statement of the witness, Kupper, and was not admissible to impeach him. Exhibits F-19-CC and F-19-DD were also not admissible because Kupper had not testified to anything which those documents contradicted (R. 1397).

Appellant asserts that Plaintiff's Exhibit U-39 (R. 2669) was admissible for the purpose of impeaching the testimony of McCarthy, sales manager of Universal. That letter contains no statement of the witness, McCarthy. It purports to be a letter from A. J. Leary to Oldsmith (R. 2669). That exhibit was inadmissible for the purpose of impeaching the testimony of McCarthy, for the further reason that it was not presented to him or inquiry made of him in regard to it (R. 1537-1558). Appellant has referred to McCarthy as "the sole witness called for that distributor." McCarthy was not called as a witness for Universal. Universal was not a party to this case at the time the witness testified.

The necessity for the presentation to the witness, who is sought to be impeached, as a preliminary requisite to its admission, is well-recognized. *The Charles Morgan*, 115 U. S. 69, 77; *C. M. S. & P. R. R. Co.* v. *Artery*, 137 U. S. 507.

Appellant asserts that Plaintiff's Exhibit RKO-21-E (R. 2640) was admissible to impeach the testimony of the witness, Depinet, sales manager of RKO. That exhibit does not purport to be a statement of the witness, Depinet. It was not admissible for the purpose of impeaching his testimony, because it was not presented to him, and he was not examined relating to it (R. 1515-1529). In the testimony of Depinet (R. 1526), is the following: "Q. I will show you this photostat of a letter that has been identified as RKO Exhibit 21, which is addressed to you and signed by an exhibitor named Mahone, and ask you if you recall having received that. A. Yes, that letter has a ring of familiarity about it. I imagine that I received it. In fact, I know that I received it, or my office did." The letter referred to is RKO-21-A (R. 2636) and not the document which appellant is now claiming should have been admitted to impeach the witness (RKO-21-E, R. 2640). There is no reference whatever to RKO-21-E in Depinet's examination. Plaintiff's Exhibits L-54, L-68, L-109, L-110, L-114-A, L-123 (R. 2626, 2627, 2629, 2630, 2634) were not admissible to impeach the testimony of Rogers, general sales manager of Loew. Neither of those exhibits purports to be a statement of the witness, Rogers. Neither of those exhibits was presented to Rogers during his examination. His attention was not directed to and he was not examined about any exhibit (R. 1559, 1563).

CONCLUSION

It is respectfully submitted that the judgment of the District Court should be affirmed.

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APPENDIX

APPENDIX A

Paragraph Fourth of Printed Contract Form of Twentieth-Century Fox (Pltf's. Ex. F-2, R. 2205, Ev. R. 363, 1422).

"DELIVERY AND RETURN OF PRINTS—FOURTH: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

"(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any 'road show,' 'tryout,' 'preview,' or 'pre-release' exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A 'pre-release' exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

"(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or

otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided."

APPENDIX B

Paragraph Sixth of Fox's Printed Contract Form (Pltf's. Ex. F-2, R. 2205).

"SELECTION OF PLAY DATES—SIXTH: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

"1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the 'available date'). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

"2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

"3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor."

APPENDIX C

Section 695, Title 28, U. S. C. A.

"In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term 'business' shall include business, profession, occupation, and calling of every kind."

SUPREME COURT OF THE UNITED STATES

No. 64.—October Term, 1947.

The United States of America, Appellant, *v.* L. C. Griffith, H. J. Griffith, Consolidated Theatres, Inc., et al.	Appeal From the District Court of the United States for the Western District of Oklahoma.

[May 3, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

This is a suit brought by the United States in the District Court to prevent and restrain appellees from violating §§ 1 and 2 of the Sherman Act. 26 Stat. 209, as amended, 50 Stat. 693, 15 U. S. C. §§ 1, 2. The District Court, finding there was no violation of the Act in any of the respects charged in the complaint, dismissed the complaint on the merits. 68 F. Supp. 180. The case is here by appeal under § 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C. § 29, and § 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. § 345.

The appellees are four affiliated corporations and two individuals who are associated with them as stockholders and officers.[1] The corporations operate (or own stock in corporations which operate) moving picture theatres in Oklahoma, Texas, and New Mexico. With minor exceptions, the theatres which each corporation owns do not

[1] Griffith Amusement Co., Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., Westex Theatres, Inc., H. J. Griffith, and L. C. Griffith. R. E. Griffith, a brother of H. J. and L. C. Griffith, was a defendant, but died while the suit was pending in the District Court and the action was not revived against his estate or personal representative.

compete with those of its affiliates but are in separate towns. In April, 1939, when the complaint was filed, the corporate appellees had interests in theatres in 85 towns. In 32 of those towns there were competing theatres. Fifty-three of the towns (62 per cent) were closed towns, *i. e.* towns in which there were no competing theatres. Five years earlier the corporate appellees had theatres in approximately 37 towns, 18 of which were competitive and 19 of which (51 per cent) were closed. It was during that five-year period that the acts and practices occurred which, according to the allegations of the complaint, constitute violations of §§ 1 and 2 of the Sherman Act.

Prior to the 1938–1939 season these exhibitors used a common agent to negotiate with the distributors for films for the entire circuit.[2] Beginning with the 1938–1939 season one agent negotiated for the circuit represented by two of the corporate appellees, and another agent negotiated for the circuit represented by the other two corporate appellees. A master agreement was usually executed with each distributor covering films to be released by the distributor during an entire season.[3] There were variations among the master agreements. But in the main they provided as follows: (a) They lumped together towns in which the appellees had no competition and towns in which there were competing theatres. (b) They generally licensed the first-run exhibition in practically all of the theatres in which appellees had a substantial interest of substantially all of the

[2] The circuit includes the four corporate appellees and their affiliated exhibitors. When less than the full ownership of a theatre was acquired, the contract would provide that the buying and booking of films was exclusively in the hands of the Griffith interests.

[3] The agreement negotiated by the common agent would be executed between a distributor and each of the corporate appellees or between a distributor and an individual exhibitor.

films to be released by the distributor during the period of a year.[4] (c) They specified the towns for which second runs were licensed for exhibition by appellees, the second-run rental sometimes being included in the first-run rental. (d) The rental specified often was the total minimum required to be paid (in equal weekly or quarterly installments) by the circuit as a whole for use of the films throughout the circuit, the appellees subsequently allocating the rental among the theatres where the films were exhibited. (e) Films could be played out of the order of their release, so that a specified film need not be played in a particular theatre at any specified time.[5]

The complaint charged that certain exclusive privileges which these agreements granted the appellee exhibitors over their competitors unreasonably restrained competition by preventing their competitors from obtaining enough first- or second-run films from the distributors [6] to operate successfully. The exclusive privileges charged as violations were preemption in the selection of films and the receipt of clearances over competing theatres. It also charged that the use of the buying power of the entire circuit in acquiring those exclusive privileges violated the Act.

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[4] There were a few franchise agreements covering films to be released by a distributor during a term of years, usually for three years and in one instance for five years.

The theatres of appellees in Oklahoma City were second, not first, run theatres.

[5] The privilege was frequently conditioned on the playing of, or paying for, a designated quantity of the film obligation during stated portions of the season.

[6] Those are the eight major film distributors who originally were defendants. The charge that these distributors conspired with each other was eliminated from the complaint and they were dismissed as defendants by stipulation or on motion of appellant. But the charge that each of the distributors had conspired with the appellee exhibitors was retained.

The District Court found no conspiracy between the appellee exhibitors or between them and the distributors, which violated the Act. It found that the agreements under which films were distributed were not in restraint of trade; that the appellees did not monopolize or attempt to monopolize the licensing or supply of film for first run or for any subsequent run; that the appellees did not conspire to compel the distributors to grant them the exclusive privilege of selecting films before the films were made available to any competing exhibitor; that there was no agreement between defendants and distributors granting defendants unreasonable clearances; that the appellees did not compel or attempt to compel distributors to grant them privileges not granted their competitors or which gave them any substantial advantage over their competitors; and that appellees did not condition the licensing of films in any competitive situation on the licensing of such films in a non-competitive situation, or *vice versa*.

The appellant introduced evidence designed to show the effect of the master agreements in some twenty-odd competitive situations. The District Court made detailed findings on this phase of the case to the effect that difficulties which competitors had in getting desirable films after appellee exhibitors entered their towns, the inroads appellees made on the business of competitors, and the purchases by appellees of their competitors were not the result of threats or coercion nor the result of an unlawful conspiracy, but solely the consequence of lawful competitive practices.

In *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, a group of affiliated exhibitors, such as we have in the present case, were found to have violated §§ 1 and 2 of the Sherman Act by the pooling of their buying power and the negotiation of master agreements similar to those we have here. A difference between that case and the

present one, which the District Court deemed to be vital, was that in the former the buying power was used for the avowed purpose of eliminating competition and of acquiring a monopoly of theatres in the several towns, while no such purpose was found to exist here. To be more specific, the defendants in the former case through the pooling of their buying power increased their leverage over their competitive situations by insisting that they be given monopoly rights in towns where they had competition, else they would give a distributor no business in their closed towns.

It is, however, not always necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the anti-trust laws have been violated. It is sufficient that a restraint of trade or monopoly results as the consequence of a defendant's conduct or business arrangements. *United States* v. *Patten*, 226 U. S. 525, 543; *United States* v. *Masonite Corp.*, 316 U. S. 265, 275. To require a greater showing would cripple the Act. As stated in *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 432, "no monopolist monopolizes unconscious of what he is doing." Specific intent in the sense in which the common law used the term is necessary only where the acts fall short of the results condemned by the Act. The classical statement is that of Mr. Justice Holmes speaking for the Court in *Swift & Co.* v. *United States*, 196 U. S. 375, 396:

> "Where acts are not sufficient in themselves to produce a result which the law seeks to prevent—for instance, the monopoly—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. *Commonwealth* v. *Peaslee*, 177 Massachusetts, 267, 272. But when that intent and the

> consequent dangerous probability exist, this statute, like many others and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result."

And see *United States* v. *Aluminum Co. of America, supra,* pp. 431–432. And so, even if we accept the District Court's findings that appellees had no intent or purpose unreasonably to restrain trade or to monopolize, we are left with the question whether a necessary and direct result of the master agreements was the restraining or monopolizing of trade within the meaning of the Sherman Act.

Anyone who owns and operates the single theatre in a town, or who acquires the exclusive right to exhibit a film, has a monopoly in the popular sense. But he usually does not violate § 2 of the Sherman Act unless he has acquired or maintained his strategic position, or sought to expand his monopoly, or expanded it by means of those restraints of trade which are cognizable under § 1. For those things which are condemned by § 2 are in large measure merely the end products of conduct which violates § 1. *Standard Oil Co.* v. *United States,* 221 U. S. 1, 61. But that is not always true. Section 1 covers contracts, combinations, or conspiracies in restraint of trade.[7] Section 2 is not restricted to conspiracies or combinations to monopolize[8] but also makes it a crime for any person

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[7] Section 1 provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . ."

[8] Section 2 provides: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor. . . ."

to monopolize or to attempt to monopolize any part of interstate or foreign trade or commerce. So it is that monopoly power, whether lawfully or unlawfully acquired, may itself constitute an evil and stand condemned under § 2 even though it remains unexercised.* For § 2 of the Act is aimed, *inter alia*, at the acquisition or retention of effective market control. See *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 428, 429. Hence the existence of power "to exclude competition when it is desired to do so" is itself a violation of § 2, provided it is coupled with the purpose or intent to exercise that power. *American Tobacco Co.* v. *United States*, 328 U. S. 781, 809, 811, 814. It is indeed "unreasonable, *per se*, to foreclose competitors from any substantial market." *International Salt Co.* v. *United States*, 332 U. S. 392, 396. The anti-trust laws are as much violated by the prevention of competition as by its destruction. *United States* v. *Aluminum Co. of America, supra.* It follows *a fortiori* that the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful.

A man with a monopoly of theatres in any one town commands the entrance for all films into that area. If he uses that strategic position to acquire exclusive privileges in a city where he has competitors, he is employing his monopoly power as a trade weapon against his competitors. It may be a feeble, ineffective weapon where he has only one closed or monopoly town. But as those towns increase in number throughout a region, his monopoly power in them may be used with

*So also a conspiracy to monopolize violates § 2 even though monopoly power was never acquired. *American Tobacco Co.* v. *United States*, 328 U. S. 781, 789.

crushing effect on competitors in other places.[10] He need not be as crass as the exhibitors in *United States* v. *Crescent Amusement Co., supra,* in order to make his monopoly power effective in his competitive situations. Though he makes no threat to withhold the business of his closed or monopoly towns unless the distributors give him the exclusive film rights in the towns where he has competitors, the effect is likely to be the same where the two are joined. When the buying power of the entire circuit is used to negotiate films for his competitive as well as his closed towns, he is using monopoly power to expand his empire. And even if we assume that a specific intent to accomplish that result is absent, he is chargeable in legal contemplation with that purpose since the end result is the necessary and direct consequence of what he did. *United States* v. *Patten, supra,* p. 543.

The consequence of such a use of monopoly power is that films are licensed on a non-competitive basis in what would otherwise be competitive situations. That is the effect whether one exhibitor makes the bargain with the distributor or whether two or more exhibitors lump together their buying power, as appellees did here. It is in either case a misuse of monopoly power under the Sherman Act. If monopoly power can be used to begat monopoly, the Act becomes a feeble instrument indeed. Large-scale buying is not, of course, unlawful *per se.* It may yield price or other lawful advantages to the buyer. It may not, however, be used to monopolize or to attempt to monopolize interstate trade or commerce. Nor, as we

[10] It was said in *United States* v. *United States Steel Corp.,* 251 U. S. 417, 451, that mere size is not outlawed by § 2. But size is of course an earmark of monopoly power. Moreover, as stated by Justice Cardozo, speaking for the Court in *United States* v. *Swift & Co.,* 286 U. S. 106, 116, "size carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past."

hold in *United States* v. *Paramount Pictures, Inc., post* p. —, may it be used to stifle competition by denying competitors less favorably situated access to the market.

Appellees were concededly using their circuit buying power to obtain films. Their closed towns were linked with their competitive towns. No effort of concealment was made as evidenced by the fact that the rental specified was at times the total minimum amount required to be paid by the circuit as a whole. Monopoly rights in the form of certain exclusive privileges were bargained for and obtained. These exclusive privileges, being acquired by the use of monopoly power, were unlawfully acquired. The appellees, having combined with each other and with the distributors to obtain those monopoly rights, formed a conspiracy in violation of §§ 1 and 2 of the Act. It is plain from the course of business that the commerce affected was interstate. *United States* v. *Crescent Amusement Co., supra,* pp. 180, 183–184.

What effect these practices actually had on the competitors of appellee exhibitors or on the growth of the Griffith circuit we do not know. The District Court, having started with the assumption that the use of circuit buying power was wholly lawful, naturally attributed no evil to it and thus treated the master agreements as legitimate weapons of competition. Since it found that no competitors were driven out of business, or acquired by appellees, or impeded in their business by threats or coercion, it concluded that appellees had not violated the Sherman Act in any of the ways charged in the complaint. These findings are plainly inadequate if we start, as we must, from the premise that the circuit buying power was unlawfully employed. On the record as we read it, it cannot be doubted that the monopoly power of appellees had some effect on their competitors and on the growth of the Griffith circuit. Its extent must be determined on a

remand of the cause. We remit to the District Court not only that problem but also the fashioning of a decree which will undo as near as may be the wrongs that were done and prevent their recurrence in the future. See *United States* v. *Crescent Amusement Co., supra,* pp. 189–190; *Schine Chain Theatres* v. *United States, post,* p. —; *United States* v. *Paramount Pictures, Inc., post,* p. —.

Reversed.

MR. JUSTICE FRANKFURTER dissents, substantially for the reasons set forth in the opinion of the District Court, 68 F. Supp. 180.

MR. JUSTICE MURPHY and MR. JUSTICE JACKSON took no part in the consideration or decision of this case.